

counseling as stated in the AFI. His former flight commander told him the control roster and referral EPR were used to cancel his assignment.

He believes that his EPR was used to cancel his assignment and therefore, it should be voided and removed from his records. One of the Senior NCO's involved who does not have a flying background was the only one willing to write down what happened. He referred to the handling of this situation as the "good ole boy system." He saw how unprofessional the others handled the situation and stated that is why he left first sergeant duty. He also wrote that the alleged circumstances surrounding the investigation were nothing more than a minor lapse in judgment, and minor lapses in judgment do not rate a referral EPR; more along the lines of counseling.

If the leadership believed he was having an unprofessional relationship, he should have received an Article 15 or at the very least been counseled on 29 June 2009, to change the perceived behavior. He was never given the chance to change any perceived behavior. He never supervised the airman he was accused of having a relationship with, nor was he in her rating chain. He believes the perception was blown out of proportion due to office gossip.

He believes that he was singled out, treated unjustly and punished for being a fast burner. His success led many of the leaders to believe he was not worthy of the success because he had not "done the time." The actions of his leadership during this time were malicious and calculated. At no time was the control roster enforced in the manner as set forth in the AFI. Not only was he subjected to judgment before the official investigation was closed, these prejudicial statements were used against him to manipulate the system and influence his next duty station. This injustice is the exact reason this EPR should be voided and all administrative actions of the control roster be corrected.

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 master sergeant (E-7). The following is a resume of his EPR ratings:

<u>RATING PERIOD</u>	<u>PROMOTION RECOMMENDATION</u>
31 Aug 11	5
21 Jan 11	5
21 Jan 10	4

*19 Aug 09	2
21 May 09 (MSgt)	5
21 May 08	5
15 Aug 07	5
15 Aug 06	5
15 Aug 05 (TSgt)	5
14 Dec 04 (SSgt)	5

* Contested Report

AIR FORCE EVALUATION:

AFPC/DPSIM recommends denial. The applicant's commander initiated control roster on or about 17 August 2009. The applicant acknowledged receipt on or about 17 August 2009. The commander placed him on a control roster on 20 August 2009 and removed him from the control roster on or about 22 January 2010.

The control roster is a rehabilitative tool designed for commanders. It is a six-month observation period for individuals whose duty performance is substandard or who fail to meet or maintain Air Force standards of conduct, bearing and integrity, on or off duty.

After reviewing the applicant's request, it was validated that the control roster was processed in accordance with applicable guidelines.

The complete DPSIM evaluation is at Exhibit C.

AFPC/DPALT5 does not make a recommendation. The applicant was selected for an assignment on 18 May 2009. The applicant was placed on AAC 21 (commander's hold) on 7 July 2009. On 20 July 2009, his report no later than date was changed to 15 December 2009. On 8 September 2009, the assignment was cancelled, without explanation. The applicant was selected for another assignment on 12 March 2010.

It appears the applicant's assignment was inappropriately managed at the unit and MAJCOM level.

The complete DPALT5 evaluation, with attachments, is at Exhibit D.

AFPC/DPSID recommends denial. The applicant filed an appeal through the Evaluation Reports Appeals Board (ERAB); however, the ERAB was not convinced that the report was unjust or inaccurate and denied the applicant's request.

The applicant was served an LOR for an inappropriate relationship with a subordinate in the workplace and also placed on a control roster for this misconduct. The applicant received

a referral EPR as a result and also chose not to rebut this report. The applicant does not address the inappropriate relationship itself, or provide evidence that this was inaccurate.

It appears there was a Commander directed inquiry and although the applicant submits a memorandum from security forces investigations stating no criminal investigation was initiated, it does not negate the inquiry. As a result of the inquiry, the commander issued an LOR with control roster action. This action was within the commander's authority and appropriate. The commander chose to document this action in the permanent record. The applicant does not support his contention that these actions were used to cancel his assignment. Additionally, the applicant provides no proof of rater misconduct, only his personal opinion based upon receiving a marked down referral report.

