RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-01709

INDEX CODE: 111.05

COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His Enlisted Performance Report (EPR) rendered for the period 30 Nov 06 through 28 Jan 08 be amended or declared void and removed from his records.

His EPR rendered for the period 29 Jan 08 through 25 Jul 08 be declared void and removed from his records.

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APPLICANT CONTENDS THAT:

His EPR closing 28 Jan 08 does not reflect all the work that was accomplished from Nov 06 to the close out date of the report. Information was excluded intentionally in reprisal for the Military Equal Opportunity (MEO) complaint he filed against the rater on 9 Aug 07.

The referral EPR closing 25 Jul 08 is not accurate. He was still performing financial management duties during and after the reporting period despite the limitations the rater describes in the EPR. Also, his security clearance has since been reinstated (13 Mar 09), providing further proof the referral report should never have been rendered.

In support of his request, the applicant provides copies of the email traffic between the rater and former rater, the MEO complaint, the 13 Mar 09 security clearance reinstatement letter from the Personnel Security Appeals Board (PSAB), a letter from his mother, character reference letters, a letter from the Area Defense Council (ADC) and his letters of rebuttal.

Applicant also provides copies of various cost reports and approval letters relative to his financial management responsibilities as well as several memoranda for record.

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

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STATEMENT OF FACTS:

Information extracted from the Military Personnel Data System (MilPDS) indicates the applicant enlisted in the Regular Air Force on 25 Aug 94 and was progressively promoted to the grade of staff sergeant, with an effective date and date of rank of 1 Sep 02.

Applicant’s EPR profile since 1998 follows:

PERIOD ENDING OVERALL EVALUATION

30 Nov 98 5

2 Jul 99 4

15 Jan 02 4

29 Nov 02 4

29 Nov 03 5

29 Nov 04 5

29 Nov 05 5

29 Nov 06 5

**\***28 Jan 08 3

**\***25 Jul 08 3 (Referral)

29 Dec 08 4

\* - Contested Reports

The record indicates the applicant arrived at his current assignment via permanent change of station on 11 Jun 07. On 9 Aug 07, the applicant filed an informal MEO complaint against his supervisor based on perceived racial discrimination that was resolved through the chain of command.

On 4 Feb 08, the applicant’s rater requested input from the previous rater for the EPR closing 28 Jan 08. On 8 Feb 08, the applicant was given a “3” EPR, and refused to sign it. On 13 Feb 08, the applicant appealed the EPR to the Evaluation Reports Appeal Board (ERAB) contending the EPR indicated incorrect dates of supervision. On 14 Feb 08, the applicant’s previous supervisor provided input per the 4 Feb 08 request.

On 4 Mar 08, the Air Force Central Adjudication Facility (AFCAF) revoked the applicant’s security clearance due to personal financial issues. On 2 May 08, the applicant appealed the revocation indicating that his financial issues were due to family members taking out credit in his name.

On 9 May 08, the ERAB referred his EPR appeal back to the applicant requesting additional information and a copy of a signed proposed replacement EPR. On 30 Jul 08, he received a referral EPR closing 25 Jul 08, acknowledging receipt the same day. On 19 Aug 08, the ADC rebutted the referral EPR on behalf of the applicant, contesting the basis for the referral as faulty due to inappropriate comments related to the withdrawal of the applicant’s security clearance. The applicant also submitted a rebuttal contesting the rater’s contention that the applicant was unable to perform any duties involving cash transactions/ financial management due to the loss of his security clearance. On 28 Aug 08, the commander approved the referral EPR rendering the applicant ineligible for promotion.

On 29 Oct 08, the applicant filed a complaint of discrimination in the federal government requesting relief in the form of changes to his last two EPRs, reinstatement of his promotion, and reassignment from his unit.

On 19 Mar 09, the Personnel Security Appeals Board (PSAB) granted applicant’s appeal, restoring his security clearance.

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AIR FORCE EVALUATION:

AFPC/DPSIDEP recommends denial, indicating no evidence of an error or injustice regarding the 28 Jan 08 EPR. According to DPSIDEP, the rater may gather information from previous evaluators, but is not obligated to use it, and the absence of such information does not make the report inaccurate. Additionally, the rater could not have intentionally left out information when it was not available until after he completed the report. As for the 25 Jul 08 EPR, the fact that the applicant’s security clearance was reinstated on 13 Mar 09 does not make the report invalid. At the time the report was written, his clearance had been suspended, then revoked, making the report accurate as written. As for the applicant’s contentions regarding his financial management responsibilities, DPSIDEP could not determine if the documents in the application relate to transactions the applicant was allegedly forbidden to handle.

A complete copy of the DPSIDEP evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 11 Jun 09 for review and comment, within 30 days. As of this date, no response has been received by this office (Exhibit D).

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THE BOARD CONCLUDES THAT:

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 error or injustice. 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 (OPR) and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. In the rating process, each evaluator is required to assess a ratee’s performance, honestly and to the best of their ability. In the case of the EPR closing 28 Jan 08, the applicant asserts that his supervisor omitted accomplishments from the report he believes are significant and should have been included. Although we find the accomplishments commendable, we see no evidence which would lead us to believe the applicant has been the victim of an error or injustice in this matter. His supervisor made efforts to obtain information from the previous rater regarding the applicant’s performance. Unfortunately, the previous rater did not respond until after the EPR in question was written and rendered to the applicant. In the case of the EPR closing 25 Jul 08, the fact the applicant’s security clearance was reinstated does not make the comments in the report regarding the applicant’s security clearance invalid. Furthermore, the documentation provided by the applicant to refute the comments in the report relative to his financial management duties do not make it clear that these were the duties he was forbidden to handle. Therefore, in the absence of sufficient evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

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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-2009-01709 in Executive Session on 1 Sep 09, under the provisions of AFI 36-2603:

Mr. Robert H. Altman, Panel Chair

Ms. Glenda H. Scheiner, Membe

Mr. Joseph D. Yount, Member

The following documentary evidence for AFBCMR Docket Number BC-2009-01709 was considered:

Exhibit A.  DD Form 149, dated 23 Apr 09, w/atchs.

Exhibit B.  Applicant's Master Personnel Records.

Exhibit C.  Letter, AFPC/DPSIDEP, dated 11 Jun 09.

Exhibit D.  Letter, SAF/MRBR, dated 26 Jun 09.

ROBERT H. ALTMAN

Panel Chair