

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-03086

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

Correct his official military record to show he was not twice-passed over for promotion.

### APPLICANT'S CONTENTIONS

While investigating his options to return to military service, he obtained a Points Report and discovered his record showed he was passed over for promotion twice. He asked the Total Force Service Center (TFSC) about this record explaining he thought it was an error and they recommended he apply to the Air Force Board for Correction of Military Records.

His records do not accurately reflect his promotion history. Incorrectly showing he was twice-passed over for promotion has negatively impacted his efforts to return to military service. He separated from the Air Force on 29 Sep 14. Shortly afterward, he received a letter indicating the progression to expect as he transitioned from active duty to reserve status. This letter clearly indicated, within six months, he would be transitioned to the Inactive Status List Reserve Section, and further explains while assigned to that section of the Standby Reserve, he would not be permitted to participate for pay or points and would no longer be eligible for promotion consideration.

Despite this notification, the TFSC explained he was still considered for promotion twice (in 2016 and 2017) and passed over. He never received correspondence notifying him of his promotion eligibility for the boards the TFSC mentions.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an honorably discharged Air Force Reserve captain (O-3).

In an undated *Individual Ready Reserve (IRR) Requirements Memorandum*, the applicant signed acknowledgement of transfer to the IRR for a period of three years for receipt of separation pay.

On 10 Apr 14, the applicant signed the *Individual Ready Reserve Agreement/Statement of Understanding for Officer Voluntary Separation Pay (VSP)*.

On 29 Sep 14, the applicant was furnished an honorable discharge, with Narrative Reason for Separation: Force Shaping – VSP, and credited with 8 years, 8 months, 27 days active service.

According to an undated Headquarters, Air Reserve Personnel Center (HQ ARPC) letter, provided by the applicant, he was notified of his assignment to the Non-obligated Non-Participating Ready Personnel Section (NNRPS) and pending transfer to the Inactive Status List Reserve Section (ISLRS), and, while assigned to ISLRS, would not be eligible for promotion or promotion consideration.

On 6 Apr 17, according to ARPC/DPT letter, the applicant was twice-deferred for promotion and a mandatory separation date was established.

On 19 Apr 17, according to HQ ARPC letter, the applicant was notified of his pending discharge from the IRR and NNRPS.

On 29 Sep 17, according to Reserve Order XXXXX, dated 22 Sep 17, the applicant was relieved from assignment and honorably discharged from all appointments in the United States Air Force.

On 31 May 22, according to myPers Discussion Thread, provided by the applicant, while assigned to NNRPS, he was passed over for promotion by W0416A and W0417A boards.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

### **AIR FORCE EVALUATION**

ARPC/PB recommends denying the application. The applicant was eligible and required to meet promotion boards per Title 10, United States Code, Section 14301 (10 U.S.C. § 14301). In accordance with 10 U.S.C. § 14301, *Eligibility for consideration for promotion: general rules*, paragraphs (a) and (b), officers are eligible for consideration for promotion by a board if they are on the Reserve Active Status List (RASL) and during the one-year period ending on the date of the convening of the promotion board the officer has continuously performed service on either the reserve active-status list or the active-duty list (or on a combination of both lists). Whenever a promotion board (excluding position vacancy boards) is convened for consideration of officers in a competitive category who are eligible under this chapter for consideration for promotion to the next higher grade, each officer in the promotion zone, and each officer above the promotion zone, for that grade and competitive category shall be considered for promotion.

When the applicant separated from active duty, he received VSP which resulted in a military service obligation. He received notification he would be placed in the IRR, specifically the NNRPS, for up to three years, and he signed various documents stating he understood. Based on the applicant's date of separation of 29 Sep 14, and three years in the NNRPS, he was assigned to the NNRPS from 30 Sep 14 – 29 Sep 17. During this period, he was eligible for, and met, two non-participating promotion boards, in 2016 and 2017, in accordance with 10 U.S.C. § 14301, and was not selected for promotion from either board.

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 1 Mar 23 for comment (Exhibit D) but has received no response.

### **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 ARPC/PB and finds a preponderance of the evidence does not substantiate the applicant's contentions. While assigned

to the NNRPS, the applicant was eligible for and met two non-participating promotion boards, in accordance with 10 U.S.C. § 14301, and was not selected for promotion from either board. 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 Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. 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 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-2022-03086 in Executive Session on 18 May 23:

, 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 24 Nov 22.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, ARPC/PB, w/atchs, dated 9 Jan 23.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Mar 23.

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.

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Board Operations Manager, AFBCMR