

ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

DEC 08 1998

IN THE MATTER OF:

DOCKET NUMBER: 88-02856

COUNSEL: NONE


558-76-8013

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

She be promoted to the grade of lieutenant colonel; or, that the AF Form 77, Supplemental Evaluation Sheet, which replaced two voided Officer Evaluation Reports (OERs), be altered to inform promotion boards of the reason for the removal of the reports. If the AF Form 77 is altered, she be considered for promotion to the grade of lieutenant colonel by a Special Selection Board (SSB).

RESUME OF CASE:

On 22 November 1988, the Board considered and granted an appeal by the applicant that her Officer Effectiveness Reports (OERs), closing 14 August 1981 and 19 December 1987 be declared void and removed from her records. A summary of the evidence considered by the Board and the rationale for its decision is set forth in the Record of Proceedings (ROP), which is attached at Exhibit H.

The applicant was subsequently considered and selected for promotion to the grade of major by the CY89 Central Major Selection Board, which convened on 4 December 1989.

On 17 March 1995, applicant applied to the Board requesting an Officer Performance Report (OPR), closing 10 April 1992, be amended to reflect a professional military education (PME) recommendation for Senior Service School; her officer selection brief (OSB) be updated to reflect award of the Meritorious Service Medal, Second Oak Leaf Cluster (MSM 2OLC); and she be promoted to the grade of lieutenant colonel; or, in the alternative, she be granted SSB consideration by the CY94A Lieutenant Colonel Selection Board. On 26 September 1995, her application was partially approved by the Board - granting correction to the OPR and SSB consideration. A summary of the evidence considered by the Board and the rationale for its decision is set forth in the Record of Proceedings (ROP), Docket Number 95-01061, at Exhibit I. In view of the Board's decision, applicant's record was reconsidered for promotion to lieutenant

colonel and nonselected by the 13 January 1997 and 19 May 1997
SSBs .

On 12 August 1997, the applicant wrote the Secretary of the Air Force concerning the Air Force promotion system (Exhibit J). Specifically, the applicant believes she was placed at an unfair disadvantage in the promotion process when she was considered for promotion to lieutenant colonel by the absence of the two officer evaluation reports (OERs), which were removed by the Board in an attempt to remedy the ill effects of a severe sexual harassment case. She believes her record can no longer be considered fairly in the promotion process.

The following is a resume of applicant's OPR ratings subsequent to her promotion to the grade of major.

<u>Period Ending</u>	<u>Evaluation</u>
19 Dec 90	Meets Standards (MS)
# 10 Apr 92	MS
28 Sep 92	MS
7 Jul 93	MS
6 Jul 94	MS
6 Jul 95	MS
## 6 Jul 96	MS
### 30 May 97	MS
#### 30 May 98	MS

Top report at the time she was considered and nonselected for promotion to lieutenant colonel by the CY94A Central Lieutenant Colonel Board, which convened on 11 October 1994

Top report at the time she was considered and nonselected for promotion to lieutenant colonel by the CY96C Central Lieutenant Colonel Board, which convened on 8 July 1996.

Top report at the time she was considered and nonselected for promotion to lieutenant colonel by the CY97C Central Lieutenant Colonel Board, which convened on 21 July 1997.

Top report at the time she was considered and nonselected for promotion to lieutenant colonel by the CY98B Central Lieutenant Colonel Board, which convened on 1 June 1998.

Information maintained in the Personnel Data System (PDS) reveals that the applicant has been nonselected for promotion to the grade of lieutenant colonel by four selection boards and that she currently has an established date of separation of 31 August 1999.

AIR FORCE EVALUATION :

Pursuant to the Board's request, the Chief, Appeals and SSB Branch, HQ AFPC/DPPPA, provided an advisory opinion addressing the issues raised by the applicant in her letter to the Secretary of the Air Force.

DPPPA stated that they thoroughly reviewed the procedures used in conducting and processing the applicant's SSB considerations and find them to be in direct accordance with the governing instruction which implements the law.

