

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

IN THE MATTER OF:




MAR 31 1996
DOCKET NUMBER: 95-01906

COUNSEL: None

HEARING DESIRED: Yes

RESUME OF CASE:

In a application dated 10 May 1995, applicant requested that the comments in Blocks III, IV and VI of the Officer Performance Report (OPR) closing 6 February 1990 be removed, he be given consideration by SSB for the Calendar Year 1992C (CY92C), CY93B, and CY94A boards, his separation under the Voluntary Separation Incentive (VSI) program be canceled and he be reinstated into the Regular Air Force. On 10 September 1996, the Board considered and denied his requests.

A complete copy of the Record of Proceedings is attached at Exhibit H.

In a letter dated 23 February 1997, applicant provided additional documentation pertaining to his contention that miscounseling and unclear guidance facilitated his unwanted departure from the military. He requests reconsideration in light of additional evidence he is now submitting. Tabs 1 through 4 of his submittal are new documents. Included is another statement from the major at his former military personnel flight (MPF), who affirms that the applicant received negligent counseling and unclear guidance. Tabs 5 through 8 were previously submitted with Exhibit A.

Applicant's complete reconsideration request is attached at Exhibit I.

AIR FORCE EVALUATION:

The Chief, Programs and Procedures Branch, HQ AFPC/DPPRP, reviewed applicant's request for reconsideration and recommended denial. While the applicant may have been initially counseled by the MPF that he could apply for a 30 June 1995 separation date, the MPF later correctly advised him he must separate no later than 18 November 1994. MPF Letter 93-78 dated 29 December 1993 clearly states that captains in the 1983 promotion year group [like the applicant] must apply no later than 19 August 1994 for a separation date no later than 18 November 1994. This data was

continually provided by update message and by MPF Letter 94-28. The MPF Letters do not list once-deferred captains as eligible for VSI; therefore, it is clear once-deferred captains or those who became deferred by their promotion boards would not be eligible to apply. The applicant himself admits calling the Air Force Personnel Center (AFPC) in July 1994 and being advised once-deferred officers were not eligible for the program. He also admits he processed the application even after being advised by AFPC in July that once-deferred captains would not be eligible to apply for VSI. Even when he discovered his separation under VSI must be no later than 18 November 1994 versus 30 June 1995, he continued with the application. Although he repeatedly states his decision to apply for VSI was involuntary, based on discussions with others, he voluntarily applied for VSI and continued his application when he was provided the correct information. Information on these drawdown programs was widely disseminated throughout the Air Force population. Being in the Public Affairs field, he had ready access to this information since he would have been responsible to advertise the programs to the base. Therefore, his request should be denied.

A complete copy of the Air Force evaluation, with attachments, is provided at Exhibit J.

HQ AFPC/DPPPOC and HQ AFPC/DPPPA reviewed this appeal and state that applicant's additional documents do not alter the evaluations and recommendations made in their earlier advisories (see Exhibits C and E). Complete copies of their latest responses are attached at Exhibit K.

The Senior Attorney-Advisory, HQ AFPC/JA, also evaluated this case and argues that the applicant has not satisfied the requirements for reconsideration. Should the Board nevertheless consider applicant's claim, the author would recommend denial. The applicant, quite simply, has failed to take adult responsibility for his own actions. He blames his "involuntary separation" on the alleged faulty counseling he received from Colonel G--. However, he has provided absolutely no proof other than his own and another individual's hearsay statements that he was "miscounseled" to the point that would have required him to have applied for separation via VSI. In a new twist, one of the supporting statements seem to suggest that the applicant was the victim of miscounseling regarding eligibility over the program itself; i.e., the applicant found out too late that had he waited to meet the board he would have still been eligible to apply for VSI. This statement is wrong---both as to its characterization of the eligibility requirements for VSI and in characterizing applicant's understanding of those requirements. As clarified by HQ AFPC/DPPRP in its recent advisory, officers once deferred were not eligible for VSI---and applicant acknowledged that whatever misunderstanding he may have had with respect to the program, that misunderstanding was clarified before the final application was made. He has failed to prove that his decision to accept VSI and separate from the Air Force was anything other than his own.

