

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2010-04456

COUNSEL:

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her records be corrected to show she was awarded the Air Force Commendation Medal (AFCM) for permanent change of station (PCS) in June 2009.

APPLICANT CONTENDS THAT:

In a seven page brief the applicant, through counsel, makes the following contentions:

a. She was unfairly targeted for retaliation by a higher ranking officer and given a negative enlisted performance report (EPR) which has unjustly impacted her career and prevented her from being recommended and acknowledged for her significant accomplishments during her tour of service at Andersen Air Base (AB), Guam.

b. For the period 16 June 2007 through 1 June 2008, she exemplified stupendous leadership in her duties and performed at an above average level. Her efforts were acknowledged and documented in her enlisted performance report closed in early 2008, and rated her "truly among the best (5)."

c. She was a key participant in base and community projects and received letters of appreciation and garnered national recognition in the Air Force print news for spearheading and raising over \$4,500 for a Sexual Assault & Abuse Resource Center Association (SAARCA) fundraiser.

d. In contrast to her earlier EPR, she received a negative EPR in March 2009 for the time period ending 31 December 2008. The report ranked her as average or below average. She filed an appeal through the Evaluation Reports Appeals Board (ERAB) under the provisions of AFI 36-2401, *Correcting Officer and Enlisted Evaluation Reports*, to request the EPR be voided from her record on the grounds that the raters of her EPR had violated Air Force instructions and retaliated against her on several separate occasions for her use of the chain of command. The ERAB considered and approved the request and removed the report from her record effective 13 April 2010.

e. With the removal of the report from her record, she contacted her previous unit and requested consideration for award of the AFCM. Although her email correspondences were never acknowledged, she was informed by the military personnel flight superintendent, via telephone, that she would receive a response to her request soon. After a ninety-day delay she appealed to the force support squadron commander. Her appeal was denied. She has appealed the denial, but has not received relief.

In support of her request, the applicant submits a copy of her counsel's brief with related support documents.

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 Technical Sergeant, E-6.

On 29 November 2010, the applicant submitted a request for correction of her records to the Air Force Board for Corrections of Military Records (AFBCMR). She requested, through counsel, a recommendation for award of the AFCM for meritorious service for PCS from her assignment at Andersen AB. In response to her request for entitlement to the AFCM, AFPC/DPSIDR, by letter dated 5 January 2010; (Exhibit C), advised the applicant that after careful review of her claim they were returning her application without further action. They further advised, that before submitting a DD Form 149 requesting a change to her military record, the applicant must go back to the original approval authority of the AFCM and request administrative relief in accordance with AFI 36-2803, *The Air Force Awards and Decorations Program*, paragraphs, 1.5, 1.7, 3.3.8, and 3.4.2.

The applicant must exhaust administrative channels for reconsideration of the AFCM before utilizing the AFBCMR process. Once a decision has been rendered by the decoration approval authority and the applicant believed an injustice still existed, they requested that she resubmit a DD Form 149, with the approval authority's final decision, through the AFBCMR process. The applicant's appeal for administrative relief, to the original AFCM approval authority, was denied by letter dated 2 June 2011.

On 11 January 2011, the applicant's AFBCMR case was administratively closed for lack of records to substantiate her request. She resubmitted a DD Form 149, with the approval authority's final decision, through the AFBCMR process on 9 May 2012.

Regarding the applicant's contention that she was unfairly targeted for retaliation by a higher-ranking officer and given a negative EPR; an inquiry to the Secretary of the Air Force IG (SAF/IG) revealed that the applicant has two IG complaints on file but neither complaint is specific to this case.

On 15 July 2010, the applicant, through counsel, submitted an IG complaint to the 12AF/IG. The applicant alleged that she was given a letter of counseling that resulted in the denial of award of a permanent change of station (PCS), end of tour, decoration for her assignment at Soto Cano AB, Honduras. During the complaint clarification interview, the applicant was advised that the IG would not consult with her attorney during the complaint analysis process. They advised her that she could communicate with her attorney during the process; however, the IG would only communicate directly with her concerning the matters in her complaint. Subsequent to the conversation, the applicant called and made a request to withdraw her complaint. The applicant followed up her verbal request with an email request.

On or about 13 August 2010, the applicant filed a complaint through the DoD/IG Hotline, alleging reprisal for the same reasons cited in her original complaint to the 12AF/IG. The DoD Office of the Inspector General, Directorate for Military Reprisal Investigations, reviewed the allegations of whistleblower reprisal and determined the allegations did not meet the criteria for consideration under the applicable statute or DoD Directive. Therefore, the applicant's complaint was transferred to the 12AF/IG for review and resolution.

