

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

FEB 23 1999

IN THE MATTER OF:

DOCKET NUMBER: 93-01960

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His complaint that the Air Force's procedures of dividing the records of promotion candidates in the same competitive category among panels that make up the selection violates statute and Department of Defense Directive be upheld and majors' nonselections during reviews be declared void.

He be reinstated in the Air Force with all back pay and allowances and other benefits to which he is due.

His records be reviewed for promotion to the grade of lieutenant colonel against all 2086 majors who were promoted to lieutenant colonel as a result of the CY90 Central Lieutenant Colonel Selection Board, which convened on January 16, 1990, using a Board consisting of 25 civilian members completely independent of the Air Force.

He be promoted to the grade of lieutenant colonel as if selected by the CY90 board if his records fall any place other than the absolute bottom after scoring from the above-mentioned board or the Air Force cannot produce the records with officer selections briefs needed by the above board.

He be promoted to the grade of colonel at the time he would have met the colonel promotion board as a result of being promoted to the grade of lieutenant colonel by the CY90 board.

He be given all back pay and allowances and any other benefits to which he was due as a result of being promoted to the grade of colonel.

His records be purged as follows: All nonselections be deleted; his separation be voided; and his records be corrected to reflect constructive active duty service as appropriate.

RESUME OF THE CASE:

The applicant is a former Regular Air Force officer who was honorably relieved from active duty on 31 Dec 93 and retired in

the grade of major, effective 1 Jan 94. He had served 20 years and 20 days on active duty.

On 5 Aug 96, the Board considered and denied the applicant's requests that his nonselections for promotion to the grade of lieutenant colonel be set aside; and, that he be directly promoted to the grade of lieutenant colonel, or afforded "effective" Special Selection Board (SSB) consideration (see AFBCMR 93-01960, with Exhibits A through H).

APPLICANT CONTENDS THAT:

The Air Force used illegal promotion board procedures.

His records should be corrected as a result of the United States Court of Federal Claims decision in **Roane v. United States**.

Applicant's complete submission is at Exhibit I.

AIR FORCE EVALUATION:

Pursuant to the Board's request, the Staff Judge Advocate, AFPC/JA, reviewed the applicant's most recent submission and recommended denial of his application. JA indicated that, notwithstanding the judge's ruling to the contrary in **Roane**, two other judges of the United States Court of Federal Claims have determined that the Air Force's promotion board process fully complies with the law. In line with those decisions, JA urged the Board to reject the applicant's arguments, **as** the applicant has failed to prove that any error or injustice occurred with respect to the promotion boards that considered him.

A complete copy of the JA evaluation is at Exhibit J.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In his response, the applicant indicated that **Roane v. United States** has not been overturned and he is relying on the court's decision. The bottom line is that the promotion board that his records met were conducted illegally. Therefore, all of his nonselections are void and he should be granted relief. (See Exhibit L.)

THE BOARD CONCLUDES THAT:


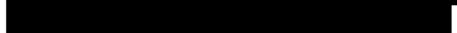
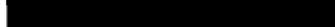
1. In earlier findings, we determined that there was insufficient evidence to warrant any corrective action regarding the applicant's original appeal. We have reviewed the applicant's most recent submission and find it insufficient to warrant a reversal of our previous determination in this case. In our view, the issues raised by the applicant have been adequately addressed by the Air Force office of primary responsibility (OPR). Therefore, we agree with the opinion and recommendation of the OPR and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Accordingly, we again find no compelling basis to recommend granting the relief sought in this application.

2. 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 14 Oct 98, under the provisions of AFI 36-2603:

 Panel Chair
 Member
 Member

The following additional documentary evidence was considered:

- Exhibit I. Ltr from Congressman, dated 11 Mar 97, w/atchs.
- Exhibit J. Letter, AFPC/JA, dated 20 Aug 97.
- Exhibit K. Letter, AFBCMR, dated 2 Mar 98.
- Exhibit L. Letter, applicant, dated 11 May 98.


Panel Chair