RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-01997

INDEX CODE: 131.00/107.00

XXXXXXX COUNSEL: XXXXXXXXXX

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

He be granted retroactive promotion to the grade of senior master sergeant (E-8), with all back pay, allowances and any other benefits as appropriate.

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APPLICANT CONTENDS THAT:

His exceptional career was irreparably damaged when his chain of command abused their authority by approving an inaccurate Enlisted Performance Report (EPR) that they knew was based on factors outside the reporting period. More importantly, the damaging EPR was rendered in retaliation after the rater’s inappropriate and unsuccessful efforts to encourage him to upgrade an EPR rating on his subordinate. This violation negatively impacted him in that the Meritorious Service Medal (MSM) for which he was recommended prior to this incident was downgraded to an Air Force Commendation Medal (AFCM). These factors together served to ensure his non-selection for promotion to senior master sergeant.

In support of his request, the applicant provides a memorandum from his counsel, a copy of his DD Form 214, *Certificate of Release or Discharge from Active Duty,* EPRs rendered for all reporting periods between 1997 and 2005, 20 Dec 05 letter from HQ AMC/IGQ, 17 Jan 06 letter from the XXXth Air Mobility Wing/IG, and 4 Oct 04 recommendation for the MSM, second oak leaf cluster (the contested decoration).

The applicant’s complete submission, with attachments, is at Exhibit A.

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STATEMENT OF FACTS:

Applicant’s military personnel records indicate he enlisted in the Regular Air Force on 4 Aug 81 for a period of four years in the grade of airman basic (E-1) and was progressively promoted to the rank of master sergeant (E-7) with an effective date and date of rank of 1 May 97.

On 10 Oct 03, the applicant was notified by his rater his EPR closing 30 Sep 03 (previously submitted for processing) would be pulled back and not approved for senior rater (major general) endorsement as originally proposed.

The applicant contested the decision through his chain of command, complaining the alleged reasons for the downgrade took place after the reporting period. After subsequent meetings with his rater and a 12 Nov 03 meeting with his commander, he made initial contact with the Wing Inspector General Office on 17 Nov 03.

On 19 Dec 03, the applicant requested a 31-month extension to his Date Estimated Return from Overseas (DEROS) to remain at XXXXXXXX AB, XXXXXXX, which was denied by his commander on 24 Dec 03.

On 6 Jan 04, the applicant was furnished the contested EPR with a downgraded senior rater endorsement and a reduced rating in the “Leadership” category of the report.

On 20 Jan 04, the applicant initiated an AF Form 102, *Inspector General Personal and Fraud, Waste and Abuse Complaint Registration*, alleging reprisal and abuse of authority by his chain of command relative to his EPR and his request for extension of his (DEROS).

On 27 May 04, AMC/IG directed a Category II investigation into the applicant’s allegations. The investigation was conducted from 1 Jun 04 to 23 Jun 04 at XXXXXXX AB, XXXXX; XXXXXX AFB, XX; and XXXXX AFB, XX.

On 4 Oct 04, the applicant’s commander recommended him for award of the Meritorious Service Medal (MSM), first oak leaf cluster, based on his upcoming Permanent Change of Station (PCS).

On 16 Nov 05, the applicant was awarded the Air Force Commendation Medal (AFCM) by virtue of Special Order G-040.

On 20 Dec 05, the applicant was notified by Headquarters, Air Mobility Command Office of the Inspector General (HQ AMC/IG) of its findings regarding his allegations.

SAF/IG reviewed the HQ AMC/IG report of investigation and approved four separate findings of abuse of authority related to both the EPR and DEROS extension request. Specifically, the chain of command abused their authority by signing the applicant’s EPR knowing that it was marked down based on events alleged after the 30 Sep 03 closeout. Further, the applicant’s refusal to upgrade his subordinate’s EPR at the behest of the rater, a personal friend of the subordinate, was a significant event prompting the rater to mark down the applicant’s EPR and recommend denial of his DEROS extension with no other basis. The allegations related to reprisal were not substantiated because the actions of the chain of command, while arbitrary and capricious, were not specifically in response to the protected communication with the Inspector General’s Office. The specific allegations and findings are as follows:

**Allegation 1** (as amended by HQ AMC/IG). Applicant’s squadron commander abused his authority by signing an EPR, close-out 23 Sep 03, that was not reflective of applicant’s performance, in violation of AFI 90-301, *Inspector General (IG) Complaints*, on 6 Jan 04.

