

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2025-00314

XXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His military personnel record be amended to reflect the following:

1. He be issued a new DD Form 214, *Certificate of Release or Discharge from Active Duty*, that reflects his highest attained rank of colonel (O-6).

2. He receive retirement pay in the grade of O-6.

3. In the alternative, a Special Selection Board (SSB) be convened to consider his promotion to the grade of O-6.

4. The derogatory remarks, "When inclined" be removed from his Officer Performance Report (OPR), dated 9 Jan 95 through 16 Jul 95, Section VI.

5. His award from the [State] Air National Guard (ANG) Headquarters be upgraded to a Meritorious Service Medal (MSM). **(Failed to exhaust lower administrative remedies.)**

APPLICANT'S CONTENTIONS

According to applicant's counsel, the applicant experienced racism, discrimination, and disparate treatment on the basis of his race as an African American. Throughout his career, the applicant was passed over for promotion, duty assignments and other benefits that went to his white counterparts. He consistently held positions and responsibilities beyond his rank. The positions the applicant held in the [State] ANG and at the Pentagon Headquarters were O-6 positions. However, he was the only [State] Director of Operations not to be promoted to O-6. The people before and after the applicant who held that position were promoted to O-6 and were notably Caucasian. Between these two positions, the applicant worked for five years in O-6 positions but never received promotion to O-6 that he undoubtedly earned due to systemic racism and discrimination.

Per counsel, this was especially evident when the applicant's rater for his OPR, also a lieutenant colonel (O-5), used a racial trope to imply the applicant is a lazy black man, for his own self gain. The rater was vying for the same position of command as the applicant, a clear and obvious bias and motive to subvert the applicant's career to benefit his own¹. The rater did in fact obtain the command position, despite being junior in rank to the applicant who was fully qualified for the position. The undeserved derogatory comment cost the applicant the position of command as well as promotion to the grade of O-6. The applicant was forced to retire at the rank of lieutenant colonel and received an end of tour/service award that usually went to enlisted

¹ According to the applicant's AF Form 707A, *Field Grade Officer Performance Report*, for the period 9 Jan 95 through 16 Jul 95, the applicant's rater was a lieutenant colonel, occupying the position of Commander, XXX Maintenance Squadron, evaluating the applicant, who at that time was a subordinate Organizational Maintenance Officer in the grade of major.

airmen when he should have received the MSM. Counsel provided a detailed account of the applicant's military career in support of his application to the Board. Additionally, in support of his contentions regarding racism and discrimination, counsel provides a Smithsonian Air & Space Magazine article, dated Dec 21, which featured the applicant and discussed racial discrimination and the integration of the armed forces during the Vietnam War and documentation from the National Museum of African American History and Culture.

According to counsel, the applicant received a derogatory comment with heavy implication of a racial stereotype, in his OPR, dated 9 Jan 95 through 16 Jul 95, "When inclined, Major [applicant] is more than capable of accepting the greater responsibilities associated with higher rank." The applicant's rater for this OPR was the same rank at the time, although junior to the applicant, and was vying for the same position of command².

Although there is a presumption of regularity for government affairs, in this case there is significant evidence that officers of the government negligently failed to discharge their duties in accordance with law and policy. The applicant's rater had a clear conflict of interest and never should have been the applicant's rater in the first place. Unable to directly give the applicant a derogatory/unsatisfactory report, the rater included derogatory comments and racially motivated stereotypes so he may obtain command over the applicant who was senior in rank to him and fully qualified for the position³. But for this grave error and violation of the applicant's right to Equal Opportunity (EO) protections against racial discrimination, he would have received command and been promoted to colonel. Even if the rater did not intend his comments to be racist or discriminatory in nature, they nevertheless derailed the applicant's entire career and prevented him from promoting to, and retiring at, the rank of colonel.

