

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2019-02788

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUESTS

1. He receive Special Selection Board (SSB) consideration for the Calendar Year 2013 Participating Reserve Line and Nonline Major Promotion Selection Board (V0413A).
2. He be awarded a Meritorious Service Medal for his retirement from the Regular Air Force on 1 October 2006.
3. AF IMT 707B, *Company Grade Officer Performance Report (2Lt thru Capt)*, for the period 17 January 2005 through 1 November 2005, Block 3, *Grade*, be amended to "Capt" vice "1Lt." **(Administratively Corrected)**
4. AF IMT 707B, for the period 17 January 2004 through 16 January 2005, which, was removed from his record and replaced with AF Form 77, *Letter of Evaluation*, by direction of the Air Force Board for Correction of Military Records (AFBCMR), Docket Number BC-2006-01168, be amended to remove the last bullet from Block VI, *Rater Overall Assessment*, and Block VII, *Additional Rater Overall Assessment*, and added back to his record.

APPLICANT'S CONTENTIONS

He seeks to be made whole from the collateral consequences of a partially corrected injustice addressed by AFBCMR Docket Number BC-2006-01168. Several factors from this original case resulted in his non-selection for promotion to major by the V0413A board. Following the Board's decision in 2007, he was offered a chance to reverse his retirement and return to active duty. However, he declined and joined the Air Force Reserve. Because of the level of approval required under the retired officer selection board, it took two years for him to return to duty. While in the Air Force Reserve, he continued to do what was expected of an officer with the full expectations of being promoted to major and then to lieutenant colonel (O-5). He completed his master's degree, was awarded Air Force Command Pilot Wings, and completed Squadron Officer School. He made sure his records were updated when they went before the promotion board on 14 January 2013. However, on 13 March 2013, he was informed of his non-selection for promotion to major. A Total Force Service Center representative told him he had not received a decoration in over 11 years, there were holes in his record when the Officer Performance Report (OPR) was removed by direction of the Secretary of the Air Force, and his OPR from 2005 reflected the grade O-2 rather than O-3. When he requested an official copy of this post-board counseling, he was told the counseling was only done as a courtesy. In December 2013, he received an Air Force Commendation Medal. In January 2014, his records went before the major selection board for a second time, and he was selected for promotion. Based upon analysis of the previous board, not receiving a retirement award was definitely the number one reason he was not promoted in 2013. Because he met the promotion board two years after returning to service, the only opportunity to receive an award was for his retirement in October 2006. While the Board did an outstanding job trying to correct his record in 2007, no one knew that lingering issues would prevent future promotion opportunities. Not correcting his record will cause one year loss of time in grade, and he will only have one chance remaining to

be promoted - a year after officers with his same date of rank. Additionally, he will be pushed closer to a mandatory separation date that would not allow his promotion to lieutenant colonel.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force Reserve major.

On 12 April 2006, the applicant requested the Board correct his record to remove the nonjudicial punishment imposed under the provisions of Article 15, Uniform Code of Military Justice, and all rights, privileges and property of which he may have been deprived be restored.

On 30 September 2006, the applicant was released from active duty and retired effective 1 October 2006, in the grade of O-2.

On 3 April 2007, the Board considered and recommended the applicant's request be granted. The Director, Air Force Review Board Agency, on behalf of the Secretary of the Air Force directed the applicant's records be corrected as requested.

On 4 May 2007, under Special Order XXXXX, the applicant was promoted to the rank of captain (O-3), effective and with a date of rank of 5 April 2005.

On 18 May 2007, under Special Orders No. XXXXX, the applicant's retirement order Special Orders No. XXXXX, dated 25 May 2006, was amended to reflect his grade as O-3, with highest grade held on active duty as O-3.

On 22 May 2007, the applicant was issued a DD Form 215, *Correction to DD Form 214, Certificate of Release or Discharge from Active Duty*, correcting his grade to O-3, with a 5 April 2005 date of rank.

On 17 March 2009, under Reserve Order XXXXX, the applicant was appointed to the Air Force Reserve, in the grade of O-3.

On 13 January 2013, the applicant was considered by the V0413A promotion board, and was not selected for promotion.