He has failed to prove that he was coerced, misled or treated differently than any other persons in that situation. Therefore, the author recommends applicant's request be denied.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

After being granted two extensions, applicant responded to the advisory opinions. The miscounseling and misinformation he received in late June 1994 regarding the Early Out Programs were the catalysts leading to his departure from the military. He was told he would not be promoted and to get out before he met his first in-the-zone board or risk being left with nothing. His chances for promotion were only hampered by the contested OPR he was attempting to remove from his records. At no time did he initiate any discussion reference his leaving the military as he had no plans to separate. But for the conditions that were incorrectly presented to him, it was illogical for him to have taken the action he did. He was erroneously told that, once passed over for promotion, he **was** no longer eligible to participate in any of the Early Out Programs. He asserts that statement is not true. He contends it was reasonable for him to rely on the advice he received from Col G---, the former [REDACTED] and his MPF. Not until he read the Oct/Nov 1994 Air Force Times article that twice-deferred officers were still eligible for early retirement did he realize he had been misguided. Had he fully understood that he could have been passed over twice for promotion and still remained eligible for the Early Out Programs, he would have remained on active duty. Given the correct information, he would have at least opted for the opportunity for a 15-year retirement. He would have been a fool to accept severance pay in lieu of VSI/SSB, and he would have accepted the 15-year retirement over either VSI/SSB had he known he did not lose his eligibility to do so. It is a misrepresentation for the Air Force evaluation to suggest that he should have been able to decipher information even some of the experts couldn't handle. He was not a volunteer for the Early Out Program.

The 12 attachments to his rebuttal are duplicates of documents previously provided at other Exhibits and are so identified at the bottom of their pages. Applicant's complete response, with attachments, is at Exhibit O.

THE BOARD CONCLUDES THAT:

After a thorough review of the evidence of record and applicant's submission, including the supporting statements, we are not persuaded that his appeal should be granted. Applicant contends Col G--- advised him that he would not be promoted without a master's degree; that this single deferral would render him ineligible for the Early-Out Programs; and that he should get out before he was left with nothing. He further argues that the misleading, incorrect and faulty information he received from Col G-- and the MPF regarding the Early-Out Programs facilitated his unwanted departure. He asserts that he was not a volunteer for the Early-Out Program because, given the correct information, he would have decided differently. However, the evidence of record and applicant's own actions indicate otherwise. He has submitted no corroborating statement from Col G--- regarding his promotion chances and eligibility for the VSI. We did note that in his 10 February 1995 letter to Col G---, the applicant refers to Col G--'s having apparently denied telling him that once passed over he was no longer eligible for the Early-Out Programs. As indicated by the Air Force, the information the applicant received regarding the VSI was correct. Because of his year group, he had to apply for VSI by 19 August 1994, which was before the CY94A board convened. As he was correctly advised, if he had been considered and not selected by the CY94A board, he would become ineligible to apply for the VSI program. If he wanted to take advantage of the VSI program, which he ultimately decided to do, he had to act when he did. Even assuming that the applicant was not thoroughly counseled concerning all of his entitlements initially, we note that he received the correct information in sufficient time to withdraw his VSI application. The vice commander recommended approval of the applicant's request to withdraw his VSI application, and AFPC informally advises that his request would have been approved had it been submitted. However, for reasons of his own, the applicant chose not to submit his withdrawal request. Thus, the fact that he did not receive consideration for promotion to major on two occasions and, if not selected, qualify for early retirement under the TERA was due to factors over which he had complete control.

In summary, it is our view that the applicant has not substantiated a basis for relief. Applicant's main thrust now seems to be that he should have been advised he still would have been eligible for a 15-year retirement (under the TERA) with two deferrals. Regarding this issue, we note that in August 1994 he was not eligible to separate under the TERA because he did not have at least 15 years of service. With his enlisted time, and including the time that would elapse over two passovers (assuming he was nonselected), the applicant would become eligible for the TERA on 30 November 1995. We fail to see how an MPF is responsible for anticipating future events and projecting a member's ultimate eligibility for programs without that member also having some responsibility. Granted, this may require "asking the right questions," but in this regard the applicant

was no more burdened than were other Air Force personnel seeking information during the drawdown. In the final analysis, the applicant has failed to substantiate his contention that he was somehow forced out of the Air Force because of miscounseling and misinformation. Regarding the contested OPR, he has not established that it should be amended or voided and that **SSB** consideration by the CY94A board is warranted. We therefore find no basis upon which to overturn the original Board's decision to deny applicant's request in its entirety.