This derogatory and racially motivated comment became an insurmountable burden toward the applicant's promotion to colonel. He was passed over three times and never given a reason why. Per counsel, the applicant had the requisite time in grade and had completed all military education requirements. He was even pursuing a master's degree while working at the Pentagon. The only logical explanation being the derogatory comment made by his rater, an officer of the same rank and, at the time, vying for the same position as the applicant⁴. But for these comments, the applicant would have been promoted and retired at the rank of colonel. Even the appearance of bias, impropriety, and racial discrimination against the applicant warrants relief.

Counsel further contended the applicant obtained his present rank on 12 Dec 95, yet he consistently served in billets normally reserved for those of a higher rank; however, he was constantly passed over for assignments, promotions, and other advancement on account of his race. On one occasion, a new white officer who recently showed up to the unit was selected to a higher billet over the applicant and another black officer with more experience.

Counsel contended, recognizing the applicant's worth and his achievements, the wing commander directed another rater to write a CRO [Change of Reporting Official] that was consistent with the applicant's performance. This neutralized the previous rater's comments and allowed the applicant to promote to his present rank. In 1999, when assigned to Headquarters Air Staff, the applicant's rater gave him a "Definitely Promote." However, his rater in 2000, gave him a "Promote." Although she gave the applicant outstanding remarks on his OPR, she stated that she had to consider all of his OPRs in submitting her promotion recommendation. The applicant's previous rater's remarks clearly had a negative effect on his career, costing him his promotion to colonel.

² Ibid.

³ Ibid.

⁴ Ibid.

On 26 Oct 01, the applicant received the Evaluation Reports Appeal Board (ERAB) decision letter stating the ERAB denied his request to remove comments in Section VI, Line 6, "When inclined" from his OPR, dated 1 Dec 97⁵. The decision was based on the applicant not providing convincing evidence that the comment should be removed and did not provide evidence of wrongdoing by the rater or additional rater who concurred with the original report.

Per counsel, to further the injustice, when the applicant was forced to retire at the grade of O-5, he received an end of tour/service award that usually goes to enlisted airmen, when he should have received the MSM, as is appropriate for field grade officers retiring with over 40 years of honorable service⁶.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve lieutenant colonel (O-5).

On 3 Dec 95, according to AF Form 707A, *Field Grade Officer Performance Report*, the applicant was issued an OPR for the period 9 Jan 95 through 16 Jul 95.

On 2 Sep 97, according to Department of Military Affairs, [State] Army and ANG, Special Order XXXX, the applicant was transferred to the Air Force Reserve, effective 1 Oct 97.

On 1 Oct 97, according to NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, the applicant was honorably discharged from the [State] ANG, in the grade of lieutenant colonel (O-5), with Authority and Reason: "AFI 36-3209, Para 2.48 Reason: Transfer to AFRES."

On 4 Oct 97, according to Department of Military Affairs, [State] Army and ANG, Special Order XXXX, the applicant was awarded the Air Force Commendation Medal (AFCM) for meritorious service during the period 1 Dec 95 – 30 Sep 97.

On 26 Oct 01, according to a HQ AFPC/DPPPE memorandum, Subject: AFI 36-2401 Decision: [Applicant], OPR Closing 16 Jul 95, the ERAB reviewed the applicant's submission and determined the evidence did not warrant voiding the report.

According to DD Form 214, provided by the applicant, he voluntarily served in support of Operation NOBLE EAGLE from 2 Dec 01 through 2 Feb 02.

On 22 Jul 02, according to Reserve Order XXXX, the applicant was assigned to the Retired Reserve Section and placed on the USAF Reserve Retired List, in the grade of lieutenant colonel (O-5), effective 16 Jul 02.

On 3 Mar 09, according to Reserve Order Number XXXX, the applicant was authorized retired pay and was placed on the USAF Retired List, Retired Reserve Section ZB, in the grade of lieutenant colonel (O-5), effective 10 Jan 09.

