

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

DEC 08 1998

IN THE MATTER OF:

DOCKET NUMBER: 98-00329

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. Reinstatement in the active Reserve retroactive to his mandatory separation date (MSD) of 29 November 1997.
2. His Retention/Retirement (R/R) year be extended to 7 May 1998.
3. He be considered for promotion by the next lieutenant colonel promotion board as a Line of the Air Force officer, rather than a Medical Service Corps (MSC) officer, or in the alternative,
4. He be retired under 10 U.S.C. 12731a(a) based on completion of 15 years of service,

APPLICANT CONTENDS THAT:

He was unfairly considered for promotion by the Fiscal Year 1997 (FY97) and FY98 Reserve Lieutenant Colonel Promotion Boards as a health professions officer, rather than a line officer, although he was serving as a Admissions Liaison Officer (ALO).

The applicant also contends that his R/R year was prematurely ended 7 months short of his meeting the 18-year sanctuary due to his MSD, although he had earned the necessary points for a satisfactory year of Federal service for retirement purposes.

In regard to his promotion consideration, the applicant states that he entered active duty as a line officer in 1973, and was later transferred to the MSC. He left active duty as a MSC officer in 1980 and retained the MSC designation while serving as a category "A" reservist assigned to the 171st ARW as a clinic administrator, He elected to become inactive while completing graduate school and returned to the Reserves as an ALO. An ARPC official advised him that if he had to compete against other MSC officers (as opposed to line officers), he had very little opportunity for promotion since he had not served as a MSC for more than 14 years. The MSC officers selected were all category "A" reservists who were working in their units as MSC officers. Not wanting to be limited again in competing for promotion in FY

98, he requested to be reappointed as a line officer to prevent his competing again in the health professions category. He was advised by ARPC that even though the ALO appointment rules changed in 1994 and no health professions officer can be appointed as primary duty ALO's due to the aforementioned adverse promotion ramifications, they would not let him be reappointed to the line officer category. In addition, ARPC advised him that the ALO Air Force Specialty Code (AFSC) "95AO" was not a "real" AFSC and would not, in itself, be grounds for reappointment as a line officer. He feels that he would have been promoted to the grade of lieutenant colonel if he had been permitted to be reappointed as a line officer and allowed to compete in the line officer category.

Concerning his R/R year, the applicant states that based on his excellent record and the fact that he accumulated more than enough points to earn a creditable 18th year, his 17 years and nearly 7 months of service should be rounded up to 18 years which would put him in the 18-year sanctuary and allow him to return to active status and serve to the 20-year point. As the first primary duty ALO to serve as Liaison Officer Director (LOD) in his area in quite some time, he feels that he has invested the time and energy required to make some important improvements; however, a great deal more needs to be accomplished and he wishes to continue serving as an LOD. The Air Force Academy would permit him to remain in the LOD role if he were reinstated to active reserve status. Although no one is indispensable and their area would continue to function with someone else serving as LOD, he and several other officers who know of his circumstances feel that the [REDACTED] area would be best served if he remained in the LOD role.

In support of the appeal, the applicant has provided copies of his Officer Performance Reports (OPRs) and a statement from the Associate Director of Admissions for Enrollment Programs,

The applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

On 19 May 1973, the applicant was commissioned in the Regular Air Force.

The applicant was released from active duty and transferred to the Air Force Reserve, MSC, on 19 May 1980.

On 20 March 1985, the applicant was assigned to the Inactive Status List Reserve Section (ISLRS),

On 8 May 1989, the applicant was reassigned from the ISLRS to an ALO position at the Air Force Academy as an MSC officer.

The applicant was considered and not selected for promotion by the FY97 and **FY98** Air Force Line and Health Professions Lieutenant Colonel Selection Boards as an MSC officer. In accordance with 10 U.S.C. **8846** (a), the applicant was assigned an MSD of 29 November 1997 (one year and 90 days after the date on which he would have been promoted if he had been recommended by the first selection board that considered him.

During the R/R year ending 7 May **1997**, the applicant was awarded **18** Active Duty Training (IDT) points, 50 Inactive Duty Training (IDT) points, and 15 membership points, for a total of **94** points for retirement. In addition, the R/R year ending 7 May 1997 was considered a year of satisfactory Federal service.

During the partial R/R year ending **24** November **1997**, the applicant was awarded 25 ADT points and 27 IDT points for a total of **52** points for retirement.

The applicant was separated from the active Reserve and entered the Honorary Retired Reserve on the 29 November 1997. The applicant completed a total of 17 years of satisfactory Federal service for retirement purposes.

AIR FORCE EVALUATION:

The Staff Judge Advocate, ARPC/JA, reviewed this application and states that there are two main component's to the applicant's argument that an error or injustice occurred when his second deferral for promotion to the Reserve grade of lieutenant colonel resulted, under the provisions of the now-obsolete (but still applicable to his case) 10 U.S.C. **8846**, in his being offered to elect between transfer to the Honorary Retired Reserve or discharge on 29 November 1997 - his status as ALO and his failure to attain **18** satisfactory years before that date.

