

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 93-00357

04 1993

COUNSEL: None

HEARING DESIRED: Yes

131.01

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APPLICANT REQUESTS THAT:

1. All nonselections for promotion to the grade of major, beginning with the CY86B Central Major Board, be set aside.
2. He receive direct promotion to the grade of major as if selected by the CY86B Central Major Board.
3. He be reinstated to active duty and awarded all back pay and allowances and all other entitlements associated by retroactive promotion to major.

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APPLICANT CONTENDS THAT:

Applicant alleges the central major selection boards, and the special selection boards which considered his record for promotion, were held in direct violation of statute, DoD Directive and/or Air Force Regulations. Additionally, the scoring system employed by these boards was clearly arbitrarily and capriciously established not to provide fair and equitable consideration, but rather to minimize the potential for a consideree to gain selection from this process. Applicant believes he has been denied fair and equitable consideration and that the nonselections are without effect.

Applicant's complete submission is attached at Exhibit A.

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STATEMENT OF FACTS:

Applicant has five promotion nonselections; CY86B, CY87, CY88, CY89, and CY 91 Central Major Boards. There was no Central Major Board in CY90. In addition, applicant was granted a Special Selection Board (SSB) for CY86B and CY87 on 28 March 1988, and a SSB for CY89 on 27 April 1992. Applicant has since been separated from the Air Force effective 31 August 1992.

AIR STAFF EVALUATION:

The Chief, Appeals & Analysis Branch, AFMPC/DPMAJA, states that the applicant asserts to have clearly proven his claimed injustices. However, his appeal reveals that his case consists only of unsubstantiated opinions and incorrect interpretations of both personnel regulations and the law. Additionally, it is important to note that at no point has the applicant claimed that there exists any uncorrected errors in his record. They believe it is quite clear he has received full and fair consideration for promotion. They recommend the applicant's appeal be denied.

A complete copy of the Air Staff evaluation is attached at Exhibit C.

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APPLICANT'S REVIEW OF AIR STAFF EVALUATION:

In summary, applicant states that the evidence is clear there is no basis to time bar his petition. He also believes there were illegal MLEBs, illegally conducted Central Selection boards and violation of Air Force Regulations. Applicant states that clearly the facts are not disputed with evidence: (1) Specific corrective actions is indeed within the purview of the Board, (2) No evidence has been presented which would support the AFMPC recommendation the Board not correct his record to promotion, and (3) without evidence to the contrary, it is clear such promotion should be granted.

A complete copy of applicant's response is attached at Exhibit E.

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. Applicant makes numerous assertions and challenges the promotion board, special selection board and the MLEB process. However, it appears that applicant's assertions are based solely on unsubstantiated opinions and incorrect interpretations of the law and regulations. The Chief, Appeals and Analysis Branch, in his advisory of 4 February 1993, has accurately addressed these issues and we are in complete agreement with his comments and recommendations.
4. With regard to applicant's issue concerning the impact the voided 13 May 1983 OER had on his assignments, we observe that there is no assignment policy which prescribes that a member with a

voided OER be considered for assignment any differently than other officers. Based on the correction of his records, we are convinced he has been afforded appropriate relief and his records were given fair and equitable consideration for assignments. In the absence of substantial evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

5. 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 issue(s) involved. Therefore, the request for a hearing is not favorably considered.

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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.

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The following members of the Board considered this application in Executive Session on 4 June 1993, under the provisions of AFR 31-3:

Martin H. Rogers, Panel Chairman  
Vladimir W. Culkowski, Member  
Teddy-L. Houston, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 22 Jul 92, with atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFMPC/DPMAJA, dated 4 Feb 93.
- Exhibit D. Letter, AFBCMR, dated 12 Feb 93.
- Exhibit E. Applicant's Letter, dated 19 Apr 93, with atchs.