The applicant explains her promotion to the grade of major by the CY90 Board, with the "holes" in her record, by stating the board was not as selective or competitive as the lieutenant colonel selection boards. DPPPA concurs. DPPPA does not concur with the applicant's contention that the SSB process cannot fairly consider her record for promotion. Officers are selected and nonselected by both central boards and SSBs with "holes" in their records.

DPPPA stated that the applicant's contention that her record cannot be objectively assessed in the SSB process is unfounded. At the 2 September 1997 SSB, an officer was recommended to be selected for promotion to the grade of colonel with one of his most recent OPRs voided from his record. The applicant's omitted OERs were much farther down in her record than the selected individual to whom DPPPA is referring. While all documents in an officer selection record (OSR) are important, it is common knowledge that the most recent reports in a record are the most important, as they reflect performance in the officer's current grade.

DPPPA stated that it is not Air Force policy for a record to be selected or not selected for benchmark status on the basis of whether or not it contains an omitted report. To be selected for promotion to the grade of lieutenant colonel in-the-promotion (IPZ) by an SSB requires that the considerees' record outscore all the originally nonselected records and, at least, tie or outscore one originally selected record. This has been Air Force policy since 1976. No changes to standards have occurred since the applicant has been in the Air Force.

DPPPA stated that while the applicant suggests changes to the appeals and SSB process, it is not within her discretion to determine how her SSB consideration occurs. DPPPA indicated that the action to void the OERs from the applicant's record was done at her request through the appeal process. If the applicant wanted the P0594A and P0596C selection boards to know why the reports were voided, she had the option of writing to the promotion board president. The applicant chose not to exercise her option of writing to both the central selection boards and SSBs. While the applicant believes the boards were unable to render an objective decision due to a lack of information.

regarding her voided reports, **DPPPA** believes it was her choice not to provide them the information she now believes was pertinent.

DPPPA stated that throughout the applicant's letter and attached background paper, she continually refers to senior officers who have told her she has a "promotable" record. While these officers are entitled to their opinions of the applicant's performance and promotion potential, they were not the individuals specifically charged with assessing her record at the promotion-board. **DPPPA** has no reason to believe their judgment is more accurate than that of a duly constituted board, assessing the applicant's record in comparison with her peers.

DPPPA stated that unofficial documentation cannot be placed in an **OSR** to offer an explanation for the voided action, it is left to the consideree to inform the board - if they so choose - of the reason the report was voided.

DPPPA does not recommend the Board grant the applicant direct promotion to the grade of lieutenant colonel. **DPPPA** stated the applicant has failed to prove the appeals or SSB process worked to her detriment. The applicant received as full and fair consideration by the central boards and SSBs as allowed, limited only by her decision not to write letters to each particular board president. Based on the evidence provided, **DPPPA** strongly recommends against direct promotion and deviation from established board procedures.

A complete copy of this evaluation is appended at Exhibit K.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The Special Selection Board (SSB), or any selection board, is supposed to rate past performance and thereby assess performance-based future potential for advancement in rank. The AF Form 77 in her records does not reflect on a period of performance. Rather, it wipes out a period of excellent performance (falsely described in a retaliatory performance report as otherwise) and substitutes documentation, which at best could only be described as "neutral." This did not make her records whole. **AFPC** is no doubt aware of this (the potentially prejudicial impact of an **AF** Form 77), as it has in the past granted **SSB** consideration without the **AF** Form 77 on file (see attachment 1). If the Board has any question, it need only compare the **AF** Form 77 to any **OER** or **OPR** she has received - and it, too, can see how the damage is done. No letter she could write the selection board would credibly provide the missing information - nor should she be required to submit to each selection board materials that, in effect, prospectively "second-guess" promotion board members' perceptions. Nor can she (or anyone else) "recreate" a fair **OPR** for this period because of the elements of reprisal involved. Nor do the instructions to the selection boards provide board

members any help. The only oblique mention of the "holes" in a record is found in the Secretary's instruction to the SSB. She respectfully submits that being made whole (required for full and fair promotion consideration) does not just mean eliminating a wrong--it also means restoring what was right. The fact remains, she cannot be "made whole" - not because of her error, but because her rating chain chose to viciously punish her because she objected to blatant harassment and subjected her to reprisal for her complaints regarding that harassment. If the Board cannot make her record whole for an SSB, then she respectfully submits the Board must consider direct promotion as the fairest possible solution to this problem.

