

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2011-04279  
COUNSEL: NONE  
HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

The Enlisted Performance Report (EPR) rendered for the period 13 Mar 2011 through 14 Aug 2011, be declared void, or her rater be changed.

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APPLICANT CONTENDS THAT:

Her civilian supervisor, did not have the proper training required to supervise military personal, nor did she meet the waiver requirements as outlined in AFI 36-401, *Employee Training and Development*, Attachment 2, and AFI 36-2406, *Officer and Enlisted Evaluation Systems*.

This report was written based of personal disagreements and possible reprisal for filing an Air Force Inspector General (IG) complaint on 21 Jan 2011, and had nothing to do with her duty performance.

The 37th Training Support Squadron (TRSS) is responsible for maintaining control of Personnel Information Files (PIF) for all group personnel. However, her supervisor maintained an illegal PIF in her desk drawer, which she did not have immediate access to. During the EPR feedback session, her supervisor provided her with AFI 33-332, *Privacy Act Program*, Air Education and Training Command (AETC) Supplement 1, and advised her she could use the Privacy Act program to request a copy of her "desk drawer" PIF. This is unfair in policy and practice. She should have immediate access to documents which are being used against her. Requesting her records though the Freedom of Information Act (FOIA) takes 20 days. She only had three days to decide if she would sign the EPR.

Her supervisor completed a Letter of Counseling (LOC) which was not in accordance with regulations. The entire format of the document was incorrect, improper personnel were present during discussion of the proposed LOC, she was not afforded the opportunity to respond to the LOC, and the document was never signed at all. However, she considered this document when preparing her EPR.

Her supervisor was unaware of the requirement in AFI 36-2406 to conduct proper face-to-face feedback prior to the EPR being signed. She was informed on several different occasions by herself and others, that she must provide face-to-face feedback to discuss the EPR prior to obtaining her signature. Her supervisor continued to insist on providing the feedback electronically until the first sergeant intervened and advised her of the requirement.

Significant inputs such as making the university President's List for maintaining a 4.0 grade point average in May 2011, and helping the American Heart Association raise over \$119,000 in May 2011 were left out of her EPR.

In support of her request, the applicant provides, a personal statement, EPRs for the last 10 years, decorations, formal feedbacks, and electronic communiqués.

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

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STATEMENT OF FACTS:

On 31 Mar 2012, the applicant retired from the Air Force in the grade of senior master sergeant (SMSgt, E-8).

The following is a resume of the applicant's performance profile:

<u>Period Ending</u>	<u>OVERALL EVALUATION</u>
1 Jul 2001	5
1 Jul 2002	5
30 Apr 2003	5
30 Apr 2004	5
12 Mar 2005	5
12 Mar 2006	5
12 Mar 2007	5
12 Mar 2008	5
12 Mar 2009	5
12 Mar 2010	5
12 Mar 2011	5
<b>* 14 Aug 2011</b>	<b>4</b>

**\*Contested Report**

The remaining relevant facts pertaining to this application are described in the letters prepared by the Air Force offices of primary responsibility, at Exhibits B and C.

AIR FORCE EVALUATION:

HQ AFPC/DPSIMC recommends approval of removing the applicant's LOC, dated 4 Aug 2011 from her records. DPSIMC states, the applicant did not acknowledge receipt of the LOC within three duty days however, she did provide a rebuttal to the LOC on 10 Aug 2011. The use of the LOC by commanders and supervisors is an exercise of supervisory authority and responsibility directed by AFI 36-2907, *Unfavorable Information File Program*. Specifically, the LOC is an official record on a member that is initiated by a member's supervisor. The LOC dated 4 Aug 2011 was not processed in accordance with AFI 36-2907.

The complete AFPC/DPSIMC evaluation is at Exhibit C.

HQ AFPC/DPSID recommends denial to remove the contested report. DPSID states the applicant did not file an appeal through the Evaluation Reports Appeal Board's (ERAB) under the provisions of AFI 36-2401, *Correcting Officer and Enlisted Evaluation Reports*.

The applicant received a non-referral EPR, with no mention of the LOC in the report. The issuance of the LOC appears to be an isolated incident. AFI 36-2401, states in part that although the applicant may feel the evaluator has overstressed an isolated incident or a short period of substandard performance or conduct, the evaluator is obliged to consider such incidents, their significance, and the frequency with which they occurred in assessing performance and potential. Only the evaluator knows how much an incident influenced the report. Whether or not the LOC was a factor in the ratings and comments on the EPR is unknown, but based on the presumed validity of the LOC, any consideration of it in the preparation of this EPR would have been valid and within the rater's rights to do so. The applicant has not provided any documentation, either from her rating chain or from any independent investigation to demonstrate that the issuance of the LOC by her rater unduly influenced the contested evaluation.

