

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

FEB 24 1999

IN THE MATTER OF:

DOCKET NUMBER: 97-01693 (Case 3)

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. He be reassigned to a command position.
2. All negative documentation be removed from his record.
3. His Promotion Recommendation Form (PRF) for the P0696B Colonel Selection Board be declared void and removed from his records; and, that a new PRF be rendered by an appropriate and impartial general officer other than his senior rater.
4. He be considered for promotion to the grade of colonel by a Special Selection Board (SSB) for the CY96B (P0696B) Colonel Selection Board, which convened on 2 December 1996, with a new PRF.

In his rebuttal comments, the applicant indicated that the documents he is requesting be removed and destroyed include: (a) The letter from 45 Space Wing (SW/CV) to Air Force Space Command (AFSPC/DP) requesting his reassignment (see Exhibit -A, atch 4), including file copies and computer memory retained at 45 SW, HQ AFPC, or AFSPC. (b) The microfilm historical copy of the PRF that is maintained by HQ AFPC. (c) Any internal memos retained by offices of 45 SW, HQ AFPC, or AFSPC that allude to poor performance or removal from his position as commander.

APPLICANT CONTENDS THAT:

He was unjustly removed from his position as commander of the 45th Civil Engineering Squadron (45 CES). This resulted in falsely harmful correspondence being placed in his record, completely negating his chances for promotion.

In support of his request, applicant submits a personal statement, copies of his PRF for the P0696B Board, a Performance Feedback Worksheet (PFW), a statement from his rater, his Field Grade Officer Performance Report (OPR), closing 29 February 1996, and additional documents associated with the issues cited in his contentions (Exhibit A).

STATEMENT OF FACTS:

Information extracted from the Personnel Data System (PDS) reveals the applicant's Total Active Federal Military Service Date (TAFMSD) as 4 June 1975. He is currently serving on active duty in the grade of lieutenant colonel, with an effective date and date of rank of 1 November 1991.

The applicant's assignment history, extracted from his Officer Selection Brief (OSB), prepared for the P0696B Colonel Selection Board, indicates that, from 25 June 1995 - 30 June 1996, he held the duty title of commander, Civil Engineer Squadron, Patrick AFB. Effective 1 July 1996, applicant held the duty title of Special Duty Officer, Civil Engineer Squadron, Patrick AFB.

Applicant's OPR profile, commencing with the report closing 30-January 1991, follows:

<u>Period Ending</u>	<u>Evaluation</u>
30 Jan 91	Meets Standards (MS)
23 Aug 91	MS
20 Jan 92	MS
20 Jan 93	MS
29 Oct 93	MS
30 Apr 94	MS
28 Feb 95	MS
# 29 Feb 96	MS
##29 Mar 97	MS
29 Mar 98	MS

Top report at the time he was considered and nonselected for promotion to colonel by the CY96B Central Colonel Board, which convened on 2 December 1996.

Top report at the time he was considered and nonselected for promotion to colonel by the CY97B Central Colonel Board, which convened on 8 December 1997.

On 3 May 1994, the AFBCMR considered and recommended approval of applicant's request that the Field Grade Officer Performance Report (OPR), closing 30 January 1990, be removed from his records. On 25 May 1994, the Deputy for Air Force Review Boards directed the removal of the 30 January 1990 OPR from the applicant's records and that he be provided supplemental promotion consideration to the grade of lieutenant colonel for the CY91A (15 April 1991) Lieutenant Colonel Promotion Board, and for any subsequent boards for which the OPR was a matter of record.

AIR FORCE EVALUATION:

The Directorate of Assignments, HQ AFPC/DPAIP2, reviewed this application concerning the assignment issues. DPAIP2 stated that

the applicant does not cite any specific "assignment" policies or procedures as unjust. The applicant expresses concern about time on station (TOS) and funding of a PCS. DPAIP2 stated that if the Board directs a PCS, the minimum TOS requirement for PCS would be waived and any move would be funded from the normal Air Force PCS open appropriation, unless the Board directs otherwise.

DPAIP2 stated that the applicant's request for reassignment to another commander position of at least equal stature to that from which removed may not be practical and might not be in the applicant's best interests for the following reasons:

(1) If the applicant is selected for promotion to the grade of colonel, another commander assignment equivalent to his previous commander assignment might be inconsistent with the new rank.

(2) Assigning the applicant to a commander position "of at least equal stature" might necessitate terminating the assignment of some other officer, unless the Board allows a reasonable length of time to effect such an assignment.

(3) The term "of at least equal stature" is vague. Significant difference of opinion could arise over whether or not a particular assignment was in keeping with the spirit and intent of the findings of the Board.

If the Board finds an injustice exists, DPAIP2 recommended the following as alternatives to the action the applicant requests:

(1) The record be corrected to show completion of the commander assignment, or

(2) The applicant be reinstated as the commander of the unit at the location to which he was assigned at the time of the injustice, or

(3) Any further assignment be based on the needs of the Air Force and the applicant's qualifications.