As she pointed out to the Secretary of the Air Force, although board members are briefed not to prejudice any records with missing performance reports, many board members do so (subconsciously or otherwise). Equally unfair, neither senior raters nor PRF management level review boards are provided any information about the cause of the "hole(s)" in her record although they, too, make critical promotion decisions that related directly to the selection process. In effect, the AF Form 77 (1) will always leave a shadow of doubt, (2) will always be subject to unfavorable interpretation, and (3) falls far short of the performance report it was designed to replace.

The damage done to her records cannot be undone at this date. She also believes her case is unique. It is impossible to go back and "recreate" a fair, accurate and unbiased OER. Accordingly, the only relief she can request is a direct promotion to the grade of lieutenant colonel. She is ready and willing to appear before the Board if necessary. Both Major General McB--- and Colonel L--- have indicated that they would be pleased to testify to the Board either by phone or in person. Both of these officers have extensive experience as central board and SSB members and in General McB---'s case as SSB presidents.

A complete copy of this response is appended at Exhibit L.

ADDITIONAL AIR FORCE EVALUATION:

Pursuant to the Board's request, the respective Air Force offices provided advisory opinions addressing the issues raised by the applicant in her 31 October 1997 rebuttal.

The **Selection Board Secretariat, HQ AFPC/DPPB**, stated that they are unable to confirm or disprove the comments of a former Air Force officer, Major (Retired) N---, regarding scoring procedures for Special Selection Boards (SSB) prior to 1983. DPPB indicated that the current SSB procedures have been in effect since, at least, February 1983. In June 1988, the Secretary of the Air Force reviewed the SSB procedures in detail, without change. Further, the SSBs, which were conducted on 13 January 1997 and

19 May 1997 to reconsider the applicant for promotion, were in compliance with all governing directives (Exhibit M).

The Appeals and SSB Branch, HQ AFPC/DPPPA, do not believe the applicant has raised any new or valid arguments not previously discussed fully in their initial advisory. DPPPA indicated that the applicant has not provided any credible evidence to support any of her opinions and comments. Rather, she simply refutes their advisory by expounding on and restating her case. The applicant believes the method the Air Force uses to correct or replace missing reports to have been prejudicial in her case, and ultimately was to blame for her nonselection to the grade of lieutenant colonel. As DPPPA previously pointed out, the fact the applicant was promoted by an SSB to the grade of major with an AF Form 77 filed in her selection record proves selection boards are not biased by missing documents. DPPPA contends that the applicant was "made whole" when she was retroactively promoted to major by the P0489 SSB. A direct promotion now would be only the beginning of a series of appeals each time she was nonselected for promotion. While it is distressing the applicant had to endure these unfortunate circumstances, it is evident she does not have a competitive record to be selected for promotion to lieutenant colonel. DPPPA does not believe that the AF Form 77 was a contributing factor in the applicant's nonselection by either SSB. The statements on the AF Form 77 are not viewed in a negative light by promotion boards or SSBs. They inform the board members that an injustice had occurred when the report was originally written, and the report was subsequently removed by approval of the Secretary of the Air Force. Numerous applicants are promoted by SSBs that have had AF Forms 77 in their records. One recent case in point not only had an AF Form 77 in place of an OPR, it also had an AF Form 77 in place of an AF Form 709, Promotion Recommendation Form (PRF). Both of these reports were removed by approval of the Secretary of the Air Force, and the considerer was subsequently promoted by SSB. There is no requirement to maintain statistics on how many officers met a central board with either an AF Form 77 in lieu of an OPR or with a "corrected copy" statement on an OPR.

