

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2012-00258
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. The Air Force (AF) Form 707, *Officer Performance Report (OPR)*, rendered for the period 1 Mar 09 through 28 Feb 10, be removed from his records and replaced with two different OPRs; one for the period 1 Mar 09 through 22 Sep 09, and the other for the period 23 Sep 09 through 22 Sep 10.
 2. His corrected record receive Special Selection Board (SSB) consideration for promotion to the grade of lieutenant colonel (Lt Col) by the CY 11 Line and Health Professions Lt Col Selection Board.
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APPLICANT CONTENDS THAT:

An improper change of reporting official (CRO) date resulted in him receiving a referral OPR for missing his annual Fitness Assessment (FA). He changed jobs and supervisors during the reporting period and his organization backdated the effective date of the CRO to avoid writing an OPR. This change kept the initial period of supervision under 180 days. The back dating of the OPR caused him to miss his annual FA and resulted in his referral OPR. The OPR in question does not accurately reflect his duty or supervisors. The referral OPR caused his non-selection to Lt Col.

In support of his request, the applicant provides an expanded statement and copies of excerpts from his military personnel record, which include performance reports, Air Force Forms (AF) IMT 2096, *Classification/On-the-Job Training Action*, as well as letters of support from his current rating chain.

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

STATEMENT OF FACTS:

The applicant is currently serving in the Air Force Reserves in the rank of major (O-4).

On 17 May 10, the applicant participated in an FA and attained a passing score.

In accordance with AFI 36-2905, *Air Force Fitness Program*, Chapter 2, Air Force members must participate in a fitness assessment at least bi-annually in order to remain current. The AFI further states service members are responsible for maintaining currency standards. In addition the failure of a service member to remain current or achieve a passing score before the end of the performance report reporting period will result in a "DOES NOT MEET STANDARDS" rating on the service member's OPR/EPR if, as the closeout date of the performance report, currency or a passing score is not obtained.

On 6 Dec 09, the applicant became non-current in accordance with the provisions of AFI 36-2905 and remained non-current until participating in a FA on 28 Feb 10.

According to an AF IMT 2096, *Classification/On-the-Job Training Action*, dated 1 Dec 09 the applicant was reassigned from OSF Position 04538481L to 731AS position 04558051L, effective 15 Jun 09.

According to an AF IMT 2096, *Classification/On-the-Job Training Action*, dated 31 Oct 11, the applicant was reassigned from OSF Position 04538481L to 731AS position 04558051L, effective 23 Sep 09.

On 20 Aug 10, the contested OPR was rendered upon the applicant for the period 1 Mar 09 through 28 Feb 10.

The applicant's OPR profile as major is as follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
28 Feb 06	Meets Standard (MS)
28 Feb 07	MS
29 Feb 08	MS
28 Feb 09	MS
*28 Feb 10	Does Not MS
28 Feb 11	MS
29 Feb 12	MS

*Referral Report

The applicant did file an appeal with the Evaluations Report Appeals Board (ERAB). However, the ERAB was not persuaded the contested report was inaccurate or unjust and denied his request.

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 C.

AIR FORCE EVALUATION:

ARPC/DPB recommends denial noting there is no evidence of support from the applicant's original rating chain indicating the report in question was erroneous or unjust. Furthermore, there is no evidence the applicant changed organizations for duty performance nor does his Duty Assignment History reflect a change in assignment or the effective date of the change in assignment from 731 ALS to the 302d. The Fitness Testing completion record provided by the applicant shows he was five months past due on his annual test, and that since 2008 he has been consistently late in accomplishing his fitness testing.

The complete ARPC/DPB evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In support of his request the applicant provided a letter from his former squadron commander who was the primary rater on the OPR in question. The applicant further points out that the Reviewing Official for the referral report is the Reviewing Official for the two replacement OPRs. His Wing Commander supports replacing the one OPR with two others. His Wing Commander thoroughly reviewed all the evidence in this case and agrees that an injustice occurred. The Wing Commander is willing to sign the two replacement OPRs, which in the applicant's mind, is as much an endorsement of his case as any letter he could write. His Wing Commander did not take this case lightly - he understands the impact fitness testing has in our current Air Force culture, and the removal of an OPR with a fitness related referral in it is not something he is willing to allow unless the circumstantial evidence clearly demonstrates a need to do so.

The evaluation by the Office of Primary Responsibility stated "There is nothing in the applicant's AFBCMR package or in his record to show that he changed organizations for duty performance." He believes this was based on the 7 Feb 12 Single Unit Retrieval Format (SURF), which was not accurate. He has attached an updated SURF, which accurately reflects his duty history, and no longer includes a 15 Jun 09 CRO date. Also, the AF Form 2096 has been filed, and the proper date of 27 Sep 09 for the CRO is now reflected in his duty history. The CRO from 27 Sep 09 should have generated an OPR. The evaluation further states "Failure of the rating chain to document conduct that departs from Air Force core values does a disservice to all others competing for promotion." He agrees that proper documentation is a necessary part of our rating/promotion system and believes this has occurred in his case. However, the appropriate documentation for an overdue fitness test is not a referral OPR. No one in the Air Force today is being given a referral OPR simply for allowing their fitness test due date to

expire. The reason the referral OPR exists, as it pertains to fitness, is to document a failure to pass the test itself, or failure to accomplish the test during the OPR reporting cycle. If an OPR closes out without having a satisfactory fitness test accomplished during the OPR effective dates, then a referral is required - it doesn't matter whether the member simply didn't take the test, or whether they took it 10 times and couldn't pass it. The end result is the same referral OPR. In his case, he has never failed the fitness test since entering the Air Force in 1995. He was given a referral OPR because he was overdue for the test and didn't have a valid score by the closeout date of 28 Feb 10, but he should have never had an OPR that closed out on that date. His OPR reporting cycle should have changed on or about 27 Sep 09.

The applicant's complete response, with attachments, is at Exhibit E.

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. The applicant believes that his command's action to select a change of reporting official (CRO) effective date so as not to generate an OPR in conjunction with his reassignment resulted in his receiving the contested referral officer performance report (OPR). However, after a thorough review of the evidence of record and the applicant's complete submission, to include his response to the Air Force evaluation, we are not convinced he was the victim of an error or injustice. Even if we assume for the sake of argument that the applicant's record should be reconstructed in the way he requests, the fact the applicant allowed himself to become non-current in his fitness assessment for over five months in violation of AFI 36-2905 would continue to form the legitimate basis for a referral OPR, regardless of the period for which it was rendered. The applicant's contentions are duly noted; however, we do not find the evidence presented sufficient to convince us that his referral OPR was the result of anything other than his lack of due diligence in ensuring he remained current in his FA in accordance with the prescribing instruction. Therefore, we find no 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.

THE BOARD DETERMINES THAT:

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

The following members of the Board considered AFBCMR Docket Number BC-2012-00258 in Executive Session on 16 Aug 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 9 Jan 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, ARPC/DPB, dated 14 Feb 12.
- Exhibit D. Letter, SAF/MRBR, dated 1 Mar 12.
- Exhibit E. Letter, Applicant, dated 21 Mar 12, w/atchs.

Panel Chair