⁵ The applicant's contested OPR was not dated 1 Dec 97. The HQ AFPC/DPPPE memorandum, Subject: AFI 36-2401 Decision: [Applicant] OPR Closing: 16 Jul 95, referenced AFI 36-2401, *Correcting Officer and Enlisted Evaluation Reports*, 1 Dec 97.

⁶ The applicant was awarded the Air Force Commendation Medal in Oct 97, upon his transfer from the [State] Air National Guard to the Air Force Reserve, not upon his retirement in Jul 02.

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

APPLICABLE AUTHORITY/GUIDANCE

Department of the Air Force Manual (DAFMAN) 36-2806, *Military Awards: Criteria and Procedures*, dated 27 Oct 22 (Incorporating Change 1, 23 May 23):

Chapter 2 – Personal Military Decorations

Sectio 2B – Time Limitation

2.12. Time Limitation.

2.12.1. Recommendations (including reconsiderations and upgrades) are entered into official channels within 3 years and awarded within 5 years of the act, achievement, or service performed. The PH is excluded from the time limitation.

2.12.2. Service members currently serving, a time waiver may be requested for SS and lesser decorations (except the PH). The request is submitted through the chain of command the member was assigned to during the period of the act, achievement, or service being recognized, for endorsement by the MAJCOM, FLDCOM, FOA, or DRU Director of Manpower, Personnel, and Services (A1/S1) to AFPC/DP3SP (afpc.dp3sp.workflow@us.af.mil).

2.13. *Requesting Statutory Time Waiver.* Recommendations (to include reconsiderations and upgrades) for veterans and nominations for the MOH, AFC, and DSM (pursuant to 10 USC § 9274) submitted after the applicable time limitation are only considered if submitted pursuant to 10 USC § 1130. This legislation allows consideration of recommendations submitted beyond the time limitation. The PH is excluded from this requirement.

2.13.1. Requests shall be made by someone other than the member, who has firsthand knowledge of the acts or achievements. **(T-0)**. Every effort should be made to obtain an endorsement from someone in the member's chain of command at the time of the act, achievement, or service performed.

2.13.2. *Procedure.* The requester submits a written request to a member of Congress for endorsement on a recommendation, pursuant to 10 USC § 1130. Recommendations should include a narrative justification, citation, eyewitness statements (2 or more), and supporting documents. Refer to paragraph A3.5 and Table 2.1 for additional guidance. The member of Congress endorses the recommendation and submits it to the Air Force Legislative Liaison Office, 1160 Air Force Pentagon, Washington, DC 20330-1160. The Air Force Legislative Liaison Office forwards the recommendation to AFPC/IG for action.

Chapter 5 – Awards for Veterans

5.2. *Submitting Recommendations.* Refer to Section 2B for submitting recommendations past the time limitation, reconsiderations, and upgrades.

5.4. *Correction of Military Records.* The AFBCMR considers applications after all administrative remedies have been exhausted to correct the alleged error or injustice. Refer to Section 2B and Chapter 5 for administrative options, and AFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. Requests to the AFBCMR are submitted using a DD Form 149, *Application for Correction of Military Record*.

Attachment 2 – Criteria – Personal Military Decorations

A2.14. *AIR AND SPACE COMMENDATION MEDAL (ASCOM)*. The ASCOM was established by SecAF, 24 March 1958 and announced in DAF General Orders No. 16, 28 March 1958. The medal is awarded to any service member, or to any member of the armed forces of a friendly

foreign nation, who has distinguished himself or herself by meritorious achievement or service, valor, or heroism. On 16 November 2020, SecAF approved the renaming of the Air Force Commendation Medal to the Air and Space Commendation Medal.

A2.14.1. *Eligibility.*

A2.14.1.1. The ASCOM is awarded to U.S. and foreign military personnel in the grade of O-6 and below. Do not award to U.S. and foreign general or flag officer grades (O-7 and above).

