

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

SEP 11 1998

IN THE MATTER OF:

DOCKET NUMBER: 95-01482

COUNSEL: None

HEARING DESIRED: Yes

APPLICANT REQUESTS THAT:

His records be corrected to show he was either selected for promotion by the CY 1996 Lieutenant Colonel Selection Board, which convened on 4 March 1996, or, he receive supplemental promotion consideration for that board; or, in the alternative, his date of rank as a captain be changed from 27 May 1981 to 15 February 1982 and he be reconsidered for promotion to the grade of major by the appropriate selection boards based on this change.

RESUME OF THE CASE:

The applicant is a member of the Regular Air Force who is serving on active duty in the grade of major. His Total Active Federal Military Service Date is 24 November 1981. He has been considered and nonselected for promotion to the grade of lieutenant colonel by three selection boards. He has an established date of separation of 30 November 2001.

On 17 April 1995, the applicant submitted an application for correction of his military records requesting that his date of rank as a captain be changed from 27 May 1981 to 15 February 1982 and that his date of rank as a major be changed from 1 November 1988 to 1 February 1989. He asserted that the changes to his dates of rank as a captain and major in November 1992 made him eligible for consideration for promotion to lieutenant colonel by the CY 1994 lieutenant colonel selection board, which convened on 11 October 1994, and that, as a consequence, he did not have sufficient time to complete Air Command and Staff College (ACSC) before the selection board convened. His nonselection by the CY 1994 board then had a negative impact on his future assignments and his ability to build a competitive record. In his rebuttal, he noted that a similarly-situated officer's case was considered by the Board in 1984 and the Board determined that the DOR as a captain, the same date he entered active duty, was correct. The Board considered and denied the applicant's requests on 7 September 1995. For a summary of the relevant facts extracted from the applicant's records and the Board's rationale in this matter, see AFBCMR 95-01482, dated 25 September 1995, with Exhibits A through E.

In 1996, through a member of Congress, the applicant requested reconsideration of his case. His application was reconsidered and denied by the Board on 23 July 1996 (see the Addendum to the Record of Proceedings, dated 26 September 1996, with Exhibit F).

APPLICANT CONTENDS THAT:

The adjustment of his date of rank as a captain has caused him to be the victim of a promotion injustice.

In further support of his application, he provided a personal statement, a background paper and a position paper, in which he reiterated and elaborated on his initial contentions, documents pertaining to the Board's consideration of an appeal by a similarly-situated officer, a supportive statement, and documents contained in his Officer Selection Record (OSR). A complete copy of the applicant's submission is at Exhibit G.

AIR FORCE EVALUATION:

The Personnel Procurement and Development Division, AFPC/DPPA, reviewed the applicant's most recent submission and recommended denial. After summarizing the applicant's requests and contentions, and providing background concerning the action in 1992 to change the applicant's date of rank as a captain, DPPA indicated that Professional Military Education (PME) is not a requisite to meet a promotion board and each officer is responsible for deciding when and if to complete it. Further, the exact reason for an officer's nonselection cannot be pinpointed since it is based on several factors in the whole person concept. Since PME is one of the factors considered, DPPA addressed the applicant's inability to complete ACSC.

DPPA is of the opinion that the applicant is using faulty hindsight to allege that the change to his date of rank and resultant change in promotion eligibility negatively impacted his plan to complete ACSC before his In-the-Promotion Zone (IPZ) lieutenant colonel promotion consideration in 1996. DPPA stated that it is true that if his date of rank had not been changed, the events that unfolded would have resulted in his IPZ board being in CY 1996. However, in the late 1980's and early 1990's, he had no way of knowing this. DPPA provided documentation from that period that projects his IPZ board for CY 1994. They analyzed chaplains who had their IPZ board accelerated due to the same audit and found the majority of them completed ACSC prior to CY 1994.

