

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

FEB 12 1999

IN THE MATTER OF:

DOCKET NUMBER: 97-01594

[REDACTED]

COUNSEL: NONE

[REDACTED]

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

A DA Form 67-8, US Army Officer Evaluation Report, rendered for the period 7 Apr 82 through 31 Jan 83, be added to his Officer Selection Record (OSR).

His nonselection for promotion to the grade of captain by a Special Selection Board (SSB) for the CY83B Captain Board, which convened on 11 Jul 83, be set aside.

He be given a new date of rank (DOR) for promotion to the grade of captain; his DORs for promotion to the grade of major and lieutenant colonel be recalculated based on his new DOR to captain; and he be given back pay based on the new DORs.

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APPLICANT CONTENDS THAT:

His DOR calculation error which occurred in 1982 was discovered during an audit. As a result, his DOR to first lieutenant was adjusted which resulted in an earlier consideration to captain by the CY83B Captain Board. He was nonselected by that board. Had the Army evaluation report been present in his OSR, he would have been selected by the CY83B board.

In support of his appeal, the applicant provided a narrative of events, a copy of the Army evaluation report, and other documents associated with the matter under review. Applicant's complete submission is at Exhibit A.

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STATEMENT OF FACTS:

Information extracted from the Personnel Data System (PDS) indicates that the applicant is currently serving on active duty in the grade of lieutenant colonel, having been promoted to that grade on 1 Feb 98. His Total Active Federal Military Service Date is 28 Apr 83. He was voluntarily ordered to extended active duty on 11 Jun 83.

Applicant's OER/OPR profile since 1982 follows:

<u>PERIOD ENDING</u>	<u>EVALUATION</u>
6 Apr 82	Always Exceeded Requirements (Army Rpt)
10 Jun 83	No Rpt Required IAW 36-10
13 Dec 83	1-0-1
10 Jun 84	1-1-1
10 Dec 84	1-1-1
19 Jun 85	1-1-1
19 Jun 86	1-1-1
7 Nov 86	1-1-1
7 Nov 87	1-1-1
20 May 88	1-1-1
22 Jul 88	Training Report
19 Jun 89	Meets Standards
19 Jun 90	Meets Standards
19 Jun 91	Meets Standards
19 Jun 92	Meets Standards
19 Jun 93	Training Report
19 Jun 94	Meets Standards
19 Jun 95	Meets Standards
19 Jun 96	Meets Standards

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AIR FORCE EVALUATION:

The Officer Promotion and Appointment Branch, AFPC/DPPPO, reviewed this application and recommended denial. DPPPO noted that the applicant entered extended active duty (EAD) as an inter-service transfer from the Army on 11 Jun 83 with a DOR to first lieutenant of 9 May 83. Air Force Regulation 36-89, Oct 77, stated eligibility criteria for promotion to captain as two years time in grade as a first lieutenant. With a DOR of 9 May 83 and an EAD of 11 Jun 83, the applicant met the CY84 central selection board and was selected for promotion. Applicant's DOR and effective date of rank to captain was 17 Apr 84. HQ AFMPC/DPMD002, memorandum, 26 Jul 94, stated as a result of an audit of his records, an error was revealed, therefore, his DOR as a first lieutenant was adjusted from 9 May 83 to 17 Apr 82. With this adjusted DOR, DPPPO indicated that the applicant should have been considered by the CY83B captain board. The applicant was scheduled for an SSB. The SSB met on 28 Nov 94 and the applicant was nonselected for retroactive promotion to captain for the CY83B board. HQ AFMPC, 2506462 Oct 94 message stated that if the applicant was selected by the CY83 captain board, he would meet the CY88 below-the-zone (BPZ) promotion board and CY91 in-the-promotion zone (IPZ) board to major. If the applicant had been selected from the 28 Nov 94 SSB, his DOR would have remained the same due to the 2-year time in grade requirement for promotion to captain.

According to DPPPO, the applicant's request for the inclusion of an Army evaluation report into his record should be denied based under the equitable doctrine or laches which denies relief to one who has unreasonably and inexcusably delayed in asserting claim. Laches consist of two elements: inexcusable delay and prejudice to the Air Force resulting therefrom. In the applicant's case, he waited over 13 years to file and took no action on the claim prior to that time. Regardless of the date of discovery, the opportunity to request action to ensure his selection record was complete has been afforded to him since 1984.

The applicant's unreasonable delay has also caused prejudice to the Air Force. The Air Force asserts that the applicant's unreasonable delay regarding a matter now dating back over 13 years has greatly complicated its ability to determine the merits of the applicant's position.

DPPPO indicated that the applicant's DOR to captain is accurately computed. Subsequent promotion considerations to major and lieutenant colonel which were based on the DOR to captain are correct. The key to the applicant's situation is the effective date of promotion to first lieutenant. The nonselection from the SSB had no effect on the applicant's promotion. Therefore, DOR should have remained the same.