The applicant additionally alleges that her civilian rater, was unaware of procedures for properly conducting feedbacks, In accordance with AFI 36-2406, she did not follow proper procedures in this regard. The applicant, in one of her specific charges, claims that her initial feedback was not conducted, but in contradiction of this statement, the applicant provides the very initial feedback she claims was never accomplished (attachment 4 of her case). When her report closed out the applicant also claims that she never received any negative feedback from her rater prior to this feedback, and that she was not allowed to properly clarify and or justify any of the markdowns on the EPR, as given by the rater. The applicant further claims that none of the performance issues were documented nor disclosed prior to the close out of the EPR. It should be obvious to the applicant that the rater did in fact document substandard performance, in the

form of the very LOC the applicant provided in her case. What must also be taken into consideration is AFI 36-2401, Attachment 1, Paragraph A1.5.8, which states that lack of counseling or feedback, by itself, is not sufficient to challenge the accuracy or justness of a report. AFI 36-2406, Paragraph 2.1 0, states that while documented feedback sessions are required by this Instruction, they do not replace informal day-to-day feedback. A rater's failure to conduct a required or requested feedback session, or document the session on a performance feedback worksheet, will not, of itself, invalidate any subsequent performance report. DPSID states, that in the absence of any evidence to the contrary, the rater did follow all applicable policies and procedures in the preparation and completion of the contested evaluation.

In regards to the applicant's allegation that the marked down EPR was the result of an Air Force IG complaint, she contends she filed prior to the beginning of this rating period. She does not provide any evidence of either filing an IG complaint or the results of such an investigation. The applicant has not proved in her appeal that filing of such IG complaint had any impact on the EPR she is contesting. Accordingly, they find this element of her appeal without any merit and therefore irrelevant.

She alleges that due to a personality conflict between herself and her rater, her rater omitted important accomplishments from the contested evaluation. In accordance with AFI 36-2401, it is up to the applicant to provide proof of this specific allegation, which she has not done. She must provide first hand evidence that clearly shows how the conflict prevented the evaluator from preparing a fair and accurate report. If other evaluators support an appeal because they were unaware of a conflict at the time, they should provide specific information (and cite their sources) which leads them to believe the report is not an objective assessment. Based on a lack of any evidence provided by the applicant that would show that the conflict was personal, DPSID contends the rater acted professionally in regards to preparing the contested evaluation and rated the applicant fairly.

An evaluation report is accurate as written when it becomes a matter of record. To effectively challenge an EPR, it is necessary to hear from all the members of the rating chain-not only for support, but also for clarification/explanation. The applicant has failed to provide any information or support from the rating chain on the contested EPR. In the absence of information from evaluators, official substantiation of error or injustice from the IG or Military Equal Opportunity is appropriate, but not provided. In this case, the applicant claims to have filed an IG complaint, however the applicant did not provide any evidence of such an investigation which may or may not have substantiated her overall appeal. It appears the report was accomplished in direct accordance with applicable Air

Force instructions. DPSID states, that once a report is accepted for file, only strong evidence to the contrary warrants correction or removal from an individual's record. The burden of proof is on the applicant. The applicant has not substantiated the contested report was not rendered in good faith by all evaluators based on knowledge available at the time.

The complete AFPC/DPSID evaluation is at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 20 Mar 2012, copies of the Air Force evaluations were forwarded to the applicant 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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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 an error or injustice. We took careful 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 its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. We note that DPSIMC recommends the LOC dated 4 Aug 2011 be removed due to procedural errors; however, we ascertained the LOC is not a part of the applicant's military personnel records. Notwithstanding the above, we are not persuaded that the contested report is not a true and accurate assessment of her demonstrated potential during the specified time period or that the ratings she received were in error or contrary to the provisions of the governing instruction. Therefore, in the absence of persuasive evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

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 this application in Executive Session on 31 May 2012, under the provisions of AFI 36-2603:

Panel Chair  
Member  
Member

The following documentary evidence was considered in AFBCMR BC-2011-04279:

- Exhibit A. DD Form 149, dated 17 Oct 2011, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSIMC, dated 22 Dec 2011.
- Exhibit D. Letter, AFPC/DPSID, dated 27 Feb 2012.
- Exhibit E. Letter, SAF/MRBR, dated 20 Mar 12.

Panel Chair