DPPA related the changes to the IPZ Promotion Board Projection charts for the years in question and stated that, in 1992, the applicant was newly projected to be IPZ in CY 1994. The applicant enrolled in ACSC by correspondence in March 1992. In November

1992, he was notified that his date of rank as a captain would be changed to almost a year earlier and he was entitled to a special selection board (SSB) for the CY 1987 Major board. DPPA stated that he should have known then that if selected by the CY 1987 board, his IPZ lieutenant colonel consideration would accelerate from CY 1994 to CY 1993. He was disenrolled from ACSC in March 1993 for not completing the first three portions within one year. His CY 1987 SSB was held in August 1993 and it was announced in October 1993 that the applicant was selected. However, sometime in 1993, it was announced there would be no CY 1993 Chaplain Lieutenant Colonel board, therefore, the applicant was newly projected to be IPZ in CY 1994. He reenrolled in ACSC in October 1993 and completed Part 1 in July 1994. He was nonselected by the CY 1994 Lieutenant Colonel board held on 11 October 1994. Sometime in late 1994, it was announced there would be no CY 1995 Chaplain Lieutenant Colonel board, therefore, had he been allowed to keep his original date of rank, his IPZ board would have been in CY 1996. The applicant completed ACSC Part 2 in January 1996 and Part 3 in February 1996.

Based on the scenario provided, DPPA stated it is not possible to guarantee when an officer's IPZ board will be held. However, it appears evident that if the applicant was truly serious about getting ACSC completed before his IPZ board, his plan would have called for completing it prior to CY 1993 or CY 1994, not CY 1996. DPPA found six other chaplains still on active duty whose promotion eligibility was moved up to within four years of when they were notified of the DOR change. They had the same promotion and PME information the applicant had during the 88-92 timeframe and are compared to the applicant in a matrix provided as Attachment 7 to the DPPA advisory opinion.

Concerning the evidence provided by the applicant related to the similarly-situated officer whose case was considered by the Board, DPPA stated that the advisory opinion provided in that case to the Board in 1984 was in error. That officer's date of rank of 15 February 1982 was incorrect as he had claimed, however, the advisory stating that it was correct was based on a misinterpretation of the regulation. Also, the officer's erroneous date of rank should have been caught during the 92-93 audit, however, it was not. In DPPA's opinion, this does not negate the fact that the applicant and the other 407 non-line officers had their records adjusted to reflect the correct service dates and those whose promotion eligibility changed were all put before the correct promotion boards.

A complete copy of this evaluation is at Exhibit H.

The Appeals and SSB Branch, AFPC/DPPPA, reviewed this application and concurred with DPPA's assessment of the case. DPPPA stated that if the Board finds in the applicant's favor (and they do not believe the Board should), they would recommend SSB consideration rather than a direct promotion. Absent clear-cut evidence the applicant would have been a selectee by the CY 1996 board, they

believe that, except under extraordinary circumstances, a duly constituted board applying the complete promotion criteria is in the most advantageous position to render this vital determination. Other than his own opinions, the applicant has provided no substantiation for his allegations.

DPPPA stated that while it may be argued that the fact he did not get an opportunity to complete his PME prior to his IPZ board may have contributed to his nonselection, there is no clear evidence that it negatively impacted his promotion opportunity. Central boards evaluate the entire officer selection record (OSR) (including the promotion recommendation form, officer performance reports, officer effectiveness reports, training reports, letters of evaluation, decorations, and officer selection brief), assessing whole person factors such as job performance, professional qualities, depth and breadth of experience, leadership, and academic and professional military education. DPPPA is not convinced the lack of PME completion was the sole cause of the applicant's nonselection as pointed out in the DPPA advisory.

DPPPA noted that the application was untimely and indicated that, in their opinion, it could be dismissed under the equitable doctrine of laches.

The complete DPPPA opinion is at Exhibit I.

The Staff Judge Advocate, AFPC/JA, reviewed this submission and recommended denial of applicant's requests on the merits. JA noted the applicant's belief that he suffered an injustice because an error in another officer's record was not corrected. In JA's view, the fact that another similarly-situated officer's record was not corrected is irrelevant to the Board's consideration in this case. The applicant makes no attempt to tie this event to any disadvantage that he personally was subject to and they are unable to discern such a connection. (Apparently Major Seaman has retired and has not requested that his record be corrected since the 1992 audit occurred.)

JA stated that the applicant's surprise by the early promotion date and his assertion that his plan to complete ACSC in time for the CY 1996 board was adversely impacted is more problematic. There is no doubt that the Air Force was negligent in miscomputing the applicant's correct date of rank as a captain, especially in light of the fact that he questioned its correctness on two prior occasions and was informed it was correct as set. After reviewing the DPPA advisory opinion, JA is convinced that the applicant was equally negligent and was really a victim of his own procrastination. The evidence laid out in the timelines provided by DPPA clearly indicates that the date of the promotion board that would consider the CY 1988 majors (the applicant's year group prior to the correction of his date of rank) was a moving target. The fact is that the promotion board dates were projected and then delayed on several occasions. As early as December 1990, the CY 1988 major to lieutenant colonel board was projected for CY 1993.