DPAIP2 recommended that the applicant's request to be reassigned to another commander position of equal stature be denied. If the Board finds that the documentation was unjust and corrective action is appropriate, then for the reasons indicated above, DPAIP2 recommended one of the alternative actions (Exhibit C).

The Directorate of Personnel Program Management, HQ AFPC/DPPPA, reviewed this application and stated that the applicant's P0696B PRF indicates he had been removed from his position and that he "failed to demonstrate the leadership required to manage the broadly diverse and complex civil engineering demands of the Eastern Range and Patrick AFB." DPPPA noted that in response to the applicant's Inspector General (IG) complaint, SAF/IGS indicated that the applicant's allegation of wrongdoing was not substantiated. DPPPA reviewed the OPR, closing 29 February 1996,

and found no reference to the applicant's removal from his position. Therefore, DPPPA does not support any type of request for removal or correction. With regard to the letter from the rater of the 29 February 1996 OPR, DPPPA stated that the rater only indicated he would hire the applicant again given the opportunity - he did not address anything in the OPR. The applicant did not submit a statement from the senior rater of the P0696B PRF. Since the evaluators of the reports in question did not submit specific statements of support, DPPPA can only conclude the PRF and OPR are accurate as written. DPPPA noted that the applicant did not specifically cite what document(s), other than the OPR and PRF in question, he wants destroyed. DPPPA indicated that none of the letters of support and other documents submitted state the evaluators rated the applicant inaccurately. Based on the evidence provided, DPPPA recommended the applicant's request be denied. A complete copy of this evaluation is appended at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinions and indicated that the evaluations fail to address the central issue - that he was "unjustly removed from the position of squadron commander and reassigned." His original request was for "immediate reassignment" to a squadron commander position of at least equal stature; i.e., roughly the same size squadron and level of responsibility. Had such immediate reassignment been approved, he would still have been a lieutenant colonel, and that level of position would be appropriate. The contention that it would be inappropriate if he is promoted to colonel avoids the central issue, since if promoted to colonel, he would accept whatever assignment he received commensurate with that rank. His reason for suggesting PCS funding alternatives was to provide another route in the possible event that lack of such funds became a factor in the final decision on his application. As stated in his application, no one to whom SAF/IGS spoke was able to produce one piece of evidence that he had been 'informed on several occasions' that his performance was somehow a threat to his continued command. If the people in his rating chain were so unhappy with his performance, then there should have been OPRs, feedback forms, memos for record of counseling sessions, etc., to support his removal. No such documentation exists.

As to whether the general has the authority to remove a commander serving under him, that point has never been questioned. The issue is whether he has the authority to do so without prior warning and in opposition to all performance indicators. The referenced PRF was rendered months after his removal as commander. At that point, the senior rater was constrained to write something that supported his own actions or have the obvious inconsistency call those actions even further into question. The referenced OPR was rendered shortly before his removal and hence makes no mention of that removal; nor does it mention any substandard performance. He never requested removal

of the OPR. The OPR was included in his application for its probative value in demonstrating the inconsistency between his performance and his removal. DPPPA stated that they did not "hear from the senior rater on the P0696B PRF." In actuality, the senior rater has been heard from twice; once on the included OPR and again when he removed him as commander. Two such manifestations of opinion cannot be so closely timed yet so diametrically opposed and both be accurate. He has provided documentation from the rater, as well as others in a position to observe, that substantiates the senior rater's high praise for his performance as stated on the OPR. Therefore, the obvious conclusion is that his removal was not based on some long-term shortcoming in leadership, but on some particular incident, as stated in his application package. The PRF must then be inaccurate by virtue of its false and unsupported allegations of poor leadership, and should be removed. The individuals whose testimonials he has provided worked closely with him on a daily basis. The fact that they were not officially in his rating chain does not negate their ability to accurately observe actions, evaluate performance and render a valid opinion.

The pivotal issue contained in the application is the fact that, contrary to Air Force policy, he was arbitrarily and capriciously removed from his position as squadron commander. As a result of this action and subsequent actions derived from it, he has been denied any chance to further serve the Air Force in positions of increased responsibility. The senior rater was afforded numerous opportunities to provide specific justification for his removal, and in all instances was unable to do so.

A complete copy of this response is appended at Exhibit E.

ADDITIONAL AIR FORCE EVALUATIONS:

The Directorate of Assignments, HQ AFPC/DPAIP2, responded to the applicant's assertion that he was unjustly removed from the position of squadron commander and reassigned. DPAIP2 stated that preceding the applicant's PCS from Patrick AFB, FL, to Dallas, TX, a series of actions took place. None of the actions resulting in his PCS fall under the purview of DPAIP2's office. DPAIP2 stated that if the Board modifies in some way the actions upon which the PCS was based, then further reassignment may be appropriate (Exhibit F).

