RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2016-04295

 COUNSEL: NO

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1.  He be promoted to the grade of major (O-4), effective 18 Feb 16.

2.  Alternatively, his records meet a special selection board (SSB) for CY16 USAFR Line Major Participating Reserve (PR) Promotion Selection Board (V0416A), and he be authorized to inform the SSB about the medical reason he was not allowed to perform any military duty between Jan 14 and Apr 15.

APPLICANT CONTENDS THAT:

Air Force regulations governing promotion of Reserve officers prohibit selection boards from considering an officer’s medical situation. This prohibition prevented him from explaining a 14 month absence from duty, and unjustly resulted in his non-selection for promotion to O-4. While AFI 36-2501, *Officer Promotions and Selective Continuation,* paragraph 2.10 authorized eligible officers to submit letters to the promotion board, no such letter may contain any medical information, because doing so would violate AFI 36-2501, which states: “No medical information of any type is enumerated, and is therefore prohibited from consideration by the Board” (page 63); and, “Attachments containing any of the following are not permitted: information that the Secretary has directed by excluded from the OSB and the Officer Selection Records” (paragraph 2.10.2.2.).

According to the Air Reserve Personnel Center, during his post-board counseling, the only significant unfavorable aspect of his officer selection brief (OSB) was his non-participation from Jan 14 through Apr 15. The ARPC representative told him that because the Promotion Board did not know the reason for his non-participation, “They would have assumed you just walked off.” His non-selection to major was based upon consideration of prohibited medical factors.

The applicant’s complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

According to the documentation submitted by the applicant, on 25 Jan 14, the applicant was notified by 349 AMDS/SG he was placed in a Duty Limiting Condition (DLC) status and could not participate for pay or points pending a final disposition.

On 15 May 15, the applicant received an AF Form 77, *Letter of Evaluation*, stating “No report available for the period 30 Jan 14 through 15 May 15. Member non-Par during this period.”

The applicant was considered and not selected by the CY16 USAFR Line Major Participating Reserve (PR) Promotion Selection Board (V0416A).

Under Reserve Order EK-0505, dated 4 Nov 16, the applicant was transferred to the Retired Reserve, effective 8 Mar 17, awaiting attainment of the age eligible to receive retired pay.

The remaining relevant facts pertaining to this application are contained in the memorandum prepared by the Air Force office of primary responsibility (OPR), which is attached at Exhibit C.

AIR FORCE EVALUATION:

ARPC/PB recommends denial indicating there is no evidence of an error or an injustice. AFI 36-2501 does not apply to Air Force. Reserve officers being considered for promotion to the grade of Colonel or below. AFI 36-2504, *Officer Promotion, Continuation and Selective Early Removal in the Reserve of the Air Force,* requires the Secretary of the Air Force’s Memorandum of Instructions (MOI) for the board be read verbatim on the convening date of the Board. The MOI for the board in question directed the Board members to apply the whole-person concept in assessing officer’s records, and stated a factor for consideration in the Air Force Reserve Component that is not relevant in the active duty force is participation. The member's record contained only the information outlined in AFI 36-2504, to include the applicant's participation record listed on the Officer Selection Brief (OSB). Although the applicant's nonparticipation was presented to the board, ARPC/PB cannot determine if non-participation was the sole reason for the applicant’s non-selection.

The applicant contends AFIs prohibit selection boards from considering an eligible officer's medical situation, which prevented him from explaining his absence from duty. There is no prohibition restraining eligible officers from explaining a lack of participation in a letter to the board. Although medical documentation is not presented to the board, AFI 36-2504 allows the officer to send written communication to the board calling attention to any matter the officer considers important to his or her case.

The applicant has provided no evidence the board acted contrary to law or the SECAF's MOI to the board. Recommend denial.

A complete copy of the ARPC/PB evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In further support of his original request, the applicant submitted a rebuttal to the Air Force Evaluation, in which he takes exception to the OPR’s recommendation to deny, and argues an injustice occurred even if the Air Force evaluation is correct. He contends:

The advisory opinion disagrees with his analysis the AFI prohibited him from explaining his 15 months of non-participation to the promotion board. Fundamentally, it does not matter whether his perception that the AFI prohibited him from telling the promotion board about the medical reason for his absence from duty was correct or incorrect. It was his desire to comply with Air Force regulations and his perception, founded upon the regulations he quoted in his request to the Board, that to obey Air Force law he had to refrain from explaining his absence from duty. An injustice resulted from that decision, regardless of whether his reading of the AFI is correct, or whether the advisory opinion's interpretation of the AFI is correct. Either way he lost out on a promotion he earned.

He always had positive OPRs and EPRs, as proven by his records and the declaration submitted with his application. Quite simply, there was no explanation for the promotion board to pass him over except for the medical suspension. This is not only his perception. During his post-denial debriefing the AFPC representative said "oh here it is" when he was trying to find clues to explain the non-selection, and the "it" was his absence from duty. The AFPC representative said his performance reviews and awards were good, so the promotion board must have just assumed he "walked off” for those 15 months of nonparticipation.

In a context where no records are created to clarify the promotion board's reasoning, and where there is no other explanation, clearly the non-participation was the cause. There is no requirement that he prove the causation beyond a reasonable doubt or to any other legal standard, only that he demonstrate some reasonable and logical basis for the relief he is requesting. Even if the advisory letter’s legal analysis was correct, it would result in the perpetuation of an injustice.

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 an error or injustice. We took notice of the applicant’s complete submission, to include the applicant’s rebuttal, in judging the merits of the case and agree with the opinion and recommendation of ARPC/PB and adopt the rationale expressed as the basis for our conclusion the applicant has failed to sustain his burden of proof that he has been the victim of an error of injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the requested relief.

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 the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and 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-2016-04295 in Executive Session on 14 February 2018 under the provisions of AFI 36-2603:

 Panel Chair

 Member

 Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2016-04295 was considered:

 Exhibit A.  DD Form 149, dated 10 Sep 17, w/atchs.

 Exhibit B.  Applicant's Master Personnel Records.

 Exhibit C.  Memorandum, ARPC/PB, dated 9 Aug 17.

 Exhibit D.  Letter, SAF/MRBR, dated 6 Oct 17.

 Exhibit E.  Letter, Applicant, dated 7 Nov 17.

Pursuant to paragraph 1 of AFI 36-2603 (Title 32 Code of Federal Regulations, Part 865.1), it is certified a quorum was present at the Board's review and deliberations, and the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.