In August 1991, the projection was for a board in CY 1994. In July 1992, the projection was still for CY 1994 (at that time the CY 1987 majors were projected for the CY 1993 board). All these projections were announced, and the applicant was, or should have been, aware of them. Had the applicant been prudent in his planning based on the projection of when he might be considered in the primary zone, he would have long planned to have ACSC completed and his record in time for the projected CY 1993 board and most certainly by the CY 1994 board date. Since the 1987 year group (the applicant's year group after the changes to his dates of rank) ended up being considered by the CY 1994 board, the year the 1988 year group had been projected for over several years, the applicant would not have been impacted had he planned on the projected date he had been given. Further, since no one knew in 1993-1994 that there would not be a chaplain lieutenant colonel board in 1995, it is difficult to understand how one would be planning to meet the CY 1996 instead of the CY 1995 board. Once again, JA stated that had the applicant based his planning on the published projected board dates, he would have completed ACSC before the CY 1994 board. Another factor to consider is that although the applicant claims he was not notified of his date of rank change to major until November 1993, in fact, he was notified in November 1992 of the change to his date of rank as a captain and was informed he would meet an SSB for promotion by the CY 1997 board. JA indicated that a prudent person would have planned on the possibility of promotion and positioned himself accordingly.

Even though the Board has the authority to remedy injustice, in JA's view, because of the applicant's lack of diligence in pursuing the completion of ACSC prior to projected dates of the promotion boards he might be required to meet, his case does not come close to "shocking the conscience." JA is of the opinion that an injustice deserving of correction has not been proven by the applicant.

Should the Board find in the applicant's favor, JA recommended against direct promotion. If the Board determines that relief is appropriate, JA recommended that the applicant's records be corrected by changing his service date and dates of rank to those he originally held and then direct an SSB for the CY 1996 board where his record would appear with his completed PME as a primary zone consideration.

The complete JA review is at Exhibit J.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinions and, noting DPPA's citation of laches, indicated that they overlooked the fact that he filed his original complaint on 17 April 1995, only a year and a half after being notified of his new date of rank as a major. He was deployed when the SSB met and, although not provable, he did

not know the SSB was meeting. He did not know the impact it would have on his future. The first nine months of 1994, he was working to accelerate his ACSC prior to the CY 1994 board and the last three months he was serving as a senior chaplain with a staff reduced by deployments.

The applicant stated that JA failed to understand that his projected plan was to finish ACSC prior to the board immediately after the CY 1994 board. He thought there would be a CY 1995 board. The assumption that a chaplain will know a lengthy time in advance when a promotion board will meet is untrue. In addition to being untrained in personnel actions, a base chaplain does not have access to AFPC records, has a vague knowledge of promotion projections, and does not have the time to invest in research due to a demanding workload.

The applicant stated that a key question is the importance of ACSC for promotion to lieutenant colonel. For a junior captain, there was a mixed message. Senior chaplains felt that doing PME indicated a registration and quitting ACSC is noted by DPPA. Their timeline does not mention his six-month suspension from failing part B, the price of trying to accelerate the course completion.

DPPA is of the opinion that there is no case connection between his case and Major S--'s case, but they recommend that he would have appealed upon the basis of his change in date of rank. They validate the connection with their statement. Chaplain S-- testified in writing that he was fully informed, believed that the ruling was absolute, and applied equally to him (the applicant). The applicant stated that JA ignored the legal understanding of precedent, yet precedence by foreknowledge and acceptance is an important part of his case.

He believes it is shocking that the military system can ignore the precedent set by the Board, the appeals to AFPC *for* correction, and then when the time for correction has passed to correct to the detriment of the service member. In his opinion, this constitutes an injustice and he requests that the Board select DPPA's option A and allow him to meet the CY 1996 board as a major in the primary zone.

The applicant's review, and additional supportive statements and letters of appreciation are at Exhibit L.

THE BOARD CONCLUDES THAT:

1. As a result of our consideration of previous submissions by the applicant, we determined that insufficient evidence had been presented to show that the adjustments to his dates of rank as a captain based on a records audit and as a major based on his consideration by an SSB were erroneous or unjust. We have reviewed the applicant's amended requests and the information provided in

support of his appeal and do not find the evidence is sufficient to reverse our earlier conclusions concerning the propriety of the actions taken in this case or to find that the applicant has been the victim of a promotion injustice.