  
MARTIN H. ROGERS  
MARTIN H. ROGERS  
Panel Chairman

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ii.  
RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 90-02695

COUNSEL: NONE

HEARING DESIRED: NO

JUL 02 1991

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APPLICANT REQUESTS THAT:

He be promoted to the grade of major as if selected by the Calendar Year (CY) 1986B selection board or by the CY 1989 selection board.

If his above request are not granted, he requests that-the 0489A Promotion Recommendation For (PRF) be upgraded to definitely promote (DP) and he be considered for promotion to the grade of major by Special Selection Board (SSB) for the CY89 Major Board.

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APPLICANT CONTENDS THAT:

1. Although the unjust Officer Effectiveness Report (OER) closing 13 May 1983 has been removed from his records, there is absolutely no way for him to go back and get those higher headquarters and special duty assignments and general officer indorsements. His records are there for eternity and decisions affecting him will be based on the contents of those records.

He states that by promoting him to the grade of major as if selected by the CY86B board would completely eliminate the chronic injustices he has experienced. Most importantly, it would immediately stop the discrimination, slights and oversights endured for the past 4 years for being a non-selectee. Outright promotion by the CY89 board would accomplish much of the corrective actions mentioned above, but he would still be subject to further discrimination, slights and oversights because of his total active federal commissioned service date of 30 September 1976 would reflect that it took 13 years to be promoted to the grade of major instead of the usual 10-year norm.

2. At the time he was considered for a promotion recommendation, his current Officer Performance Report (OPR) was not in his records, which is contrary to AFR 36-10, para 409a. As a result of his senior rater not seeing the latest OPR, the PRF that was written contains no specifics of his duty performance during the previous nine months while assigned to RAF Upper Heyford. He also states that the OPR was not reviewed by the CY89 selection board.

Since he did not get a chance to compete fairly with

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contemporaries at RAF Upper Heyford for a DP recommendation, his PRF should be upgraded to a DP. He believes that he has met all the criteria for meeting a SSB. Meeting this board without upgrading his PRF does not correct the violations of regulations governing the promotion recommendation process.

In support of his appeal, he has provided a personal statement, with 42 attachments. His complete submission is attached at Exhibit A.

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STATEMENT OF FACTS:

Applicant is currently serving on extended active duty in the grade of captain,

His was considered but not selected for promotion to the grade of major by the CY86 and CY87 selection boards.

In 1986, applicant submitted applications under the provision of AFR 31-3, requesting that the Article 15 issued to him, in April 1983 the Officer Effectiveness Report (OER) closing 13 May 1983 be declared void. On 29 September 1987, the Board considered and denied his request, (Exhibit C)

On 2 March 1988, the Officer Effectiveness Report (OER) closing 13 May 1983 was declared void and removed from his records by the Officer Personnel Records Review Board (OPRRB) .

Based on the removal of the 13 May 1983 OER, applicant requested and received Special Selection Board (SSB) considered for the CY 86 and CY 87 boards; however, he was nonselected by both boards.

On 30 March 1988, applicant submitted an application under AFR 31-3, requesting that he either be promoted to the grade of major, selected for selective continuation on active duty or his two nonselections for promotion to major be set aside. His application was considered in Executive Session on 27 April 1988 and the Board recommended his records be corrected to show that he was selected for continuation as an exception to Air Force policy. The Deputy for Air Force Review Boards approved the Board's recommendation on 28 April 1988. (Exhibit D)

He was considered but not selected for promotion to the grade of major by the CY88, and CY89 selection boards. There was no CY90 Major Board,

His OERs/OPRs since 1980 are as follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
24 Jan 1980	1-1-1
1 Jun 1980	1-1-1
1 May 1981	1-0-1
13 Mar 1982	1-1-1
13 May 1982	Training Report
13 May 1983	Voided Report
17 Oct 1983	1-1-1
17 Oct 1984	1-1-1
17 Oct 1985	1-1-1
# 26 Jun 1986	1-1-1
## 26 Jun 1987	1-1-1
### 7 Mar 1988	1-1-1
#### 1 Nov 1988 (OPR)	Meets Standard
27 Aug 1989	Meets Standard

- # - Top OER on file at time of the CY86 board.
- ## - Top OER on file at time of the CY87 board.
- ### - Top OER on file at time of the CY88 board.
- #### - Top OER on file at time of the CY89 board, which convened on 4 December 1989.