AIR FORCE EVALUATION

ARPC/PB recommends denying the applicant's request for promotion to the grade of colonel (O-6), or in the alternative, consideration by an SSB for promotion to the grade of colonel (O-6). There is no evidence the Calendar Year 2001 (CY01) and CY02 United States Air Force Reserve (USAFR) Colonel Promotion Boards were not conducted in accordance with Title 10, United States Code § 14101 (10 USC § 14101) and § 14102, or there was a material error of fact or material administrative error.

The applicant transferred from the [State] ANG to the Air Force Reserve as a lieutenant colonel on 1 Oct 97, per order XXXX. On 22 Dec 97, the applicant was assigned to HQ USAF, per order XXXX. After a review of the Air Force Promotions System, the applicant was considered and not selected for promotion to the grade of colonel during the CY01 and CY02 USAFR Colonel Promotion Selection Board. ARPC/PB cannot confirm the applicant was considered for promotion to the grade of colonel on boards prior to 2001.

In accordance with 10 USC § 14107, *Information furnished by the Secretary concerned to promotion boards:*

(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under §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, §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.

In accordance with 10 USC §14502, *Special selection boards: correction of errors*

(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 §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 SSB 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.

To maintain integrity of the process and ensure fair and equitable consideration, board members are not provided an individual's race, sex, or ethnic group nor is it displayed in the officer selection record at any point in the board process.

A member of Congress may propose an honorary promotion through the appropriate service secretary in accordance with 10 USC § 1563. This is the only additional authority to promote an individual other than a promotion board convened under 10 USC § 14101 or § 14502 (SSB).

The complete advisory opinion is at Exhibit C.

ARPC/DPTS recommends denying the application based on the absence of supporting evidentiary documentation. There is no indication of any error or injustice in the applicant's personnel record that would warrant the requested revisions.

The applicant's DD Form 214 cannot be revised or reissued to reflect the rank and grade of colonel (O-6), as he never held or was awarded that rank, as confirmed by his Grade History report in the Military Personnel Data System (MilPDS).

According to Air Force Instruction (AFI) 36-2406, *Officer and Enlisted Evaluation Systems*, the ERAB has established specific criteria for appeals. On 26 Oct 01, the ERAB reviewed the applicant's request and determined there was insufficient evidence to justify removing the remark, "When inclined." Unfortunately, the applicant has not provided any additional substantial documentation to support its removal.

Regarding an upgrade to the MSM, DAFMAN 36-2806, Section 2B, paragraphs 2.12 and 2.13 stipulate that award upgrade requests must be submitted through official channels within three years of the relevant service, act, or achievement. There is no record indicating that a request for an MSM upgrade was made within the required timeframe.

Finally, retirement pay at the grade of O-6 cannot be approved as the applicant never held this grade at any point in his career, as confirmed by his MilPDS Grade History report.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 28 May 25 for comment (Exhibit E) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed. 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 USC

§ 1552 and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*.

2. The applicant failed to exhaust other available administrative remedies for upgrade of his award 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 recommendations of ARPC/PB and ARPC/DPTS and finds a preponderance of the evidence does not substantiate the applicant's contentions. Contrary to the applicant's contentions, evidence shows he was not evaluated by a lower or same ranking officer. His rater was a lieutenant colonel and the applicant was in the grade of major. Further, the rater was already assigned as the squadron commander. The applicant's contentions that but for his allegations of discrimination he would have been promoted and given command are purely speculative. It has been more than 24 years since the applicant was transferred to the Retired Reserve. Other than his own uncorroborated assertions, he has provided no evidence to substantiate his contentions he was the victim of discrimination on any basis. Therefore, the Board 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 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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2025-00314 in Executive Session on 12 Nov 25:

, 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 18 Dec 24.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, ARPC/PB, w/atchs, dated 30 Apr 25.
Exhibit D: Advisory Opinion, ARPC/DPTS, w/atchs, dated 21 May 25.
Exhibit E: Notification of Advisory, SAF/MRBC to Counsel, dated 28 May 25.

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