As DPPPA previously pointed out, if the applicant desires subsequent promotion boards to know the situation surrounding the removal of the OPR, it is up to her. They disagree with the applicant's belief that it is in the best interest of justice for the board to deviate from the regulatory guidelines and correct her report as she specified in her letter to the Secretary of the Air Force. While they understand the applicant's frustration with the correction system, DPPPA must stress her case is not unique. It would not be in the best interest of the majority of the force to allow an individual to choose the manner in which corrections to records are made. Even if the applicant were to prove the promotion system was biased against her based on the AF Form 77 present in her selection record, DPPPA does not understand how this correlates to her promotion status. If the

boards were found to be illegal, the remedy would not be to promote the applicant.

Based on the evidence provided, DPPPA strongly recommended against direct promotion and deviation from established board procedures. A complete copy of this evaluation is appended at Exhibit N.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION:

Her case is about reprisal - reprisal for resisting the sexual advances of her squadron commander, reprisal for complaining about the resulting false derogatory performance report - and the long lasting effects of those reprisals. Reprisal is relatively rare in the Air Force, but that is what makes her situation unique.

As to the issue of granting a Special Selection Board (SSB) without the **AF Form 77** in the file, she provided considerable evidence, including testimony from senior officers that had served on regular SSBs that such **was** the case. These senior Air Force officers have indicated the presence of an **AF Form 77 is usually viewed negatively by board members or at least handicaps those officers being considered because it at best provides a neutral record of performance in place of the usual "outstanding" record**; **AFPC** evaded the Board's request to comment on the issue of granting an SSB without the **AF Form 77** in the file. **AFPC's** responses provided extensive additional "rebuttal" comments regarding her counter-arguments to their original advisory opinion.

AFPC has been silent on the procedural anomalies she described in her request for reconsideration. For example, **AFPC** does not refute the fact its scoring system was "developed to minimize the selection rate." In fact, **AFPC** actually confirmed a former **AFPC** official's (Major N---) comment that the Secretary of the Air Force did not approve the SSB procedures until 1988--six years after SSBs began.

She does not take issue with the SSBs having been constructed and administratively conducted in accordance with the written requirements of relevant statutes and instructions. She asks the Board, however, to look at the basic requirement for an SSB in view of her situation and according to Title 10, Section 628. Her record before the various boards did not "appear as they would have appeared." It is therefore hard to understand how an SSB could ever effectively and fairly evaluate her record of performance.

She was selected for promotion to the grade of major by a normal central selection board in 1989. **An** SSB did not promote her to major (or any other rank) nor was she retroactively selected for promotion. Thus, the whole **AFPC** premise for their position is

built on a false assertion, and perhaps they are confusing the issues.

A general officer in her chain of command very recently discussed with her the results of the most recent Management Level Review (MLR) of which he was a member. This MLR considered her records (above the zone) in order to establish the promotion recommendation for the next selection board for lieutenant colonel. He indicated the board members considered her overall record to be outstanding. However, he also indicated that the MLR members considered the missing reports to be a "problem" and agreed "were it not for the [negative] effect of the missing [reports]" she would readily have competed for and probably received a definitely promote "DP." From this candid exchange it would seem the adverse effect of missing performance reports on board members' perceptions of missing performance reports still exists (AFPC's view notwithstanding) and will continue to do so at all levels.

AFPC is correct that she did not complain when she was selected for major. She was very relieved that an unjustly rendered false OER that would certainly have seen her passed over had been removed and that she had been selected. She did not know then that the AFBCMR's well-intended corrective action had placed her chances of further promotion, regardless of her future performance level, at grave risk.

AFPC's surmise that she was not selected because her record did not match the quality of the benchmark records is an unfounded assumption not based on any specific testimony or evidence. On the other hand, her assertion to the contrary is based on first hand testimony that, if the Board desires, can readily be made available (referenced testimony from selection board members).

AFPC's statement that the AF Form 77 is not viewed in a negative light is specifically contradicted by former members and presidents of central promotion boards and special selection boards who have discussed their board experiences with her. While an AF Form 77 documents the injustice took place, it neither explains it nor corrects it. AFPC has provided no rebuttal comment concerning her previous statements that a letter to the selection board simply does not work.

