

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01138
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. The Article 15 punishment imposed on her on 27 Apr 09 be removed from her records.
 - 2 The AF Form 910, *Enlisted Performance Report (EPR) (AB thru TSgt)*, for the period 5 Sep 08 thru 4 Sep 09 (Referral Report) be removed from her records.
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APPLICANT CONTENDS THAT:

- 1) Her rating chain and leadership misrepresented various statements she made and violated her due process rights.
- 2) She was not read her rights until after she was pressured to implicate herself. She was not aware of a possible investigation until 8 Apr 09, one week after the said incident.
- 3) The inconsistencies led to an unjust Article 15 action and ultimately the Article 15 being reported on her contested evaluation.
- 4) She did not lie to her supervisors. She was punished for a few minor inconsistencies. The witness statements that formed the basis of the nonjudicial punishment (NJP) action were dated 7 to 14 days after the alleged false official statements were made.

She did not state what friend she had to assist, however, her supervisors took it upon themselves to assume who it was.

In support of her request, the applicant provides a personal statement, copies of witness statements, and the Article 15 paperwork.

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

STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of staff sergeant.

As a result of an investigation, the applicant was offered NJP under Article 15, Uniform Code of Military Justice (UCMJ). She was charged with two specifications of making a false official statement. The applicant was afforded an opportunity to consult with defense counsel, accepted the Article 15, and waived her right to demand trial by court-martial. She elected to present written matters, but waived her right to make a personal appearance before the commander. On 27 Apr 09, the commander imposed punishment consisting of a suspended reduction to the grade of senior airman, 30 days of extra duty, and a reprimand. The applicant declined to appeal the commander's decision. The Article 15 action was reviewed and determined to be legally sufficient.

The remaining relevant facts pertaining to this application are contained in the letters prepared by the appropriate offices of the Air Force at Exhibits C, D and E.

AIR FORCE EVALUATION:

AFLOA/JAJM recommends denial of the applicant's request to remove the Article 15 from her records. The applicant has not demonstrated any error or injustice.

The applicant alleges that the statements made by her supervisor and NCOIC were incorrect. Nonetheless, the applicant had the opportunity to rebut these statements upon the offer of NJP. While she submitted matters to her commander in consideration of the original NJP action, she declined the opportunity to make a personal appearance before him. She was afforded the right to appeal her commander's decision, but declined to do so. At all times, she was represented by a fully qualified appointed military defense counsel. The commander was in the best position to evaluate the evidence in the applicant's case, and exercised the discretion granted to him by the applicant when she accepted the Article 15, and found the NJP appropriate in this case. The legal review process showed the commander did not act arbitrarily or capriciously in making his decision. A review of the NJP action indicates the applicant's rights were observed throughout the process.

The applicant does not make a compelling argument that the Board should overturn the commander's original NJP decision on the basis of injustice. The commander's ultimate decision on the Article 15 action is firmly based on the evidence of the case and the punishment was well within the limits of the commander's authority and discretion.

The complete JAJM evaluation is at Exhibit C.

AFPC/DPSID recommends denial of her request to remove her EPR. DPSID states based on the lack of corroborating evidence provided by the applicant, and the presumed sufficiency pertaining to the issuance of the Article 15, they recommend the report not be voided from the applicant's permanent record. The applicant has not provided compelling evidence to show the report is unjust or inaccurate as written.

In accordance with AFI 36-2406, *Officer and Enlisted Evaluation Systems*, Paragraph 1.3.1., Evaluators are strongly encouraged to comment in performance reports on misconduct that reflects a disregard of the law, whether civil law or the UCMJ, or when adverse actions such as Article 15's, Letters of Reprimand, Admonishment, Counseling, or placement on the Control Roster have been taken. The applicant does not offer any evidence that would substantiate her assertions of inconsistencies in the investigation of incidents by her rating chain. To prove any allegation of unfair or overly harsh treatment, the applicant would need to provide the results of an independent Inspector General (IG) Report, Command Directed Investigation (CDI) or other official investigation findings germane to her appeal, which are credible sources.

The applicant was given the opportunity to rebut the administrative actions as well as the referral report itself, and declined to do so. No evidence has been provided in the appeal that any of the administrative actions commented on in the report have been rescinded or otherwise invalidated. Based upon the presumed sufficiency of the Article 15 as served, JAJM's provided advisory, and no evidence that the Article 15 was ever set aside, its mention in the applicant's contested report was appropriate, as such there is no basis to support removal of the contested report.

An evaluation report is considered to represent the rating chain's best judgment at the time it is rendered. 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, and she has not substantiated the contested report was not rendered in good faith by all evaluators based on knowledge available at the time.

The complete DPSID evaluation is at Exhibit D.

AFPC/DPSOE deferred to the recommendations of JAJM and DPSID. DPSOE states based on the recommendation of JAJM to deny setting aside the applicant's Article 15, and DPSID's that her EPR is accurate as written and should not be voided or removed, they do not recommend promotion/supplemental consideration.

The complete DPSOE evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 11 Sep 12, copies of the Air Force evaluations were forwarded to the applicant for review and comment within 30 days. As of this date, a response has not been received by this office (Exhibit F).

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 opinions and recommendations of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no 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.

The following members of the Board considered Docket Number BC-2012-01138 in Executive Session on 29 Nov 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to Docket Number BC-2012-01138 was considered:

- Exhibit A. DD Form 149, dated 26 Mar 13, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.

- Exhibit C. Letter, AFLOA/JAJM, dated 10 May 12.
- Exhibit D. Letter, AFPC/DPSID, dated 21 May 12.
- Exhibit E. Letter, AFPC/DPSOE, dated 21 Jun 12.
- Exhibit F. Letter, SAF/MRBR, dated 11 Sep 12.

Panel Chair