The Chief, Officer Evaluation Boards, HQ AFPC/DPPPEB, addressed the technical aspects of this case. DPPPEB stated that the applicant was removed from his position as the civil engineer squadron commander on 1 July 1996 by his senior rater (Brig Gen H---). Brig Gen H--- then included comments on the P0696B PRF indicating the applicant failed to demonstrate leadership and was replaced as squadron commander after one year. DPPPEB stated that although the applicant claims his senior rater included inappropriate comments on his PRF, evidence provided does not substantiate this allegation. The applicant has not provided

supporting documentation from his management level president indicating the officer did not receive fair and equitable treatment in the PRF process. DPPPEB indicated that there is no provision in AFI 36-2402 which allows anyone other than the officer's designated senior rater to reaccomplish a PRF. If substantial evidence is presented to prove a PRF is invalid, it is removed from the Record of Performance (ROP), it is not reaccomplished by an impartial officer. DPPPEB stated that the applicant had the option of writing a letter to the Central Selection Board president prior to the board convening. A senior rater is responsible for the content and promotion recommendation awarded on a PRF and there is no evidence to support the applicant's claim of anything but fair and equitable treatment. Since no evidence has been provided which shows Air Force regulations and guidelines were not adhered to, DPPPEB recommended the original PRF remain a part of the applicant's record (Exhibit G).

The Directorate of Personnel Program Management, HQ AFPC/DPPP, stated that the applicant is now requesting the original P0696B PRF be voided and reaccomplished by another general officer other than the senior rater who rendered the contested PRF. DPPP concurs with the assessment of HQ AFPC/DPPPEB. DPPP indicated that, as stated in their original advisory, in order to challenge the validity of an evaluation report, in this case a PRF, it is imperative to have support from both the senior rater and the management level review board (MLRB) president concerning the contested PRF. The applicant has provided no supporting documentation from either individual. In particular, a statement from the senior rater which states exactly why the applicant was removed from command and explaining the comment included in the applicant's PRF regarding his removal might shed some light. Without the support of the senior rater and MLRB president, DPPP does not believe the PRF should be voided. DPPP stated that if the Board decided the PRF should be voided, then they recommend promotion reconsideration by the P0696B Board with an AF Form 77 in place of the voided PRF as there is no provision in AFI 36-2402 which allows someone other than the senior rater to accomplish a PRF (Exhibit H).

APPLICANT'S REVIEW OF THE ADDITIONAL AIR FORCE EVALUATIONS:

He stated that the DPPP assertion that "it is imperative to have support from both the senior rater and management level review board (MLRB) president" for the action he has requested to be considered valid is unrealistic for several reasons. He stated that there is no regulatory requirement making such documentation "imperative." AFPC is suggesting that the only way to achieve a favorable outcome is to obtain a statement from the senior rater in which he denounces his own judgment as related to a previous action. AFPC has gone to great lengths to explain the philosophy behind the creation and use of the PRF. However, they would have to agree that the PRF is not intended to give official sanction to improper or capricious actions by senior raters, not based on

performance, that have career-ending impact on subordinates. The PRF in question cites a failure to "demonstrate leadership," yet, only two months before his removal as commander, the same senior rater said he was an "exceptional officer-inspired leader." In this case the PRF was used to justify an improper action, not rate performance (Exhibit J).

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 probable error or injustice. We took notice of the applicant's complete submission in judging the merits of the case. However, in our opinion, these documents do not support a finding that the senior rater, tasked with the responsibility of assessing the applicant's performance and promotion based potential, was unable to render an unbiased evaluation at that time. We are unpersuaded by the evidence presented that the PRF was based on factors other than the applicant's duty performance and demonstrated promotion potential during the rating period in question. We believe it should be noted that the same issues raised in this application were investigated by the Inspector General (IG) and it was determined that the complaints concerning wrongdoing by his commander were unsubstantiated and that the actions taken by the commander were within his authority and did not violate Air Force or DoD regulations. Additionally, the IG investigation indicated the applicant had been informed that his performance did not measure up to the commander's expectations. In view of the foregoing, it does not appear that the applicant was unjustly removed from his position of squadron commander and reassigned. Consequently, we agree with the opinions and recommendations of the respective Air Force offices and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. We therefore find no compelling basis to recommend granting the relief sought in this application.
4. 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 20 October 1998, under the provisions of AFI 36-2603:

Mr. David C. Van Gasbeck, Panel Chair
Mr. Jackson A. Hauslein, Member
Mr. Richard A. Peterson, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 30 May 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPAIP2, dated 23 Jun 97.
- Exhibit D. Letter, HQ AFPC/DPPPA, dated 22 Jul 97.
- Exhibit E. Letter from applicant, dated 29 Aug 97.
- Exhibit F. Letter, HQ AFPC/DPAIP2, dated 6 Feb 98.
- Exhibit G. Letter, HQ AFPC/DPPPEB, dated 19 Mar 98.
- Exhibit H. Letter, HQ AFPC/DPPP, dated 12 Mar 98.
- Exhibit I. Letters, SAF/MIBR, dated 4 Aug 97 and 30 Mar 98.
- Exhibit J. Letter from applicant, dated 27 Apr 98.


DAVID C. VAN GASBECK
Panel Chair