

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

IN THE MATTER OF:

DOCKET NUMBER: 94-01878

HEARING DESIRED: NO

JUN 12 1996

RESUME OF CASE:

On 18 October 1994, the Board considered an application from subject applicant. Applicant requested that the comments of the additional rater, in Section VII of the Officer Effectiveness Reports (OERs) for the periods closing 15 June 1987 and 15 June 1988, be deleted. Applicant also requested that he receive consideration for promotion to the grade of lieutenant colonel by special selection board (SSB) for the Calendar Year (CY) 1990A, 1991A, 1992A and 1993A Medical/Dental Lieutenant Colonel Boards. The Board, after reviewing the evidence of record and applicant's submission, concluded that the application was not filed within three years after the alleged error or injustice was discovered, as required by Section 1552, Title 10, USC and AFR 31-3. The Board found no basis to excuse the untimely filing of the application and denied the application as untimely on 9 December 1994.

A copy of the Record of Proceedings, with attachments, dated 9 December 1994, is attached at Exhibit F.

Applicant has submitted an application, dated 23 September 1997, requesting reconsideration of his earlier request to delete the additional rater's comments from the OERs, for the periods closing 15 June 1987 and 15 June 1988; and, that he receive consideration for promotion to the grade of lieutenant colonel by SSB for the CY90A Medical/Dental Lieutenant Colonel Board.

APPLICANT CONTENDS THAT:

He believes the OERs in question were downgraded by his additional rater due to a personality conflict, bias, favoritism, the additional rater's management style, and a misrepresentation of his (applicant's) job performance. This downgrading becomes obvious when comparing the additional rater's comments with the rater's comments, as well as the previous and following OERs in his personnel record.

In support of his appeal, applicant submits statements from the raters of the OERs in question, dated July 1992, which were reviewed in applicant's original application. He also submits numerous letters from other individuals, copies of OERs/OPRs and additional documentation.

Applicant's submission is attached at Exhibit G.

STATEMENT OF FACTS:

Applicant is currently serving on extended active duty in the grade of major.

The Officer Personnel Records Review Board (OPRRB) declined on 2 March 1994 to consider the applicant's similar appeal under AFR 31-11. The applicant's request was further denied by the AFBCMR in October 1994.

Applicant has seven promotion non-selections to the grade of lieutenant colonel by the CY90, CY91, CY92, CY93, CY94, CY95 and CY96 Central Lieutenant Colonel Selection Boards.

Applicant's OER/OPR profile is as follows:

| <u>PERIOD ENDING</u> | <u>OVERALL EVALUATION</u> |
|----------------------|---------------------------|
| * 15 Jun a7 | 1-1-1 |
| * 15 Jun 88 | 1-1-X |
| 15 Nov 88 | Meets Standards |
| 13 May 89 | Meets Standards |
| # 13 May 90 | Meets Standards |
| 30 Nov 90 | Meets Standards |
| ## 30 Nov 91 | Meets Standards |
| ### 30 Nov 92 | Meets Standards |
| #### 20 Jun 93 | Meets Standards |
| ##### 1 Mar 94 | Meets Standards |
| ##### 1 Mar 95 | Meets Standards |
| ##### 1 Mar 96 | Meets Standards |
| ##### 10 Jul 96 | Meets Standards |
| ##### 10 Jul 97 | Meets Standards |

* Contested reports

- # Top report at time of non-selection to the grade of lieutenant colonel by CY90A Medical/Dental Board.
- ## Top report at time of non-selection to the grade of lieutenant colonel by CY91A Board.
- ### Top report at time of non-selection to the grade of lieutenant colonel by CY92A Board.
- #### Top report at time of non-selection to the grade of lieutenant colonel by CY93A Board.

Top report at time of non-selection to the grade of lieutenant colonel by CY94 Board.
Top report at time of non-selection to the grade of lieutenant colonel by CY95 Board.
Top report at time of non-selection to the grade of lieutenant colonel by CY96 Board.

AIR FORCE EVALUATION:

The Chief, Appeals and SSB Branch, HQ AFPC/DPPPP, states that they stand by their original advisory written 31 May 1994. The contested OERs have been a matter of record for over nine years. Clearly, the alleged error(s) upon which applicant relies has/have been discoverable since publication of the OERs in question. Applicant has provided nothing to convince AFPC/DPPPP that the errors were not discoverable until January 1990, nor has he offered a concrete explanation for filing late.