2. The applicant continues in his belief that he has been the victim of a promotion injustice because the adjustment to his date of rank as a captain and his subsequent promotion by SSB to major did not permit him sufficient time to prepare for his IPZ consideration to lieutenant colonel. He also believes that he should be afforded the relief he seeks based on the findings of a panel in the case of another similarly-situated chaplain. We do not agree.

a. While it is true that the error in the form of an incorrect DOR as a captain was not discovered in the applicant's record until 1992, after his selection for promotion to major, the evidence does not establish to our satisfaction that the applicant's ability to plan for or that his reasonable expectations concerning his IPZ promotion consideration to lieutenant colonel were negatively affected by the correction of the error. We have noted the exhaustive reviews of this matter by the appropriate Air Force offices. It appears that, prior to the correction of the original error, following his promotion to major, he was projected to undergo his IPZ consideration to lieutenant colonel in 1994 or earlier. In view of this evidence, we find there is no basis for the applicant's complaint that after the corrections to his record, his IPZ consideration for promotion to lieutenant colonel occurred at an earlier time than he would otherwise have expected.

b. In response to the DPPA analyses of the projections for his IPZ consideration during the period under review, the applicant states that as a chaplain, he only had a "vague" knowledge of and access to such projections. We believe that it is incumbent upon Air Force officers in all specialties to assume some responsibility for their career progression, especially in the areas of planning for promotion considerations, enrollment in training and participation in other career enhancing activities. Other than the applicant's own assertions, there is no indication in the evidence provided that his failure to complete ACSC prior to his IPZ board had its basis in the results of the internal audit or that it was the result of any improper action by Air Force authorities.

c. Evidence has now been provided attesting to the fact that the Board's decision in Chaplain S-'s case was based on erroneous advice. We do not find this evidence requires approval of relief in this case. The applicant has not shown how an error or promotion injustice occurred in his case because another officer's DOR remained uncorrected. No evidence has been provided showing that the correction of the records of the applicant and other officers affected by the internal audit violated governing laws and regulations then in effect, nor has the applicant provided evidence showing he was treated inequitably when compared to other officer's whose records were corrected as a result of the Air Force's audit.

In other words, merely because one officer's erroneous records were not corrected, this fact does not support a finding of inequitable treatment in the applicant's case (or in the case of all the other officers whose records were corrected).

d. In view of the above, and in the absence of evidence by the applicant which, in our view, successfully refutes the assessments of the merits of this case which are contained in the advisory opinions provided for our review, the applicant's requests for reinstatement of his original dates of rank as a captain and major, and SSB consideration by the CY 1996 lieutenant colonel board as a first-time eligible are not favorably considered. As to the applicant's primary request for a direct promotion by this Board, there is nothing to indicate his record was improperly placed before the CY 1994 selection board, that his record contained erroneous or misleading information, or that the selection board was unable to make a reasonable decision concerning his promotability in relationship to his peers. We have noted the favorable communications and testimonials concerning the applicant's performance. However, these statements do not provide a proper basis to conclude that the selection board in question was unable to properly fulfill its statutory duties and, therefore, that the decision of the duly constituted promotion board must be overturned. Accordingly, his request for promotion to the grade of lieutenant colonel is denied.

3. Since we have been able to revolve the issues raised in this appeal based on the written record and no persuasive evidence has been provided showing that a personal appearance with or without counsel will materially add to our understanding of the matters raised in the application, 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 24 August 1998 under the provisions of AFI 36-2603:

Ms. Patricia J. Zarodkiewicz, Panel Chair
Mr. Mike Novel, Member
Mr. Richard A. Peterson, Member

The following additional documentary evidence was considered:

- Exhibit G. Letter from the applicant, dated 8 July 1997, with attachments.
- Exhibit H. Letter, AFPC/DPPA, dated 22 August 1997, with attachments.
- Exhibit I. Letter, AFPC/DPPPA, dated 4 September 1997.
- Exhibit J. Letter, AFPC/JA, dated 29 September 1997.
- Exhibit K. Letter, SAF/MIBR, dated 3 October 1997.
- Exhibit L. Letters from the applicant, dated 17 October 1997, with attachment; and, Electronic Communications, dated 31 October 1997 and 5 November 1997, with attachments.

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Panel Chair