On 12 September 2014, under Reserve Order XXXXX, the applicant was promoted in the Reserve of the Air Force to the rank of major, with an effective date and date of rank of 1 October 2014.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C-E.

APPLICABLE AUTHORITY

According to Air Force Instruction (AFI)36-2504, *Officer Promotions, Continuation and Selective Early Removal in the Reserve of the Air Force*, SSBs are convened to consider officers who were improperly considered, or not considered, by one or more promotion boards. The Air Force Board for Correction of Military Records or a federal court can direct an officer for consideration by an SSB. SSB consideration is based on legal, administrative, and material errors. An SSB will not be considered if, by exercising reasonable diligence, the officer should have discovered the error or omission and could have taken corrective action before the originally scheduled board convened.

AIR FORCE EVALUATION

ARPC/PB (Selection Board Secretariat) recommends denying the applicant's request for promotion to the rank of major. In accordance with AFBCMR Directive, Docket Number BC-2006-01168, the applicant's Article 15, initiated on 3 February 2005, his OPR for the period ending 16 January 2005, and AF IMT 709, *Promotion Recommendation*, prepared for the Calendar Year 2005D (P0305D) Captain Promotion Process, were declared void and removed from his records. In accordance with AFI 36-2406, *Officer and Enlisted Evaluation Systems*, AF Form 77 was placed in the applicant's record to document the period of the voided OPR. The applicant was eligible for promotion consideration by the V0413A promotion board, which convened on 13 January 2013. He was properly considered, but not selected, for promotion. There is no evidence the promotion selection board acted contrary to law or regulation.

The complete advisory opinion is at Exhibit C.

AFPC/DP3SP (Evaluations) recommends denying the applicant's request to remove derogatory information from his OPR ending 16 January 2005. Specifically, the applicant requests AF Form 77 be replaced with the original OPR, redacting any derogatory information. Based on the analysis of the facts and documentation provided, the applicant has provided insufficient evidence to substantiate an error or injustice. The applicant appealed his referral OPR for the period of 17 January 2004 through 16 January 2005 through the Board (BC-2006-01168). In accordance with the Board directive, the contested OPR was voided. To document the period, AF Form 77 was accomplished and placed into the applicant's record.

The complete advisory opinion is at Exhibit D.

AFPC/DP3SP (Recognitions) recommends denying the applicant's request for a Meritorious Service Medal. After a thorough review of the official military personnel record, there is no evidence the applicant was nominated for the Meritorious Service Medal. According to AFI 36-2803, *The Air Force Awards and Decorations Program*, dated 15 June 2001, each decoration prescribes standards which define the degree and magnitude of an act, achievement, or service considered worthy for awarding that particular decoration. Furthermore, all related facts regarding the service of any person must be evaluated before recommending or awarding a decoration. Therefore, absent a nomination from someone who had firsthand knowledge of the applicant's performance, it is unknown if there may have been other factors, outside what the applicant presents, which would have prevented or convinced someone not to nominate him for award of the Meritorious Service Medal.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 28 February 2020 for comment (Exhibit F), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board agrees with the opinions and recommendations of the Air Force offices

of primary responsibility and adopts their rationale a preponderance of the evidence does not substantiate the applicant's contentions. Furthermore, while the applicant requests consideration for promotion to major based upon the Calendar Year 2013 Participating Reserve Line and Nonline Major Promotion Selection Board, as noted in AFI 36-2504, a special selection board will not be considered if, by exercising reasonable due diligence, the applicant should have discovered the error or omission and could have taken corrective actions before the originally scheduled Board convened. In this case, the applicant's records were changed in 2007 changing his date of rank to captain, as such he had over seven years to discover the error in his record. Therefore, Board does not find it in the interest of justice to recommend granting the relief sought in this application.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2019-02788 in Executive Session on 19 March 2020:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 8 May 2019.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, ARPC/PB, dated 17 September 2019.
Exhibit D: Advisory opinion, AFPC/DP3SP, dated 10 February 2020.
Exhibit E: Advisory opinion, AFPC/DP3SP, dated 24 February 2020.
Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 28 February 2020.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR