RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02048

XXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His record be corrected to reflect he was promoted to the grade of lieutenant colonel (O-5) prior to his discharge after World War II.

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APPLICANT CONTENDS THAT:

He was on terminal leave when the War Department issued an order allowing majors to apply for temporary promotion to lieutenant colonel while on terminal leave. He would have certainly done so had he known of the order.

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

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STATEMENT OF FACTS:

The applicant’s military personnel records indicate he was appointed a second lieutenant (O-1) in the Army of the United States on 24 May 40.

According to the applicant’s WD AGO Form 53, *Military Record and Report of Separation Certificate of Service*, he commenced his initial period of active service on 25 Jun 41. He was progressively promoted to the temporary grade of major (O-4) effective and with a date of rank of 19 Aug 43. He was promoted to the permanent grade of major on 1 Jul 44.

On 17 Oct 45, the War Department announced that officers of all Reserve Components up to the grade of colonel who had not been promoted while on active duty would be promoted to the higher grade effected on the date they go on terminal leave, provided they served on active duty for two years and had an efficiency index of 35.

On 26 Oct 45, the applicant commenced his terminal leave period of 2 months and 16 days.

On 13 Dec 45, the War Department expanded the above policy to include officers who had been promoted. Majors with an efficiency index of 40 or higher who had completed 24 months of service in grade could be promoted one grade on the first day of terminal leave. Officers who were on terminal leave at the time the policy was issued were eligible for the promotion prior to reverting to an inactive status.

On 15 Jan 46, the applicant was released from active duty and credited with 4 years, 6 months, and 21 days of total active service.

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AIR FORCE EVALUATION:

AFPC/DPSOO recommends the application be rejected as untimely, indicating the applicant has provided no documentation to indicate he was eligible or recommended for promotion. The record indicates he entered active duty as a second lieutenant, Army of the United States, on 25 Jan 41 [sic] and was progressively promoted to the grade of major (O-4) on 4 Jul 44. He was relieved from active duty in the grade of major on 15 Jan 46. On 17 Oct 45, the War Department announced that officers of all Reserve components up to the grade of colonel who had not been promoted while on active duty could be promoted effective the date they go on terminal leave provided they served on active duty for two years and had an efficiency index of 35. However, this provision does not apply as the applicant was promoted while on active duty. The War Department expanded this policy to include officers who had been promoted. Majors with an efficiency index of 40 or higher who completed 24 months service in grade could be promoted on the first day of terminal leave. Based on the applicant’s date of rank 4 Jul 44, he did not meet the 24 month time-in-grade requirement. Additionally, since his effectiveness reports are not available, his efficiency index cannot be determined. The reasons for having a statute of limitations includes the fact that stale claims like this one cannot be adequately addressed because the passage of time has resulted in the loss or destruction of records needed to adjudicate the claim.

A complete copy of the AFPC/DPSOO evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 23 Dec 10 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

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THE BOARD CONCLUDES THAT:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3.  Sufficient relevant evidence has been presented to demonstrate the existence of a probable error or injustice. The applicant contends that he should have been promoted to the grade of lieutenant colonel upon his release from active duty from the Army Air Corps after World War II in accordance with a War Department policy in effect at the time. After a thorough review of the evidence of record and the applicant’s complete submission, we believe a preponderance of the evidence indicates he is the victim of a probable error or injustice. In this respect, we note the subject policy allowed for the promotion of majors to the grade of lieutenant colonel, provided they had at least 24 months time in grade (TIG) and an efficiency index of at least 40 upon commencing terminal leave. We note the comments by the Air Force office of primary responsibility (OPR) indicating the applicant was ineligible because he lacked the requisite TIG as his date of rank to the permanent grade of major was 1 Jul 44. However, we note the applicant had been promoted to the temporary grade of major on 19 Aug 43. As such, we believe he met the TIG requirement prior to departing on terminal leave on 26 Oct 45. As for the efficiency index requirements, we note the comments by the Air Force OPR indicating they could not determine the applicant’s efficiency index. However, the applicant’s records contain efficiency reports that make it clear he was consistently rated as “Superior” among his peers. As such, we believe it is likely the applicant met the prescribed performance standards as well. Accordingly, we find it likely the applicant was eligible for promotion under the subject policy. Therefore, to preclude any further injustice to this World War II veteran, we recommend that his records be corrected as indicated below.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that he was promoted to the temporary grade of lieutenant colonel (O-5), effective and with a date of rank of 13 Dec 45.

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The following members of the Board considered AFBCMR Docket Number BC-2010-02048 in Executive Session on 8 Feb 11, under the provisions of AFI 36-2603:

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 10 Mar 10.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, AFPC/DPSOO, dated 6 Dec 10.

Exhibit D. Letter, SAF/MRBR, dated 23 Dec 10.