The OER closing 7 March 1988, contained technical flaws in the indorser's comments (i.e. commenting on previous reports and ratings).

The OPR closing 27 August 1989 was placed in his Officer Selection Folder on 18 January 1990 and was not considered by the CY 89 board.

AIR STAFF EVALUATION:

AFMPC/DPMAJA reviewed this application and indicated that they find no basis for a direct promotion and strongly recommend denial of this request. They support reconsideration by the CY89 board on the basis the 27 August 1989 OPR was not in the applicant's record when he met the central board. They do not support upgrading his 0489A PRF unless strongly supported by the senior rater and MLEB president.

In regards to the 7 March 1988 OER, they support reconsideration by the CY88 board if the indorser amends his comments.

A complete copy of the evaluation is attached at Exhibit E

APPLICANT'S REVIEW OF AIR STAFF EVALUATION:

Applicant reviewed the Air Staff evaluation and indicated, in summary, that the Air Force acknowledged that an injustice occurred. The Board attempted to put him back on a career progression path as if the injustice never occurred. As he explained, his records were tainted with the unjust OER. AFMPC failed to address the past or present injustices he has experienced and also failed to adequately compensate for these injustices. He submits the only relief he perceives appropriate for these injustices he has experienced is promotion to major. That is the only fair mechanism available to compensate for the injustices he has encountered and allow him to put his career back on a path where he can compete with his peers.

Applicant's complete response, with attachments, is attached at Exhibit G.

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice warranting promotion consideration by SSB for the CY89 selection board. In this respect, we note that the applicant's OPR closing 27 August 1989, was not a matter of record at the time he was considered for promotion to the grade of major by the CY 89 selection board. Therefore, we recommend his record, to include the OPR in question, be considered by a SSB.
4. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice in regards to his request for a direct promotion to the grade of major or his alternative request that he be given a "DP" recommendation. We note that the OER closing 13 May 1983 was removed from his records by the OPRRB and applicant was provided SSB consideration for the CY 86 and 87 selection boards and he was not selected. We also note that this Board previously considered and denied a request from the applicant that he be promoted to the grade of major; however, it was determined that he should be selected for continuation on active duty. After reviewing all the facts involved in this case, we are convinced that the applicant received fair and equitable consideration for promotion to the grade of major when he was considered by SSBs for the CY86 and 87

selection boards. With regard to his request that his promotion recommendation be upgraded to "DP", we note that he has failed to provide statements from his senior rater and the management level evaluation board (MLEB) president commenting on what effects the missing OPR had on applicant's chances to receive a "DP" recommendation. Without supporting statements, we find no basis upon which to conclude that he would have received a higher recommendation; therefore, we do not recommend favorable action on this portion of his application.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to [REDACTED] to include the Company Grade Officer Performance Report for the period 2 November 1988 through 27 August 1989, be considered for promotion to the grade of major by Special Selection Board for the Calendar Year 1989 Central Major Board.

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The following members of the Board considered this application in Executive Session on 21 May 1991, under the provisions of paragraph 9, AFR 31-38 dated 31 May 1985:

Mr. Henry C. Saunders, Panel Chairman  
Mr. Ira Kemp, Member  
Ms. Karen Bingo, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 8 May 1990, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Record of Proceedings, dated 26 October 1987, w/atchs.
- Exhibit D. Record of Proceedings, dated 28 April 1988, w/atchs.
- Exhibit E. Letter, AFMPC/DPMAJA, dated 13 November 1990.
- Exhibit F. Letter, AFBCMR, dated 2 Jan 91.
- Exhibit G. Letter, Applicant, dated 28 January 1991, w/atchs.

  
HENRY C. SAUNDERS  
Panel Chairman