

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

IN THE MATTER OF:

DOCKET NUMBER: 93-02451

COUNSEL: AMERICAN LEGION

HEARING DESIRED: YES

AUG 16 1995

APPLICANT REQUESTS THAT:

His Reenlistment Eligibility (RE) code 2X be changed and that he be reinstated to active duty in the branch of his choice, with back pay and allowances.

RESUME OF CASE:

On 17 April 1993, the AFBCMR considered applicant's request that his Enlisted Performance Report (EPR) closing 23 December 1991 be voided from his records or, in the alternative, that the overall rating be changed. The AFBCMR recommended that the overall Promotion Recommendation rating on the contested report be upgraded from "2" to "3." On 29 July 1993, the Deputy for Air Force Review Boards accepted the Board's recommendation and directed applicant's records be corrected accordingly (Exhibit C).

On 16 February 1994, the AFBCMR considered and denied the applicant's requests that his RE Code 2X be changed and that he be reinstated to active duty in the branch of his choice, with back pay and allowances. (Exhibit A through D)

Applicant has submitted numerous letters, including a letter from his member of Congress, requesting reconsideration of his request that his RE Code be changed and that he be reinstated to active duty in the branch of his choice.

In his 22 February 1994 letter, applicant contends that his official training records were not properly maintained during the reporting periods which were the cause of his eventual separation from active duty.

In his 22 February 1994 letter, applicant asserts that his immediate supervisor did not sign the AF Form 418, as required by AFR 35-16. He also contends that his last EPR, which compromised his ability to reenlist, was upgraded by the AFBCMR. Applicant further contends that when he was considered for reenlistment, derogatory statements from his first enlistment were still in his Personal Information File (PIF) after his change of duty station.

In addition to documentation presented with his earlier appeals, applicant provided a copy of his training records; copies of letters of recommendation/character references regarding his entrance into the Army (1990); letters of appreciation; an Inspector General Action Request concerning the documents in his Personal Information File (PIF); applicant's letter to his squadron commander; three certificates awarding him an Associate of Arts Degree (1 Aug 1990), a Bachelor of Arts Degree (1 Jan 1992), and an Associate Degree in Applied Science (14 Jan 1992). He also provided a copy of a letter concerning his performance and a copy of his current grade report. His complete submissions are at Exhibit E.

STATEMENT OF FACTS:

Applicant initially enlisted in the Regular Air Force on 30 May 1985. He reenlisted on 2 March 1989 for a period of four years. He was progressively promoted to the grade of senior airman (E-4), effective and with a date of rank of 30 September 1987 and was subsequently appointed a sergeant (E-4). On 31 August 1992, he was honorably released from active duty and transferred to the Air Force Reserve, under the provisions of AFR 39-10 (expiration of term of active obligated service), having served 7 years, 3 months and 2 days of active duty. He received an RE Code of 2X, which reflects that he was a second-term airman who was considered but not selected for reenlistment under the Selective Reenlistment Program. He is currently assigned to the Inactive Reserves.

An AF Form 418, contained in the applicant's records, reflects that, on 4 February 1992, he was not recommended or selected for reenlistment. The supervisor stated applicant's performance had fluctuated over the past four years and showed a downward trend. He further stated the applicant was not representative of the quality force when compared with other airmen being considered for selective reenlistment. The unit commander concurred with the supervisor's recommendation and did not recommend applicant for continued retention in the Air Force. On 7 February 1992, applicant indicated that he intended to appeal this decision. The commander's decision to deny reenlistment was upheld by the appeal authority on 25 March 1992. On 31 March 1992, applicant acknowledged receipt of notification that his appeal had been denied.

A resume of applicant's APRs/EPRs follows:

<u>PERIOD CLOSING</u>	<u>OVERALL EVALUATION</u>
29 May 86	8
19 Dec 86	9
19 Dec 87	8

93-02451

19 Dec 88	9
19 Dec 89 (EPR)	3
19 Dec 90	4
* 19 Dec 91	3 (Report was upgraded by AFBCMR from an overall promotion recommendation rating of "2" to "3")

CCUNSEL'S REVIEW OF APPLICANT'S REQUESTS:

Counsel reviewed the requests for reconsideration and supports applicant's contention that there is strong reason to believe the now-upgraded EPR may have had a direct effect on applicant's appeal of the reenlistment bar. He further stated that the letters of support which resulted in the earlier favorable AFBCMR decision do tend to support this belief.

Counsel's complete response is at Exhibit F.

THE BOARD CONCLUDES THAT:

1. After a thorough review of the applicant's statements and additional documents submitted in support of his appeal to change his RE code and reinstate him to active duty, we are not persuaded that his nonselection for reenlistment was unjust or in error. We noted that many of the issues raised by the applicant and the documents he submitted pertained to the EPR closing 19 December 1991, which was upgraded in an earlier appeal to the AFBCMR. Applicant contends that this EPR was the reason for the denial of his reenlistment. While this report may have been a contributing factor, it apparently was not the sole basis for the commander's decision to nonselect the applicant for reenlistment. Furthermore, merely because the rating on the cited report was upgraded from a "2" to a "3", this fact alone does not mandate a finding that the contested RE code was improper.

2. In assessing cases of this nature, we choose not to disturb the discretionary judgments of commanding officers absent a strong showing of abuse of that authority. We have no such showing here. After reviewing the information provided, we found no evidence that the commander's decision to nonselect the applicant for reenlistment because of his fluctuating and downward trend in duty performance over a four-year period was based on erroneous information. Nor were we persuaded that the AF Form 418 (Selective Reenlistment/Noncommissioned Officer Status Consideration) denying him reenlistment was initiated and signed by anyone other than the officials authorized to do so. We believe it should be noted that, in an independent review, the commander's decision was upheld by a superior commander. Based on the foregoing, and in the absence of persuasive evidence

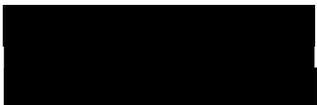
showing the applicant's commanders abused their discretionary authority, that his substantial rights were violated, or that the RE code assigned was contrary to the provisions of the governing regulation, we conclude that no basis exists to change the previous decision to deny the applicant's request.

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 issues involved. Therefore, the request for a hearing is not favorably considered.

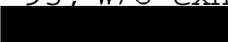
THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable 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 28 February 1995, under the provisions of AFR 31-3:

 Panel Chairman
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Forms 149, dated 2 Jul 93, 9, 10 and 17 Sep 93, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Record of Proceedings, AFBCMR 92-01959 dated 29 Jul 93, w/o exhibits.
- Exhibit D. Letter from  dated 8 Sep 93, w/atchs.
- Exhibit E. Letters, Applicant, dated 22, 23, 24, 26 and 28 Feb 94, 12, 22 and 23 Jun 94, 10, 19 and 29 Jul 94, 29 Sep 94, 13 Oct 94, 16, 21 and 30 Jan 95, 4 Feb 95, and letter from  dated 16 Mar 94,
- Exhibit F. Counsel's Statement, dated 26 Jan 95.


Panel Chairman