AFI 36-2401, *Correcting Officer and Enlisted Evaluation Systems*, states the most effective evidence consists of statements from the evaluators who signed the report or from other individuals in the rating chain when the report was signed. Statements from the evaluators during the contested evaluation period are conspicuously absent. Without the benefit of these statements, we can only conclude that the EPR is accurate as written. The applicant failed to provide any information or support from the rating chain of record on the contested evaluation. The applicant provided e-mail correspondence from another military member; however, that member was not in his rating chain. In consideration of the sum of the evidence presented, there is no basis to support the removal of the referral EPR as written.

Air Force policy states that an evaluation report is accurate as written when it becomes a matter of record. It is considered to represent the rating chain's best judgment at the time it is rendered. To effectively and successfully challenge the validity of a report, it is necessary to hear from all the members of the rating chain, not only for support, but also for clarification/explanation. It is determined that this report was accomplished in direct accordance with all applicable guidelines and regulations. Once a report is accepted for file, only strong evidence warrants correction or removal from an individual's record. The burden of proof is on the applicant. He has not substantiated the contested report was not rendered in good faith by all evaluators based on the knowledge available at the time.

The complete DPSID evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reiterates while the UIF was processed correctly, it was done with malice. At that time, it was best that he not

rebut the EPR as he did not have evidence on why he believed he received the EPR. He had been isolated for 52 days awaiting the commander's action. He felt if he challenged the commander's authority, he would impose greater actions against him. As soon as he had evidence that the actions were used to cancel his assignment, he started the appeal process.

He spoke to his additional rater about this matter and was told to stop trying to prove that he was rated incorrectly or he would take further action against him. That is why there is no documentation from the rater. While the supporting statement was from someone outside his chain, he was the first sergeant at the time and had firsthand knowledge of the situation.

Additionally, the AFPC functional manager stated that the assignment was inappropriately manipulated at the unit and MAJCOM level. This shows that his unit worked with headquarters to cancel his assignment.

The actions of his rater and additional rater were not done in good faith. The members of his chain of command abused their authority and manipulated the system to maliciously affect his assignment.

The applicant's complete response is at Exhibit G.

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. After reviewing all of the evidence provided, we are not persuaded that the contested report is an inaccurate depiction of the applicant's performance and demonstrated potential for the period in question. In the rating process, each evaluator is required to assess a ratee's performance, honestly and to the best of their ability. In judging the merits of this case, we took note of the applicant's contentions that the contested report was accomplished with malice and callousness. However, other than his own assertions, we have seen no evidence by the applicant which would lead us to believe the rater abused his discretionary authority, that the rating was based on inappropriate considerations, or that the report was technically flawed. We took note of AFPC/DPALT5 statement that the applicant's assignment may have been inappropriately manipulated. However, it is not uncommon for members to be placed on hold while under investigation; therefore, we find no impropriety in the handling of his assignment. With regard to

the applicant's placement onto the Control Roster, as a result of the commander directed inquiry which revealed the applicant's unprofessional relationship, the commander issued an LOR with control roster action. We find this action was within the commander's authority and do not find that his actions were arbitrary, capricious or done with malice. Therefore, we agree with the opinions and recommendations of AFPC/DPSIM and AFPC/DPSID and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. In the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

THE BOARD RECOMMENDS 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 AFBCMR Docket Number BC-2012-02221 in Executive Session on 15 February 2013 under the provisions of AFI 36-2603:

, Panel Chair
, Member
, Member

The following documentary evidence pertaining to BCMR Docket Number BC-2012-02221 was considered:

- Exhibit A. DD Form 149, dated 4 April 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Record.
- Exhibit C. Letter, AFPC/DPSIM, dated 13 Jul 12.
- Exhibit D. Letter, AFPC/DPALT5, dated 20 Sep 12, w/atch.
- Exhibit E. Letter, AFPC/DPSID, dated 13 Dec 12
- Exhibit F. Letter, SAF/MRBR, dated 21 Dec 12.
- Exhibit G. Applicant's Response, dated 9 Jan 13.

Panel Chair