Applicant has not provided new information to further substantiate his claim a personality conflict existed between he and the indorser of the OER. The statements from outside the rating chain are not germane to this case. While the individuals are entitled to their opinions of the applicant, AFPC/DPPPP is provided no reason to believe they were in a better position to assess the applicant's duty performance during the contested rating period than those specifically charged with his evaluation. In the absence of supportive information from the evaluators, official substantiation of error or injustice from the Inspector General (IG) or Social Actions is appropriate, but not provided in this case. The applicant attempted to procure copies of two alleged social action investigations. However, his attempts to procure them were unfruitful as he waited over five years to request them from the appropriate agencies. It appears the contested reports were accomplished in direct accordance with Air Force policy in effect at the times they were rendered.

Applicant contends the contested OERs are inconsistent with previous performance. It is not feasible to compare one report covering a certain period of time with another report covering a different period of time. The OPR was designed to provide a rating for a specific period of time based on the performance noted during that period, not based on previous performance. They recommend applicant's request be denied.

A copy of the Air Force evaluation is attached at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant states, in summary, that his raters both gave him copies of his OERs with their comments. However, the additional

rater's comment section was blank but he (applicant) assumed the additional rater's comments would mimic the positive attitude of the raters. After consulting with past promotion board members and completing an OER/OPR writing course, he realized that the additional rater's comments carry the heaviest weight in an OPR.

Applicant further states that he takes issue of the mention of his non-selections for lieutenant colonel. He feels this influences the review board's opinion on his re-appeal and is rather derogatory towards his career, his character and himself. Also, unless a Definitely Promote (DP) is awarded, the chances of promotion are minimal to non-existent.

The assessment of the quality of his job performance is provided in the supporting letters. The lack of any negative findings or trends by the Dental Quality Assurance Committee and peer reviews further proves that his professional performance met or exceeded all standards. The Air Force policy of non-tolerance towards harassment and discrimination on the job is the regulation governing this re-appeal.

A copy of the applicant's response, with attachments, is attached at Exhibit J.

THE BOARD CONCLUDES THAT:

1. The Board originally determined that applicant's record did not raise issues of error or injustice which required resolution on the merits of the case. Therefore, the Board concluded that it would not be in the interest of justice to excuse applicant's failure to file in a timely manner. Based upon the recent documentation, we believe it is prudent to resolve the applicant's case on its merits.

2. 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 not persuaded that the additional rater's comments should be deleted from the OERs, for the periods closing 15 June 1987 and 15 June 1988, and that he receive consideration for promotion to the grade of lieutenant colonel by special selection board (SSB) for the **CY90A** Medical/Dental Lieutenant Colonel Board. His contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. We note the statements submitted by the raters of the two OERs in question. Although they both stated that they believe applicant deserves promotion, neither of the raters indicated there was a personality conflict, bias or favoritism against the applicant as he alleges. We also noted the statement submitted from the indorser of the 15 June 1987 OER. The indorser stated that he did not get to know the additional rater very well and he felt

that the indorser was more dictatorial than he needed to be. However, he did not indicate that the additional rater was biased or that there was a personality conflict between the additional rater and the applicant. Applicant submits numerous letters from other individuals who had an opinion of the additional rater of the OERs in question; however, these individuals were not the individuals charged to assess applicant's performance during the contested rating period. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.

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 14 April 1998, under the provisions of AFI 36-2603.

Mr. Benedict A. Kausal IV, Panel Chair
Mr. Richard A. Peterson, Member
Mr. Terry A. Yonkers, Member

The following documentary evidence was considered:

- Exhibit F. ROP, dated 9 Dec 94, w/atrch.
- Exhibit G. DD Fm 149, dated 23 Sep 97, w/atrchs.
- Exhibit H. Letter, HQ AFPC/DPPP, dated 6 Nov 97.
- Exhibit I. Letter, AFBCMR, dated 24 Nov 97.
- Exhibit J. Applicant's Letter, dated 17 Dec 97.


BENEDICT A. KAUSAL IV
Panel Chair