



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

FEB 20 1999

AFBCMR 98-01539

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 he be considered for promotion to the grade of lieutenant colonel by a Special Review Board (SRB); that his records be evaluated in comparison with the records of officers who were and were not selected by the Fiscal Year 1996 Reserve of the Air Force Lieutenant Colonel Judge Advocate Selection Board; and that the recommendation of the SRB be forwarded to the Air Force Board for Correction of Military Records at the earliest practicable date so that all necessary and appropriate actions be completed.

[REDACTED]

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-01539

COUNSEL: None

FEB 26 1998

HEARING DESIRED: Yes

APPLICANT REQUESTS THAT:

He be promoted to the Reserve grade of lieutenant colonel as if selected by the Fiscal Year 1996 Reserve of the Air Force (FY96 ResAF) Lieutenant Colonel Judge Advocate Selection Board.

APPLICANT CONTENDS THAT:

The FY96 ResAF board improperly applied promotion selection criteria by making Professional Military Education (PME) a prerequisite for promotion.

In support, he provides a letter from the Commander, HQ Air Reserve Personnel Center (ARPC), who indicates that the FY96 ResAF board had no maximum quota, had a lower selection rate than the previous four boards for this grade, and that most of the nonselects for this board had not completed Intermediate Service School (ISS).

A copy of applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

The applicant was considered but not selected by the FY96 ResAF board, which convened on 4 March 1995. On 31 May 1996 he was notified by HQ ARPC/DP that, as a result of his second deferral for promotion, he must either apply for transfer to the Honorary Retired Reserve or be discharged by 18 October 1997.

The ResAF Lieutenant Colonel Judge Advocate Selection Board is a "fully qualified" board. Consequently, there are no limitations on the number of selections that can be made by the board---as long as those selected are "fully qualified." The formal charge given to the members of the selection board panels instructs them to assess such factors as job performance, leadership, professional competence, participation, breadth of experience, job responsibility, academic and professional education, and specific achievements. The charge also states that the completion of PME is not a prerequisite for promotion.

All 18 of the members selected by the FY96 ResAF board for promotion to lieutenant colonel in the judge advocate career field had completed the appropriate level of PME. Of the 12 nonselects, only one had completed the appropriate level of PME. As a basis for comparison, the FY95 board considered 28 members and selected 25 for promotion. Of the 25 selected, 14 had not completed the appropriate level of PME, the FY94 board considered 48 members and selected 43 for promotion. Of the 43 selected, 17 did not have the appropriate level of PME.

On 7 May 1996, the Air Force Board for Correction of Military Records (AFBCMR) considered the case of [REDACTED], whose circumstances were identical to the applicant's. In [REDACTED]'s case, the Commander, HQ ARPC, stated that, due to significantly lower overall selection rates on the FY96 ResAF board when compared to previous years and an apparent correlation between being determined "fully qualified" for promotion and completing PME, it was possible that members of the FY96 ResAF board may not have followed the Secretary's guidance in all cases. The AFBCMR concluded that any doubt should be resolved in favor of [REDACTED] and recommended that his records be considered for promotion by a Special Review Board (SRB) for the FY96 ResAF board. A copy of the Record of Proceedings for [REDACTED] case is attached at Exhibit C. In November 1996, the AFBCMR granted the same relief [REDACTED]ther applicant whose circumstances were identical to [REDACTED]

AIR FORCE EVALUATION:

The Director of Personnel Program Management, HQ ARPC/DP, reviewed this appeal and states that, as of this date, none of the panel members have come forward to indicate that PME was used as a prerequisite for selection or that PME was used as prerequisite for selection or that there were any improprieties in the selection process. Due to the confidentiality surrounding the board proceedings, DP is unable to determine specifically why the applicant was not selected for promotion. The fact that the FY96 ResAF board selected at a rate of 24-30% lower than the rates for the previous four boards to this grade could lead one to "assume" that the board did place an inordinate weight on the completion of the appropriate level of PME. The author advises how the records should be corrected if the Board concurs with the applicant's request.

A copy of the complete the evaluation, with attachments, is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the evaluation was forwarded to the applicant on 20 July 1998 for review and comment within 30 days. As of this date, no response has been received by this office.

THE BOARC 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 war-ranting favorable action on the applicant's request. As noted by the HQ ARPC, the ResAF Lieutenant Colonel Judge Advocate Selection Board is a "fully qualified" board. There are no limits on the number of selections to be made by the board---so long as those selected are "fully qualified." The fact that the FY96 ResAF board selected at a rate of 24-30% lower than the rates for the previous four boards for this grade could lead one to "assume" that board did place an inordinate weight on the completion of the appropriate level of PME. We also note that in an identical case, the Commander, HQ ARPC, stated that in a fully qualified selection process, all eligible officers fall into one of two categories: either "fully qualified" or "not fully qualified." While the possibility exists that the nonselects are, in fact, not fully qualified, the results seem to indicate that the board may have compared their records against those with ISS and determined that those without ISS were not as well qualified for promotion as those who had ISS. However, this does not necessarily mean they were not fully qualified. In fact, the Board Charge specifies that completion of ISS is not a prerequisite for promotion. Consequently, the ARPC Commander believed it was reasonable to grant favorable consideration to those applicants who approach the Board citing this issue as the basis for appeal.
4. In view of the foregoing and in the absence of a basis to question the integrity of the Director of Personnel and the Commander of the ARPC, we believe that any doubt should be resolved in favor of the applicant by having his record reevaluated for promotion to the Reserve grade of lieutenant colonel by an SRB for the FY96 ResAF board.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that he be considered

For promotion to the grade of lieutenant colonel by a Special Review Board (SRB); that his records be evaluated in comparison with the records of officers who were and were not selected by the Fiscal Year 1996 Reserve of the Air Force Lieutenant Colonel Judge Advocate Selection Board; and that the recommendation of the SRB be forwarded to the Air Force Board for Correction of Military Records at the earliest practicable date so that all necessary and appropriate actions be completed.

The following members of the Board considered this application in Executive Session on 2 February 1999 under the provisions of AFI 36-2603:

[REDACTED] Panel Chair
[REDACTED] Member
[REDACTED], Member

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

- Exhibit A. DD Form 149, dated 30 May 98, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Record of Proceedings for [REDACTED], dated 28 May 96.
- Exhibit D. Letter, HQ ARPC/DP, dated 29 Jun 98.
- Exhibit E. Letter, AFBCMR, dated 20 Jul 98.

[REDACTED]
[REDACTED]