

ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2009-03818

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. The following documents be removed from her records:

a. The Officer Performance Reports (OPRs) rendered for the periods 5 Dec 06 through 4 Dec 07 and 5 Dec 07 through 8 Jul 08.

b. The Promotion Recommendation Form (PRF) prepared for the Calendar Year 2010D (CY10D) Lieutenant Colonel Nurse Corps (NC) Central Selection Board (CSB).

c. The "Not Qualified for Selective Continuation" letter that was in her Officer Selection Record (OSR) during the CY10D Lt Col (NC) CSB.

d. The DD Form 2499, *Health Care Practitioner Action Report*, signed 17 Nov 09.

2. She be given consideration for promotion and continuation by a special selection board (SSB) for the CY10D Lt Col (NC) CSB.

3. The applicant requests her Mandatory Separation Date (MSD) be extended to afford her an opportunity to be continued under the sanctuary provisions.

The applicant amended her request for reconsideration with her 12 Apr 12 letter to the Board to include the above mentioned requests.

STATEMENT OF FACTS:

On 26 Oct 10, a similar appeal was considered by the Board where the applicant requested two referral reports, closing 4 Dec 07, and 8 Jul 08, and a Letter of Reprimand (LOR), dated 14 Feb 08, be removed from her record and her record was corrected to reflect the following:

a. The comment, "outcome-reduction with permanent removal from critical care or inpatient care duties" was removed from the Section IV, *Rater Overall Assessment*, of the OPR rendered for the period, 5 Dec 07 through 8 Jul 08,

b. Her record, to include the corrected OPR, was considered for promotion to the grade of lieutenant colonel by a SSB for the CY09D Lieutenant Colonel Nurse Corps Central Selection Board and any subsequent board the OPR was not a matter of record.

The applicant forwarded multiple requests for reconsideration, with additional documentation, prior to receiving the Board's final decision. On 7 Apr 11, the applicant was advised of the Board's findings and decision on her case and that based on the claims in her additional submissions, the Board would not be able to consider those claims until the formal investigation by SAF/IG was completed. For an accounting of the facts and circumstances surrounding the applicant's request and the rationale of the earlier decision by the Board, see the Record of Proceedings at Exhibit H.

By letters, dated 7 and 21 Apr 11, the applicant requests reconsideration of her appeal, contending that she was reprised against by her former wing and group commanders. In addition, she provided a copy of the allegations she filed against her former commanders with SAF/IG. She specifically contends the contested OPRs and PRF incorrectly state in Section IV that she underwent Peer Review in accordance with (IAW) Air Force Instruction 44-119, *Medical Quality Operations*; however, proper guidelines were not followed in conducting her peer review.

In support of her appeal, the applicant provides a personal statement; email correspondence; her SAF/IG request for investigation; her "New Information" package presented to AETC/CC, and other supporting documents.

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

On 17 Jan 12, the applicant was advised that based on the Board's directive, her letter that met the CY10D promotion board was being replaced and that her corrected OSR would meet the SSB for the CY10D Lt Col promotion board with the new letter. On 31 Jan 12, the Air Force Review Boards Agency (AFRBA) Intake office received a DD Form 149, requesting removal of a memorandum, dated 3 Dec 10, addressed to the CY10D promotion board.

In Mar 12, the applicant was notified by SAF/IGS that the investigation did not substantiate her allegations of reprisal and dereliction of duty. The SAF/IG reviewed the report of investigation and approved the findings. In addition, the Department of Defense Inspector General (DoD/IG) conducted a thorough review of the report, found it adequately addressed the allegations, and concurred with its findings (Exhibit J).

In Apr 12, the applicant amended her request for reconsideration. In addition, she requested a change to her records to afford her an extension of her mandatory separation date and provided a response to the IG report (Exhibit K, w/atchs).

The applicant was nonselected by the CY09D and the CY10D Lt Col (NC) SSBs.

On 29 Apr 12, the applicant was honorably discharged with a reason for separation of non-selection, permanent promotion.

On 3 May 12, the applicant was advised that based on conflicting applications to the Board her requests for correction of her military records had been administratively closed until she consolidated her requests into a single application. The applicant advised the AFBCMR to proceed with her reconsideration package (Exhibit L).

THE BOARD CONCLUDES THAT:

1. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. After a careful review of the application and the available evidence provided in support of the appeal under our authority found in 10 USC § 1552, we are not convinced that further relief is warranted or the Board's earlier corrections should be disturbed. In an earlier finding, the Board thoroughly considered the available evidence, including a very voluminous submission by the applicant, and determined the referral comment, "outcome-reduction with permanent removal from critical care or inpatient care duties" in her OPR closing 8 Jul 08, should be removed and granted her SSB consideration for promotion to the grade of Lt Col. However, she was not selected for promotion by the SSBs. The applicant was later advised that her additional requests, in which she contended that she was reprimed against by her former chain of command, would be considered once SAF/IG's review was completed. The SAF/IG completed its review and the applicant's allegations were not substantiated. While the applicant's submissions suggest that she was not afforded fair and objective evaluations, we believe the relief already provided by this Board has provided her full and fitting relief in this regard. Moreover, the applicant has not provided sufficient evidence to establish that her commanders abused their discretionary authority, that their actions were acts of reprisal, or that their decisions were arbitrary or capricious. As such, we find no basis to determine their evaluations of her performance are an inaccurate assessment of the applicant's allegations. In our opinion, the earlier Board, which thoroughly considered the applicant's entire record in arriving at its decision that corrective action was warranted, is reflective of considerable reviews by senior Air Force officials vested and charged with the responsibility to ensure the applicant received a fair and impartial consideration during her peer review, promotion board considerations, that she received due process in accordance with applicable laws and policies, and the DoD/IG and SAF/IG agreed with the findings of the investigation.

2. The Inspector General (IG) has investigated the applicant's allegations that she has been the victim of reprisal and has not been afforded full protection under the Whistleblower Protection

Act (10 USC § 1034) and found that her allegations of reprisal and dereliction of duty by her commander were not substantiated. We have completed our own independent review under our authority found in 10 USC § 1034 and have determined the applicant has not established the administrative actions taken by her senior rater and commander were in retaliation for making protected communications. In reaching this determination, we find the evidence of record establishes the actions taken against her were reasonable and would still have occurred, regardless of her protected communications; and she has submitted insufficient evidence to substantiate they were motivated by reprisal. Therefore, in view of the above and based on substantial evidence, we find no basis to recommend relief beyond that already granted by this Board.

3. 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 material 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 this application in Executive Session on 3 January 2013, under the provisions of AFI 36-2603 and the authorities found in 10 USC Sections 1034 and 1552:

The following documentary evidence was considered in BC-2009-03818:

- Exhibit H. Letter, AFBCMR, SAF/MRB Memorandum, and Record of Proceedings, dated 7 Apr 11, w/atchs.
- Exhibit I. Letter, Applicant, dated 21 Apr 11, w/atchs.
- Exhibit J. SAF/IG Report, Mar 12 (withdrawn).
- Exhibit K. Letter, Applicant, dated 12 Apr 12, w/atchs.
- Exhibit L. Letter, AFBCMR, dated 8 May 12, w/atrch.

Acting Panel Chair