The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without legal counsel, would not have materially added to that understanding. 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 3 March 1998, under the provisions of AFI 36-2603:

Mr. LeRoy T. Baseman, Panel Chair
Mr. Jackson A. Hauslein, Member
Mr. Joseph T. Wagner, Member

The following documentary evidence was considered:

- Exhibit H. Record of Proceedings, dated 24 Sep 96, w/atchs.
- Exhibit I. Applicant's Letter, dated 23 Feb 97, w/atchs.
- Exhibit J. Letter, HQ AFPC/DPPRP, dated 23 Jul 97, w/atchs.
- Exhibit K. Letters, HQ AFPC/DPPPA & HQ AFPC/DPPPOC, both dated 31 Jul 97.
- Exhibit L. Letter, HQ AFPC/JA, dated 4 Aug 97.
- Exhibit M. Letter, AFBCMR, dated 11 Aug 97.

- Exhibit N. Letters, Applicant, dated 10 Sep & 7 Oct 97;
and AFBCMR, dated 12 Sep & 8 Oct 97.
- Exhibit O. Letter, Applicant, dated 24 Nov 97, w/atchs.

A handwritten signature in cursive script, appearing to read "Leroy T. Baseman", followed by a horizontal line.

LEROY T. BASEMAN
Panel Chair

Sanitized

23 JUL 1997

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPRP
550 C Street West, Suite 11
Randolph AFB TX 78150-4713

30 Application for [redacted] of Military [redacted] -)

DISCUSSION:

a. The applicant's additional statements do not change our original position that he voluntarily elected the Voluntary Separation Incentive (VSI). The applicant claims he wouldn't have applied for VSI if not pressured to do so and Military Personnel Flight (MPF) had not miscounseled him. While the applicant may have been initially counseled by the MPF he could apply for a 30 Jun 95 separation date, the MPF later correctly advised member he must separate no later than 18 Nov 94. Military Personnel Flight Letter (MPFL) 93-78, Atch 2, para 2a, dated 29 Dec 93 (Atch 1), clearly stated, "Line captains in the 1983 promotion year group (DOR to captain of 1 Jan 87 thru 31 Dec 87) must apply no later than 19 Aug 94 for a separation date to be effective no later than 18 Nov 94." This criteria was continually provided by update messages (Atch 2 - 5) and by a Phase II MPFL 94-28 (Atch 5) dated 8 Jun 94. The MPFLs do not list once deferred captains as eligible; therefore, it is clear once deferred captains or those who became deferred by their promotion boards, would not be eligible to apply for VSI. The applicant himself admits calling the Air Force Personnel Center (formally Air Force Military Personnel Center) in Jul 94 and being advised once deferred officers were not eligible for the program.

b. The applicant indicates by his own statements (items 35 - 39), he processed the application even after being advised by AFPC in Jul that once deferred captains would not be eligible to apply for VSI. Even when the applicant discovered his separation under VSI must be no later than 18 Nov 94 versa 30 Jun 95, the applicant continued with application.

RECOMMENDATION: Denial

a. Though the applicant repeatedly states his decision to applied for VSI was involuntary, based on discussions with others, he voluntarily applied for VSI. Even during the application process, when he was provided the correct information, he continued his application to separate under VSI.

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b. Information concerning these types of drawdown programs were widely disseminated to the Air Force population through bulletins, base newspapers, and so on. The applicant, being in the Public Affairs field, had ready access to this information since he would have been responsible to advertise the programs to the base.

c. Therefore, we recommend denial of applicant's application.

SIGNED

DAVID E. EDWARDS, Lt Col USAF
Chief, Programs and Procedures Branch
Directorate, Personnel Program Management

Attachments

1. Extract of MFPL 93-78, 29 Dec 93
2. Update Message #2, 282300Z Jan 94
3. Update Message #7, 242300Z May 94
4. Update Message #8, 261500Z May 94
5. Extract of MPFL 94-28, 8 Jun 94

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