ARPC/JA states that the authorization of "95A0 Non-EAD [non-extended active duty] USAFR Academy or Civil Air Patrol Liaison" is a reporting identifier. Air Force Instruction (AFI) 36-2105, Attachment 3, defines the term as follows: "Reporting identifiers identify authorizations and individual officers not otherwise identifiable in the classification structure. They do not have specialty descriptions." The attachment directs how the 95A0 classification is to be used: "**Use** this identifier to report the Duty Air Force Specialty Code (AFSC) of non-extended active duty (non-EAD) Reserve officers who are participating in the Academy and Civil Air Patrol Liaison Programs. DoD Occupational Group: 9E." They note that AFI 36-2105, Attachment 3, is the authority for the use of the applicant's AFSC as an MSC officer. Absent the applicant's reclassification to another AFSC, there is no authority to reclassify him to the "Line of the Air Force."

In regard to the applicant's R/R year, ARPC/JA states that the

R/R year is the period during which he is required by 10 U.S.C. 12732(a) (2) to complete a one-year period of service and at least 50 Reserve retirement points. If the applicant's statutorily imposed MSD of 29 November 1997 had not intervened, and he had been able to have completed his 18th satisfactory year on 7 May 1998 (before any other MSD went into effect), the "18-year sanctuary," created by 10 U.S.C. 12646(a), would have prevented his discharge from active status before he had attained 20 satisfactory years or three years from the date he would have been removed from active status, whichever occurred earlier. The applicant had attained 52 Reserve retirement points as of 29 November 1997. The applicant requests a ROPMA interpretation or waiver to have his 17 years and nearly seven months of service rounded up to the 18 years needed for sanctuary based on his excellent service record and the fact that he had accumulated more than enough points to earn a creditable 18th year. The Secretary of the Air Force has not implemented the provisions of 10 U.S.C. 12731a(a), effective until 30 September 1999, which create a "Temporary special retirement qualification authority" - "Retirement With At Least 15 Years of Service"--to apply to those Air Force Reserve officers' whose careers (like the applicant's) were terminated, prior to the application of the 10 U.S.C. 12646 sanctuary, for MSD reasons. The applicant cannot be granted his 18th year of satisfactory service by "ROPMA interpretation". Therefore, they recommend denial of his requests.

A complete copy of the Air Force evaluation is attached at Exhibit C.

The Director of Assignments and Readiness, ARPC/DA, reviewed this application and states that they have not found any error or injustice to support reconsideration of the events leading up to the applicant's MSD. Therefore, they recommend the application be denied.

A complete copy of the Air Force evaluation is attached at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluations and states that in May of 1989, an oversight concerning his assignment eligibility as a primary duty ALO while holding a AFSC was made by ARPC. That oversight was perpetuated through the years as neither the Air Force nor he had reason to be aware of it. He became cognizant of it in late 1996 through personal inquiries as a result of being deferred for promotion to the grade of lieutenant colonel by the FY97 board. When he requested that ARPC rectify the oversight by re-designating him as a line officer prior to the FY98 board, he was incorrectly counseled that it was not possible to do so. The oversight had a definite negative impact on his promotion potential as it resulted in him

having to compete for promotion in a health professions officer category, rather than a line officer category for both the FY97 and FY98 boards even though he had not served as an MSC officer since the mid-1980s.

The applicant states that ARPC fails to address the fact that according to current and past assignment eligibility, 'officers with medical AFSCs cannot be assigned as primary duty ALO. The applicant notes that in accordance with AFI 36-2017 (Admissions Liaison Officer Program), chapter 3, paragraph 3.1.9, assignment to a medical AFSC disqualifies an officer from primary duty ALO duties. In addition, in 1989, the assignment policy was detailed by AFR 45-46 which clearly stated that officers with medical AFSCs, as well as JAG and Chaplains officers, cannot be assigned as primary duty ALOs. Because of clear and unambiguous language in the current and past regulations, one can easily see how he would believe that for all intents and purposes, especially for promotion consideration, the Air Force would consider him as a line officer. He applied to the ALO program in good faith. It was the Air Force's responsibility to review his application and determine his eligibility. It is obvious that a mistake was made. He should have been either denied assignment to the ALO program based on the aforementioned policy, or more appropriately been re-designated a line officer based on a previous line AFSC he held earlier in his career. Instead, the inconsistency with regulatory policy came to light only through his efforts when he inquired as to the reasons why he was not selected for promotion to lieutenant colonel by the FY97 board. Although he was advised at that time by ARPC that he could not be redesignated as a line officer prior to the FY98 board since his ALO position was not a "real" AFSC but a reporting identifier, he has since been advised by ARPC's assignment section, that he could have, and should have been redesignated as a line officer based on his prior line officer AFSC.

The applicant states that he was not counseled regarding the negative impact on his promotion potential he would experience when being forced to compete against health professions officers. One high level official candidly stated that he felt that his promotion folder was used as "cannon fodder" by the Health Professions Board due to the lack of recent service as a medical officer. The letters he received from ARPC notifying him of his consideration for appointment did not clearly state that he was going to be considered in the Health Professions Officer category. They simply stated that the Board was the Air Force Line and Health Professions Lieutenant Colonel Selection Board.