The 12AF/IG conducted a thorough complaint analysis and determined that the issues addressed in the applicant's complaint were command issues that were not appropriate for the IG complaints resolution program. Therefore, the applicant's complaint was referred to the 612TOG/CC for review and resolution. The final conclusion after the informal inquiry was; the applicant's duty performance, in the eyes of her superiors, did not warrant award of a decoration. In accordance with the AFI, that was clearly within their purview. Additionally, the applicant was not the only individual not recommended for a decoration. Therefore, the applicant was not entitled to a decoration following her tour at Soto Cano AB.

AIR FORCE EVALUATION:

AFPC/DPSIDR recommends denial. DPSIDR states they were unable to locate a recommendation or citation for the proposed decoration in the applicant's military personnel record and none was provided. AFI 36-2803, *The Air Force Awards and Decorations Program*, paragraph 2.2.6, states "no individual is automatically entitled to an award upon completion of an operational TDY or

departure for an assignment." The applicant provided, as evidence, a letter of recommendation from her supervisor, dated 1 November 2009, covering the period from 8 July 2009 through 14 October 2009. This period of service is not within the inclusive dates of her requested AFCM from June 2007 through June 2009. The applicant has exhausted her administrative channels for relief through her appeal to the force support squadron commander.

The AFCM is awarded to members of the Armed Forces of the United States who, while serving in any capacity with the Air Force after 24 March 1958, shall have distinguished themselves by meritorious achievement and service. The degree of merit must be distinctive, though it need not be unique.

The complete AFPC/DPSIDR evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In their response, counsel and applicant indicate they disagree with the conclusion made in the advisory opinion. In addition to reiterating previous contentions, they additionally contend that:

a. AFI 36-2803, paragraphs 2.2.2 and 2.2.3., provide that; recommendations for Air Force awards are to be based on recognizing meritorious service and outstanding achievements that "clearly place individuals above his or her peers" and that award recommendations are to be based "on specific projects, plans programs, or actions which are or will be beneficial to the Air Force." In his letter dated 2 June 2011, the force support squadron commander remarked that he had only served with the applicant for two months, that he only had a "partial picture" to form his recommendation, that he did not have possession of her unit personnel information, and that he only had one favorable EPR to base his decision on. Therefore he declined to recommend the applicant for a PCS award.

b. The force support squadron commander patently denied the applicant fair consideration of an award by merely "rubber-stamping" the decision by the subordinate chain of command not to recommend her for an AFCM upon PCS. Although the applicant readily recognizes that "no individual is automatically entitled to an award upon completion of an operational TDY or departure for an assignment," the remainder of the supporting documentation provided him adequate information to base an AFCM award.

c. The applicant's individual achievements during her tour at Andersen AB significantly enhanced and were beneficial to the unit, the Air Force mission and the local community.

For the reasons set forth, they respectfully request that the applicant be recommended to receive the Air Force Commendation Medal in light of her permanent change of station and service while stationed at Andersen AB.

The applicant's complete response, with 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 support of her request and we are not persuaded that she should be awarded the AFCM. Her contentions in this regard are duly noted; however, in our opinion, the Air Force office of primary responsibility has adequately addressed these contentions and we are in agreement with their recommendation. While the applicant may believe she is deserving of the AFCM, sufficient evidence has not been provided which would persuade us that the commander acted inappropriately in deciding not to award her the AFCM or that his decision represented an abuse of discretionary authority in making that decision. Therefore, in the absence of 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 a reprisal. By policy, reprisal complaints must be filed within 60 days of the alleged incident or discovery to facilitate the IG's investigation. As mentioned above, we note the applicant filed two IG complaints; however, the available record does not substantiate that either of the complaints filed alleged reprisal and it appears no investigation for reprisal was done. Nevertheless, we reviewed the evidence of record to reach our own independent determination of whether reprisal occurred under the provisions of 10 USC § 1034. Based on our review, we do not conclude the applicant has been the victim of reprisal. The applicant has not established that she ever made a protected communication and the non-recommendation for award of the AFCM or other actions were rendered in retaliation to making a protected communication. Therefore, the Board does not find that the applicant has been the victim of reprisal. Therefore, in the absence of persuasive evidence to the contrary, 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 in Executive Session on 15 February 2013, under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence was considered in AFBCMR Docket Number BC-2010-04456:

- Exhibit A. DD Form 149, dated 9 May 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. IG Case File Worksheets (withdrawn).
- Exhibit D. Letter, AFPC/DPSIDR, dated 26 June 2012.
- Exhibit E. Letter, SAF/MRBR, dated 26 July 2012.
- Exhibit F. Letter, Counsel, dated 23 August 2012.

Panel Chair