**FINDING:** SUBSTANTIATED

**Allegation 2.**  Applicant’s rater reprised against him for making a protected communication by signing an EPR, close-out 23 Sep 03, that was not reflective of his performance in violation of AFI 90-301, *IG Complaints*, on 6 Jan 04.

**FINDING**: NOT SUBSTANTIATED

**Allegation 3**.  Applicant’s rater abused his authority by signing an EPR, close-out 23 Sep 03, that was not reflective of his performance, in violation of AFI 90-301, *IG Complaints*, on 6 Jan 04.

**FINDING**: SUBSTANTIATED

**Allegation 4**.  Applicant’s flight commander reprised against him for making a protected communication by signing an EPR, close-out 23 Sep 03, that was not reflective of his performance, in violation of AFI 90-301, *IG Complaints*, on 6 Jan 04.

**FINDING:** NOT SUBSTANTIATED

**Allegation 5.**  Applicant’s flight commander abused his authority by signing an EPR, close-out 23 Sep 03, that was not reflective of his performance, in violation of AFI 90-301, *IG Reports*, on 6 Jan 04.

**FINDING:** SUBSTANTIATED

**Allegation 6**(as amended by HQ AMC/IG).  Applicant’s flight commander abused his authority by declining his request for extension, in violation of AFI 90-301, *IG Complaints*, on 6 Jan 04.

**FINDING** (as amended by SAF/IG): NOT SUBSTANTIATED

**Allegation 7.**  Applicant’s rater reprised against him for making a protected communication by providing inaccurate information to the flight commander in order to influence his decision to deny the applicant’s extension request, in violation of AFI 90-301, IG Reports, on 6 Jan 04.

**FINDING:** NOT SUBSTANTIATED

**Allegation** **8.**  Applicant’s rater abused his authority by providing inaccurate information to the flight commander in order to influence his decision to decline the applicant’s request for an extension, in violation of AFI 90-301, *IG Reports*, on 6 Jan 04.

**FINDING:** SUBSTANTIATED

A complete copy of the IG Report is at Exhibit C.

On 17 Jan 06, the applicant received a letter from the XXXth Air Mobility Wing Deputy Inspector General in response to his concerns regarding the contested EPR and subsequent Permanent Change of Station (PCS) decoration. Consistent with the AMC/IG disposition letter, the XXXth Air Mobility Wing Deputy IG advised the applicant he could use the findings of the investigation to appeal the contested EPR through the Evaluation Reports Appeal Board (ERAB) and/or pursue a remedy to the decoration through the AFBCMR.

Using these findings, the applicant successfully petitioned the ERAB to remove the contested EPR from his military records. In Apr 06, the contested report was removed.

Applicant’s EPR profile since 1995 follows:

PERIOD ENDING OVERALL EVALUATION

  11 Mar 95 5

  11 Mar 96 5

  12 Dec 96 5

  12 Dec 97 5

  12 Dec 98 5

  30 Sep 99 5

  23 Sep 00 5

  23 Sep 01 5

23 Sep 02 5

**\***23 Sep 03 Removed per ERAB

  23 Sep 04 5

  23 Sep 05 5

\* - Contested EPR

On 31 Jul 06, the applicant retired from active duty as a master sergeant (E-7). He was credited with 24 years, 11 months and 27 days of active service.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force, which is attached at Exhibit D.

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AIR FORCE EVALUATION:

AFPC/DPSOE recommends denial, indicating the applicant was provided equitable promotion consideration in accordance with existing policies using the same procedures that are afforded others in similar circumstances. They note the applicant was considered, but not selected, for promotion to SMSgt for cycles 04E8, 05E8 and 06E8 during the 24-28 Apr 06 Board based on removal of the aforementioned report.

A complete copy of the DPSOE evaluation is at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 24 Jul 09 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit E).

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1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was timely filed.

3.  Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice warranting the applicant’s direct promotion to senior master sergeant (E-8). We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant was afforded promotion consideration in accordance with applicable procedures and consistent with those afforded to others in similar circumstances. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

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THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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The following members of the Board considered AFBCMR Docket Number BC-2009-01997 in Executive Session on 10 Nov 09, under the provisions of AFI 36-2603:

Mr. XXXXXXXXXX, Vice Chair

Ms. XXXXXXXXXX, Member

Mr. XXXXXXXXXX, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 27 May 09, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. SAF/IG Report of Investigation, dated

28 Jun 04 (withdrawn).

Exhibit D. Letter, AFPC/DPSOE, dated 2 Jul 09.

Exhibit E. Letter, SAF/MRBR, dated 24 Jul 09.

XXXXXXXXXX

Vice Chair