As she previously pointed out, AFPC is somewhat in error regarding what she has requested. She requested that the system be changed in order that promotion boards could more equitably consider the record of performance of those officers who have AF Form 77s in their promotion folders. In the absence of any recognition by AFPC that officers with missing performance reports are in fact handicapped in the process of competition for promotion (and in the absence of a resulting change to the AF Form 77 process), the remedy is indeed to promote such officers if they are otherwise qualified.

She readily understands there may be some reluctance on the part of the Board to perhaps set what could be regarded as a general precedent whereby any officer who has a missing performance report could challenge their nonselection for promotion on that basis and possibly receive a direct promotion. The setting of such a precedent is not required since her case is unusual - resulting from the long-lasting effects of reprisal, possibly unique.

A complete copy of this response is appended at Exhibit P.

THE BOARD CONCLUDES THAT:

1. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and applicant's submission, we are unpersuaded that the applicant should be directly promoted to the grade of lieutenant colonel or that the AF Forms 77 should be altered and reviewed by a Special Selection Board (SSB). Applicant's contentions and supporting documents were carefully considered. We observe that due to the applicant's request, two Officer Performance Reports (OERs), closing 14 August 1981 (as a second lieutenant) and 19 December 1987 (as a captain), were removed from her records and AF Forms 77 were inserted in place of the now voided reports. In this respect, we note that it is standard Air Force policy to insert the cited form in a member's record when a performance report is voided and that it is not unique to the applicant's records. No evidence has been presented which would lead us to believe that the cited form was erroneous or contrary to the provisions of the Air Force regulations and policies. While the applicant may view her circumstances as unfair, we do not believe the AF Form 77, in and by itself, is prejudicial to the applicant. We have seen no indication that the applicant was treated unfairly in comparison to similarly situated officers who have had a performance report voided. In addition, we note that the applicant could have written letters to each particular board president concerning the basis for removal of the OERs; however, she chose not to write the board president regarding the circumstances.

2. We believe the applicant has received appropriate promotion consideration as a result of the previous corrective action by the AFBCMR. The fact that she has not been selected for promotion cannot be blamed on one specific thing; i.e., the voided OERs or the AF Form 77. Applicant's nonselections are indicative of the intensely competitive nature of the promotion selection process and it cannot be determined that one sole factor was the reason for these nonselections. Selection boards use the whole person concept to subjectively assess each eligible officer's relative potential to serve in the next higher grade and there is no guarantee the applicant would have been promoted under any circumstances. We therefore agree with the Air Force analyses of this case and find an insufficient basis to conclude.

that the applicant has suffered a promotion injustice. Accordingly, in the absence of persuasive evidence that the applicant's record was substantially in error, or that the board was unable to make a reasonable decision concerning her promotability in relationship to her peers, we find no compelling basis to recommend granting the relief sought in this application.

3. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

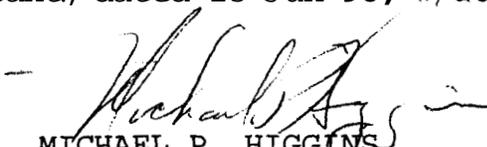
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 6 October 1998, under the provisions of AFI 36-2603:

Mr. Michael P. Higgins, Panel Chair
MS. Ann L. Heidig, Member
Mr. Steven A. Shaw, Member

The following documentary evidence was considered:

- Exhibit H. Record of Proceedings, dated 2 Dec 88.
- Exhibit I. Record of Proceedings, dated 23 Oct 96.
- Exhibit J. Letter from applicant, dated 12 Aug 97.
- Exhibit K. Letter, HQ AFPC/DPPPA, dated 16 Sep 97.
- Exhibit L. Letter from applicant, dated 31 Oct 97, w/atchs.
- Exhibit M. Letter, HQ AFPC/DPPB, dated 27 Apr 98.
- Exhibit N. Letter, HQ AFPC/DPPPA, dated 1 May 98.
- Exhibit O. Letters, SAF/MIBR, dated 6 Oct 97 and 18 May 98.
- Exhibit P. Letter from applicant, dated 15 Jun 98, w/atchs.


MICHAEL P. HIGGINS
Panel Chair