A complete copy of the DPPPO evaluation is at Exhibit C.

The Appeals and SSB Branch, AFPC/DPPPA, reviewed this application and noted that the applicant was selected for promotion by the CY97A (3 Feb 97) lieutenant colonel selection board. As a result of his DOR recalculation, the applicant was considered and nonselected by an SSB for the CY83B Captain Board, which convened on 28 Nov 94.

DPPPA indicated that AFPC/DPPPO has addressed the recalculation issue and has recommended denial of the applicant's request that the nonselection by the CY83B board be overturned and that his DOR to major and lieutenant colonel be recalculated. DPPPA stated that they concur and do not support reconsideration or direct promotion to the grade of captain on this issue.

Concerning the applicant's contention that had the Army evaluation report been filed in his record, he would have been promoted by the CY83B Captain Board, DPPPA indicated that they have researched the applicant's OSR, and there is an AF Form 77 filed that covers the period of time the Army evaluation report covers. Even though this request is untimely, DPPPA stated that they would not object to adding the Army report provided the applicant's servicing military personnel flight (MPF) provided a certified true copy. Once it has been provided, then they would not object to promotion reconsideration by the CY83B board and any other boards for which the Army report should have been a matter of record.

DPPPA noted the applicant's request that the original nonselection by the CY83B board be overturned and that a new DOR to captain be established as if he was selected by the CY83B board. In DPPPA's view, this, in effect, is a direct promotion, and they do not support it. Other than his own opinions, the applicant has provided no substantiation to support direct promotion.

A complete copy of the DPPPA evaluation is at Exhibit D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In his detailed response, the applicant indicated that he apologizes for repeating many of the same comments that were in his original narrative, but feels that the entire point of his appeal was missed. He is asking the Board to render judgment on his promotability based on the addition of this missing Army performance report and correct subsequent promotion dates to maintain the BTZ promotion to major. He does not know the impact of what he is asking or whether it is precedent setting, but he would ask the Board to consider he was not the originator of this mistake but its victim. If, after the addition of the second Army OPR, his record is not considered worthy of selection for promotion to the grade of captain in 1983, regardless of the technicalities, he will salute smartly and continue to give this Air Force everything he has.

Applicant's complete response is at Exhibit F.

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We note that a previous Army evaluation report is contained in the applicant's records and DPPPA appears to support adding the contested Army report to his OSR. In view of this, we recommend that the DA Form 67-8, US Army Officer Evaluation Report, rendered for the period 7 Apr 82 through 31 Jan 83 be accepted for file in its proper sequence. However, we are not inclined to recommend that the applicant be provided SSB consideration by the CY83B with his corrected record. We note that the applicant was selected for promotion to the grade of captain by the CY84 Captain Board. Even if he was selected for promotion to the grade of captain by an SSB for the CY83B board, because of the

rules regarding time in grade, his selection by an earlier board would have had no practical effect on his promotion; that is, his DOR would have remained the same.

4. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice concerning the applicant's requests that he be given a new DOR for promotion to the grade of captain; his DORs for promotion to the grade of major and lieutenant colonel be recalculated based on his new DOR to captain; and he be given back pay based on the new DORs. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility (AFPC/DPPPO) and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence which shows to our satisfaction that the applicant's DOR for promotion to the grade of captain was erroneously computed, the applicant's requests are not favorably considered.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that the attached DA Form 67-8, US Army Officer Evaluation Report, rendered for the period 7 Apr 82 through 31 Jan 83, be accepted for file in his Officer Selection Record (OSR) in its proper sequence.

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The following members of the Board considered this application in Executive Session on 1 Sep 98, under the provisions of AFI 36-2603:

Mr. Benedict A. Kausal IV, Panel Chair  
Mr. Terry A. Yonkers, Member  
Mr. Patrick R. Wheeler, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 19 May 97, w/atchs.  
Exhibit B. Applicant's Master Personnel Records.  
Exhibit C. Letter, AFPC/DPPPO, dated 14 Oct 97.  
Exhibit D. Letter, AFPC/DPPPA, dated 31 Oct 97.  
Exhibit E. Letter, SAF/MIBR, dated 17 Nov 97.  
Exhibit F. Letter, applicant, dated 12 Dec 97.

  
BENEDICT A. KAUSAL IV  
Panel Chair



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

FEB 12 1999

Office of the Assistant Secretary

AFBCMR 97-01594

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED], be corrected to show that the attached DA Form 67-8, US Army Officer Evaluation Report, rendered for the period 7 Apr 82 through 31 Jan 83, be accepted for file in his Officer Selection Record (OSR) in its proper sequence.

  
JOE G. LINEBERGER  
Director  
Air Force Review Boards Agency

Attachment:  
DA Form 67-8