

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01393

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. All versions of her AF Form 911, *Enlisted Performance Report (MSgt thru CMSgt) (EPR)*, for the period of 25 August 2008 through 24 July 2009 be voided and removed from her military records.
2. Her records be reconsidered by the calendar year 2010 and 2011 E-9 supplemental promotion boards.

APPLICANT CONTENDS THAT:

Her final performance report is inaccurate and unjust because it does not reflect a true account of her performance and enforcement of standards as the Inspector General (IG) Superintendent throughout 2008-2009. Specifically, the markdown in section III, block 2, "Standards" was a reprisal for her investigations of an inappropriate relationship between the wing command chief and a young Staff Sergeant (SSgt) as well as other investigations of senior enlisted members serving in wing leadership positions.

In March 2008, she was selected from a pool of several qualified applicants to work in the IG office. The new IG, her rater, arrived in August 2008.

Sometime in September 2008, a young SSgt reported an allegation to her, in her official capacity, of an affair between the wing command chief and the SSgt. She disclosed the alleged affair to the wing's vice commander in a protected communication. He assured her protection throughout the investigation of the complaint. At that time, the wing commander and the IG were deployed.

On 9 April 2009, she received mid-term feedback from her rater. Although two categories on the formal feedback were not marked "clearly exceeds" he assured her this was the first time he supervised an enlisted member and it was nothing to worry about. He assured her that the markdowns would not be reflected on her EPR.

On 2 July 2009, she made a protected communication with the new wing command chief. Since he was new to the base she hoped he would give her a fair opportunity to resolve her concerns. She disclosed to him the reprisal from her rater and the senior enlisted leaders under investigation within and outside of the wing and the incidences of their harassment and attempts to remove her from her position.

On 27 July 2009, she filed an Air Mobility Command (AMC) Equal Opportunity (EO) harassment and Department of Defense (DoD) IG Reprisal complaint. Because the harassment continued well into her Permanent Change of Station (PCS), the EO complaint was not finalized until 25 August 2009.

On 24 August 2009, she was given a copy of the draft of her EPR for the reporting period. The report contained firewall "5" ratings and accurately reflected her duties, responsibilities and performance.

On or about 26 August 2009, the EO Director formally briefed and provided a copy of her harassment/reprisal allegations to the wing leadership. Providing a copy of the allegations in advance to the IG's chain of command was unjust, unethical and unfair considering they were the individuals named in the complaint.

Also on 26 August 2009, her final EPR for the reporting period was signed. It included a markdown in the "Standards" section. She did not receive any feedback in 2008 or 2009 that indicated she would receive her first-ever performance markdown or that her job performance was not meeting expectations. It was not until 8 August 2011, when she received the DoD/IG report that she learned that claims of "performance issues" resulted in her marked down EPR.

The DoD/IG officially concluded that "unfavorable personnel actions were not taken in reprisal for her protected communications." They explained that the primary reason was that her rater wrote the EPR on 11 August 2009, before the EO complaint was finalized and before EO officially briefed the wing leadership.

Her career, life, and family were negatively impacted over the past two and a half years by these devastating events.

In support of her request, the applicant provides a personal statement, supporting memorandums, and related documents including the DoD/IG reprisal allegations conclusion w/atchs, copies of; varying versions of the contested EPR, AF Form 932 Performance Feedback Worksheet(s) (MSgt thru CMSgt), the Military Equal Opportunity Formal Complaint Summary, email

correspondence, an AF IMT 1206, *Nomination for Award*, and the ERAB case form.

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 Senior Master Sergeant (E-8), having assumed that grade effective and with date of rank (DOR) of 1 February 2009.

On or about 27 July 2009, the applicant filed an IG complaint under the Military Whistleblower Protection Act. She alleged that she received a marked down EPR, was removed from her Inspector General Superintendent position, and involuntarily received a permanent change of station move in reprisal for her protected communications to the wing Inspector General, the equal opportunity advisor, and her chain of command.

The Department of Defense IG (DoD/IG) investigated her allegations. The investigation did not substantiate the applicant's allegation of reprisal. They determined that the applicant's alleged removal from the position and subsequent reassignment did not constitute unfavorable personnel actions under DoD Directive 7050.06, *Military Whistleblower Protection*, as they did not unfavorably affect her career.

A resume of the applicant's EPRs follows:

<u>CLOSE-OUT DATE</u>	<u>OVERALL RATING</u>
24 Jul 2011	5B
24 Jul 2010	5B
**24 Jul 2009	5B
24 Aug 2008	5B
26 Sep 2007	5B

****Contested Report**

The applicant filed an appeal through the Evaluations Report Appeals Board (ERAB) to have the contested report replaced due to a missing signature. The ERAB approved the request and replaced the contested EPR with a signed version. Although the ERAB granted the applicant's request to replace the EPR due to a missing signature, she is now appealing the EPR on the basis of the content/rating. There is no available documentation indicating the applicant filed a subsequent appeal to ERAB.

Examiners note: The applicant requests all versions of her 2009 EPR be voided and removed from her military records. Subsequent to a review of the documents contained in the AFPC Automated Records Management (ARMS) Database there is only one official version of the applicant's 2009 EPR on file in her Military Personnel Records. A copy of the EPR is included under Exhibit B and is tabbed as "contested EPR."