The applicant notes that since 1973, he had only one break in service which was due to obtaining his graduate degree which he felt was required for both his civilian and Reserve careers. Prior to that, he served 6 years on active duty, in both operations and the medical field, including a 1-year remote assignment.

The applicant's complete response, with attachments, is attached 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. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice to warrant his reappointment as a line officer and consideration for promotion to the grade of lieutenant colonel by Special Review Board (SRB), as a Line of the Air Force officer, rather than a Medical Service Corps (MSC) officer, for the FY97 and FY98 Air Force Line and Health Professions Lieutenant Colonel Selection Boards. After thoroughly reviewing the evidence of record and noting the applicant's contentions, we believe the applicant has provided sufficient evidence that he may not have received fair and equitable consideration for promotion by the FY97 and FY98 boards. In this respect, we note that at the time of the applicant's promotion consideration by the FY97 and FY98 boards, he had not served as an MSC officer for more than 14 years and was serving as an Admission Liaison Officer. In view of this, we believe the applicant's competitiveness for promotion may have been adversely affected. While it cannot be conclusively determined whether or not this was the sole reason for the applicant's nonselection for promotion by the boards in question, we do believe that it served to deprive him of fair and equitable consideration. We also note that in accordance with AFI 36-2017 (Admissions Liaison Officer Program), Chapter 3, Paragraph 3.1.9, assignment to a medical AFSC disqualifies an officer from primary duty ALO duties. Therefore, we recommend he be considered for promotion, as a line officer, by SRB for the FY97 and FY98 boards.
4. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice regarding the remainder of applicant's requests. The applicant contends that his R/R year was prematurely ended 7 months short of his meeting the 18-year sanctuary due to his MSD, although he had earned the necessary points for a satisfactory year of Federal service for retirement purposes. We note the R/R year is the period during which a member is required to complete a one-year period of service and at least 50 Reserve retirement points, in accordance with 10 U.S.C. 12732(a) (2). Although the applicant attained 52 Reserve retirement points as of 29 November 1997, he did not complete the required one-year period of service. In the absence of evidence that the establishment of his R/R year was in error or unjust, we find no reason to change his R/R year. The applicant also requests that he be retired under 10 U.S.C.

12731a(a) based on completion of 15 years of service; however, the Secretary of the Air Force has not implemented the provisions of 10 U.S.C. 12731a(a), to be effective until 30 September 1999. As such, there is no statutory basis to provide him a 15-year retirement. In regard to the applicant's request for reinstatement in the active Reserve, we do not believe, he has provided sufficient evidence to indicate that his separation from the active Reserve was improper. The applicant was separated based on his statutorily imposed MSD. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting this portion of the applicant's requests.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that on 19 May 1980, he was appointed as a line officer, Air Force Reserve, rather than Medical Service Corps.

It is further recommended that his records be considered for promotion to the Reserve grade of lieutenant colonel by Special Review Boards; that his record be evaluated in comparison with the records of officers who were and were not selected by the Fiscal Year 1997 (FY97) and FY98 Air Force Line and Health Professions Lieutenant Colonel Selection Boards; and that the recommendations of the Special Review Boards be forwarded to the Air Force Board for Correction of Military Records at the earliest practicable date so that all necessary and appropriate actions may be completed.

The following members of the Board considered this application in Executive Session on 6 August 1998, under the provisions of AFI 36-2603:

Mr. Charles E. Bennett, Panel Chair
Mr. Loren S. Perlstein, Member
Ms. Peggy E. Gordon, Member
Mr. Phillip E. Horton, Examiner (without vote)

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

Exhibit A. DD Form 149, dated 29 Jan 98, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. letter, ARPC/JA, dated 23 Mar 98.

Exhibit D. Letter, ARPC/DA, dated 27 Mar 98.
Exhibit E. Letter, AFBCMR, dated 13 Apr 98.
Exhibit F. Letter, Applicant, undated, w/atchs.


CHARLES E. BENNETT
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, D. C.

DEC 08 1998

Office of *the* Assistant Secretary

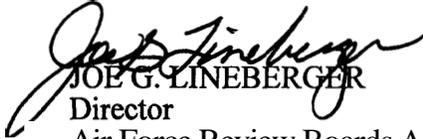
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MEMORANDUM FOR THE CHIEF OF STAFF

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 on 19 May 1980, he was appointed as a line officer, Air Force Reserve, rather than Medical Service Corps.

It is **further** directed that his records be considered for promotion to the Reserve grade of lieutenant colonel by Special Review Boards; that his record be evaluated in comparison with the records of officers who were and were not selected by the Fiscal Year 1997 (FY97) and FY98 Air Force Line and Health Professions Lieutenant Colonel Selection Boards; **and** that the recommendations of the Special Review Boards be forwarded to the Air Force Board for Correction of Military Records at the earliest practicable date **so** that all necessary and appropriate actions may be completed.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency