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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-03387

XXXXXXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

1. The promotion recommendation form (PRF) for Promotion Board P0500A be removed from his record.
2. Retroactive consideration for promotion to lieutenant colonel via a Special Selection Board (SSB).
3. If selected for promotion, he receive back pay and allowances for the difference in pay from his date of rank to his retirement 30 Jun 05.
4. He be retired as a lieutenant colonel and receive back retired pay as a lieutenant colonel from 30 Jun 05 to present.

**APPLICANT'S CONTENTIONS**

In a four-page legal brief, the applicant via his counsel contends his PRF for Promotion Board P0500A should be removed from his record due to improper senior rater and an unjust rating. The senior rater that authored his PRF for the P0500A promotion board had only been his senior rater for 49 days and wrote a PRF that was entirely inconsistent with his service records, Officer Performance Reports (OPRs), and prior PRFs. He was not selected for promotion. Air Force Instruction (AFI) 36-2401, *Correcting Officer and Enlisted Evaluation Reports*, in effect at the time was not followed. According to the regulation, a rater, to complete a PRF, must evaluate the member for at least 60 days. He sought to appeal and correct the issue at the time, but was advised in writing by a general officer not to file an appeal. He followed that guidance to his detriment, and therefore, in the interest of justice, the three-year filing requirement should be waived, and this injustice corrected.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a retired Air Force major (O-4).

According to documentation submitted by the applicant:

From his promotion to major in 1997 thru the P0500A promotion board [sic], he was assigned to the Air Force Space Command (AFSPC), Peterson AFB, CO.

On 14 Jun 00, the applicant's new senior rater arrived on station.

On 30 Jun 00, according to the 2000 AF Officer Promotion Board Schedule/Milestones, it was P0500A “Send MPFM/PRF Accounting Day” – 150.

On 3 Aug 00, the applicant was reassigned from AFSPC, Peterson AFB, CO, to the Air Force Pentagon Communications Agency, Pentagon, Washington, DC.

On 28 Nov 00, the P0500A Lieutenant Colonel Selection Board Selection Board convened. The applicant was not selected for promotion.

On 6 Feb 02, the applicant was notified he was considered but not selected, for promotion by the CY01B Lieutenant Colonel Central Selection Board. However, he was selected for continuation by the CY01C Major Selective Continuation Board

On 5 Mar 03, according to documentation submitted by the applicant, he provided his appeal package (appeal of his P0500A PRF) to his former senior rater, lieutenant general H. D. R., and was advised he not pursue the appeal at the time, but rather work for a promotion above the zone.

On 30 Jun 05, according to Special Orders No. **Work-Product**, dated 1 Dec 04, the applicant was relieved from active duty, organization and station of assignment, retired effective 1 Jul 05, in the grade of major, having served 20 years and 15 days of active service.

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

## **AIR FORCE EVALUATION**

AFPC/DP3SP recommends denying the applicant’s request to remove his PRF for Promotion Board P0500A from his record. The applicant contends the senior rater that authored his PRF for the P0500A promotion board had only been his senior rater for 49 days, short of the valid and accepted ratable period per AFI 36-2401. While AFI 36-2401 pertains to the Officer Promotion process, the applicable policy for the PRF in effect as of the PRF accounting date (-150 days prior to the promotion board) was AFI 36-2402, *Officer Evaluation System*, and subsequently the applicable AFI was AFI 36-2406, *Officer and Enlisted Evaluation Systems*, effective prior to the P0500A promotion board. Applicable excerpts from AFI 36-2402 and AFI 36-2406 are attached, showing the “PRF Accounting Date (150 days before the Central Selection Board): On the PRF accounting date, AFPC matches eligible officers to senior raters based on the officers’ unit of assignment data in the HAF Master Promotion Eligibility File. The applicant’s contention there was only 49 days supervision is not applicable to the PRF process. While this may be true of an Officer Performance Report (OPR), there is no minimum days of supervision for accomplishment of the PRF. Based on the published guidelines for the P0500A PRF cycle, on the PRF Accounting Date (30 Jun 20), eligible officers will compete with the unit they are assigned to as of this date. Based on the documentation submitted by the applicant and the AFI guidance cited above, there is no error or injustice as the applicant’s PRF was completed in compliance with Air Force policies in effect at the time. Additionally, the applicant’s request should be denied as an untimely submission (alleged error or injustice occurred over 15 years ago).

The complete advisory opinion is at Exhibit C.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 14 Jul 22 for comment (Exhibit D) but has received no response.

## **ADDITIONAL AIR FORCE EVALUATION**

AFPC/DP2SP recommends denying the applicant's request for an SSB. The applicant is requesting his PRF for the P0500A Lieutenant Colonel Selection Board be removed from his records and he receive SSB consideration for promotion to lieutenant colonel. Deferring to Military Evaluation and Recognition Programs Section's conclusion (4 Jul 22 Advisory), the applicant did not provide any documentation warranting removal of his PRF from his records and coupled with their analysis of the applicable policy for PRFs at the time, AFI 36-2406, there was no error or injustice as the applicant's PRF was in compliance with the policy/process for the P0500A PRF cycle. Therefore, they recommend the AFBCMR deny the applicant's request for SSB consideration.

The complete advisory opinion is at Exhibit E.

## **APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 19 Jul 22 for comment (Exhibit F), and the applicant replied on 15 Aug 22. In his response, via counsel, the applicant contended the advisory selected only a small piece of his argument to respond to, without addressing the crux of the issue and argument for equitable relief. He opines current changes to the rules (DAFI36-2406, 14 Nov 19) for completing a PRF would disqualify the senior rater who authored the PRF in question, due to the fact he had insufficient supervision and knowledge of the applicant's work, and that he was not the senior rater. While there may not have been a direct violation of the applicable AFI at the time, equitable relief is required in circumstances where current policy would have resulted in a more fair and just result. He reiterates his prior PRFs and OPRs demonstrate a history of outstanding performance and PRF recommendations of "Definitely Promote." (Tabs D and E of original submission). Additionally, in support of this response, he submitted a copy of the Communications Squadron Command Board, 13-16 Sep 99, listing the applicant as a nominee, further demonstrating the applicant maintained the highest standards that were not reflected by his senior rater in the subject PRF.

The applicant's complete response is at Exhibit G.

## **FINDINGS AND CONCLUSION**

1. The application was not 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 concurs with the rationale and recommendation of AFPC/DP3SP and AFPC/DP2SP and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

## RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-03387 in Executive Session on 9 Aug 22 and 16 Sep 22:

, 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 17 Sep 21.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFPC/DP3SP, w/atchs, dated 4 Jul 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Jul 22.  
Exhibit E: Advisory Opinion, AFPC/DP2SP, dated 17 Jul 22.  
Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Jul 22.  
Exhibit G: Applicant's Response, w/atch, dated 15 Aug 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

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Board Operations Manager, AFBCMR