AIR FORCE EVALUATION:

AFPC/DPSID recommends denial of the request to void the contested report. DPSID states there is no compelling evidence to show the report was unjust or inaccurate as rendered. They contend the evaluation was completed within all regulatory Air Force requirements. In order to effectively and successfully challenge the validity of any contested evaluation, it is necessary to hear from all members of the rating chain, not only for support, but also for clarification/explanation. The applicant has not provided any such documentation from her rating chain within this appeal that would substantiate any of her claims. Additionally, the applicant has not proven that an injustice occurred, via the unsubstantiated AMC EO complaint filed or the provided IG Report of Investigation, which found no culpability on the part of those accused and dismissed the complaint.

An evaluation report is considered to represent the rating chain's best judgment at the time it is rendered. We contend 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 C.

AFPC/DPSOE defers to AFPC/DPSID's recommendation to deny voiding the contested report. DPSOE states the first time the contested report was used in the promotion process was during the June 2011 Senior Noncommissioned Officer (SNCO) supplemental board to the rank of Chief Master Sergeant (CMSgt) for cycle 10E9. It was also used during the initial CMSgt Evaluation Board for cycle 11E9. The applicant was rendered a nonselect during both cycles.

The policy regarding the approval of SNCO supplemental promotion consideration relevant to an EPR is in accordance with AFI 36-2502, *Airman Promotion Program*, Table 2.5., and HQ AFPC/DPP 081945Z Nov 00 Message, effective 22 Oct 00. Supplemental

promotion consideration is granted on a case-by-case basis for reasons listed in Table 2.5. A member will not normally be granted supplemental consideration if the error or omission appeared on his/her Data Verification Record (DVR) or in the Unit Personnel Record Group (UPRG) and the individual did not take the appropriate corrective or follow-up action before the original board convened. The applicant filed an appeal through the ERAB on 13 May 2011, to have the report replaced due to a missing signature. The ERAB approved her request on 17 May 2011, and she subsequently met the June 2011 supplemental board. The applicant did not file an appeal through the ERAB for the current corrective action and states she discovered the error/injustice on 7 October 2011. This was more than two years after the contested EPR closed out and almost one year after the results were released for cycle 10E9 (18 Nov 10).

The complete AFPC/DPSOE evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant states as a trained and certified Installation Inspector General, she disagrees with the DoD/IG's "unsubstantiated" findings in regard to her Whistleblower Reprisal Investigation. The 24 July 2009 EPR had to remain in her record until the investigation was complete or there was no basis for the investigation initiated in 2009. She was informed by the DoD/IG investigator that the reprisal investigation and removal of the report would be conducted at the same time. At some point in the investigation the case was given to another investigator and the EPR removal concern was never passed on to AFPC. The investigation of her expedited PCS and reprisal were entirely investigated and she was not officially informed the investigation had even started. Receipt of the final report in the mail was her notification.

In closing, the applicant reiterates her contention that more than one version of the contested report was submitted to AFPC from either XXXXXX AFB or XXXXX AFB. She further states there are two other senior leaders whose professional careers have suffered or ended which indicates there was a pattern or sequence of events that support her claim of injustice by her previous leadership.

The applicant's complete response w/attachments, is at 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 careful notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinions and the 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. The applicant's contentions that her contested EPR does not accurately reflect a true account of her performance and enforcement of standards, that her rater gave her deceptive feedback, and that a rating markdown in Section III, block 2, of the EPR was in reprisal for her involvement in an IG complaint investigation, are duly noted; however, we do not find the evidence provided is sufficient to overcome the findings of the DoD IG, which found that the applicant's rater did not reprise against her and that a preponderance of the evidence established that the rater gave the applicant the marked down EPR based upon performance issues identified in oral and written performance feedback counseling sessions and would have taken the same action against the applicant absent her protected communications. Additionally, we are also in agreement with the findings and recommendation of AFPC/DPSID and adopt the rationale expressed as an additional basis for our determination the applicant has not been the victim of error or injustice. In light of our finding regarding the contested EPR, the applicant's request for supplemental promotion consideration is also denied. Therefore, in the absence of persuasive evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

4. The applicant alleges she has been the victim of reprisal. As noted, the applicant's allegation of reprisal was investigated by the DoD IG and found to be unsubstantiated. The applicant notes that as a "trained and certified Installation Inspector General," she disagrees with DoD/IG's "unsubstantiated" finding as a result of her Whistleblower Reprisal Investigation. As such, based on the authority granted to this board pursuant to Title 10, U.S.C., Section 1034, we reviewed the complete evidence of record to determine whether we conclude the applicant has been the victim of reprisal. As noted above, we do not find the evidence submitted by the applicant sufficient to overcome the investigative results and final determination issued by the DoD IG. Based on our review of the complete evidence of record and the complete DoD IG

report, in our view, the DoD IG investigation appears thorough and the final determination is supported. We considered the principal argument set forth by the applicant that the final report was different than earlier versions that had been prepared and that the EPR was marked down only after she had filed complaints against her rating chain. Again, we note the DoD IG found that a preponderance of the evidence established that the applicant's EPR was marked down for performance issues. Even if the EPR was changed, we are not persuaded the final report rendered was not a fair and accurate assessment of her performance for the period under review. Therefore, the Board does not find that the applicant has been the victim of reprisal pursuant to Title 10, U.S.C., Section 1034.

5. 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 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 this application BC-2012-01393 in Executive Session on 9 August 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149 dated 15 March 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSID, dated 30 April 2012.
- Exhibit D. Letter, AFPC/DPSOE, dated 22 May 2012.
- Exhibit E. Letter, SAF/MRBR, dated 4 June 2012.
- Exhibit F. Letter, Applicant, dated 29 June 2012, w/atchs.

Panel Chair