

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00907

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Correct his official military personnel record to allow for reconsideration of his promotion to colonel (O-6).

APPLICANT'S CONTENTIONS

Upon becoming eligible for promotion from lieutenant colonel (O-5) to colonel, he was continually, every promotion cycle, the number one selectee from every command; however, he was not selected for promotion even though other, less qualified, not recommended number one, were. He knows he is at risk of angering the promotion board, but it has come to his attention that although the promotion board denies it, there is in fact a secret "blacklist" that is used to pass over officers that may have crossed a former commander, and that commander has placed a candidate's name on this list rather than not recommend them for promotion. He had it on very good authority that one of his former commanders had done such a thing with regard to his eligibility and selection. He is asking for an honest review of his records and selection recommendation to be promoted to colonel.

By review of the documentation he provided, it is clear he earned this promotion. He did everything right, was at the front of the line to volunteer, never had a blemish on his service record, and had the necessary educational and military training. Yet he was passed over while others with less qualification were selected for promotion to colonel. The letter from the Office of Legislative Liaison that he provided states that promotion is based on "Performance, Participation, Professional Qualities, Job Responsibility, Leadership, Specific Achievement, and Education." The documentation provided shows he not only met these qualifications but exceeded them.

He made several attempts since discovery to have this corrected but never received a fair and impartial answer as to why he was not promoted. Not all of the Promotion Recommendations he provided were signed but should be available in his records.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve lieutenant colonel.

On 27 Dec 91, according to Special Order Number XXXXX, dated 2 Jul 92, the applicant was promoted to lieutenant colonel.

On 8 Feb 99, according to Special Order XXXXX, dated 16 Feb 99, the applicant was honorably discharged from the [State] Air National Guard, and transferred to the Air Force Reserve, effective 9 Feb 99.

According to AF IMT 709, *Promotion Recommendation*, for Board AO600A, provided by the applicant, he received an Overall Recommendation of "Definitely Promote" signed by the Senior Rater.

According to AF IMT 709, *Promotion Recommendation*, for Board VO603A, provided by the applicant, he received an Overall Recommendation of "Definitely Promote" signed by the Senior Rater.

According to unsigned AF IMT 709, *Promotion Recommendation*, for Board VO606A, provided by the applicant, he received an Overall Recommendation of "Definitely Promote."

According to unsigned AF IMT 709, *Promotion Recommendation*, with no Board designation, provided by the applicant, he received an Overall Recommendation of "Definitely Promote."

On 31 Dec 06, according to Reserve Order XXXXX, dated 26 Feb 07, the applicant was relieved from current assignment, assigned to the Retired Reserve Section, and placed on the USAF Reserve Retired List.

On 3 Feb 08, according to Reserve Order Number XXXXX, dated 10 Jan 08, the applicant was placed on the USAF Retired List.

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 (Selection Board Secretariat) recommends denying the application. The applicant met and was colonel (O-6) non-selected for promotion to colonel for Fiscal Year 2000 (FY00) through Fiscal Year 2007 (FY07) promotion boards. In accordance with Title 10, United States Code, Section 14502 (10 U.S.C. § 14502). *Special selection boards:*

(b) *Officers Considered But Not Selected; Material Error.*

(1) in the case of an officer or former officer who was eligible for promotion and was considered for selection for promotion from in or above the promotion zone under this chapter by a mandatory promotion board convened under section 14101(a) of this title but was not selected, the Secretary of the military department concerned may, under regulations prescribed by the Secretary of Defense, convene a special selection board under this subsection to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that;

(A) the action of the mandatory promotion board that considered the officer or former officer was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error.

Additionally, in accordance with 10 U.S.C. § 14107. *Information furnished by the Secretary concerned to promotion boards:*

(a) *Integrity of the Promotion Selection Board Process.*

(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 14101(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer's official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department concerned, after review by that Secretary in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to be substantiated, relevant information that could reasonably and materially affect the deliberations of the promotion board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 14106 of this title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1) is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

There is no evidence the promotion board members acted contrary to law or were given and used a "blacklist" that contained information regarding certain officers meeting the promotion board. The applicant was considered for promotion by FY00 through FY07 Air Force Reserve colonel promotion boards. Overall, he met eight promotion boards and was non-selected each time. The applicant's AF IMT 709 were all marked "Definitely Promote" by the senior rater, and there were no "Do Not Promote" recommendations or other statements of that nature.

Finally, Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 3.5. *Meeting Time Limits*, states the applicant must file an application within three years after the error or injustice was discovered, or with due diligence, should have been discovered. The applicant stated the alleged error was discovered in 2005, and it has been 18 years since discovery of the alleged injustice.

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 19 May 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. There is no evidence the promotion board members acted contrary to law or in a manner that would support the applicant's request for supplemental promotion consideration. Therefore, 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. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by 10 U.S.C. § 1552 and DAFI 36-2603. 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.

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 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-00907 in Executive Session on 21 Sep 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 17 Jan 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, ARPC/PB, dated 16 May 23.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 May 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