

SEP 11 1998

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02074

COUNSEL: NONE

HEARING DESIRED: YES

~~APPLICANT REQUESTS THAT:~~

His original appointment as captain in the Reserve of the Air Force be amended to reflect a normal progression of promotion commensurate with his commissioned peers. He be tendered an appointment in the Reserve of the Air Force with a retirement grade of brigadier general.

~~APPLICANT CONTENDS THAT:~~

He was discriminated against because of his Polish descent. This discrimination occurred at the beginning of his career in 1943 and was ongoing.

In support of his request, applicant submits a personal statement, congressional inquiries and additional documents associated with the issues cited in his contentions (Exhibit A).

~~STATEMENT OF FACTS:~~

The applicant was an enlisted member of the United States Army Air Corps from 16 April 1942 until 5 March 1943, on which date he was honorably discharged to accept a commission as a second lieutenant, Army Air Corps. On 6 March 1943, he was commissioned a second lieutenant, Army Air Corps and subsequently promoted to first lieutenant (temporary) on 13 January 1944. On 25 June 1945, he was relieved from active duty due to demobilization and assigned to an inactive status in the Air Force Reserve. During the period 30 April 1948 through 26 April 1954, the applicant served as both an enlisted member in the Regular Air Force and an officer in the Air Force Reserve.

On 30 August 1954, the applicant was appointed a first lieutenant, Reserve of the Air Force, Inactive Reserve Status, for an indefinite term appointment and subsequently promoted to the grade of captain, Reserve of the Air Force, on 22 September 1954.

On 31 July 1956, applicant was released from the Nonaffiliated Reserve Section (NARS) and honorably discharged from commissioned

status as Reserve of the Air Force and from all appointments in the USAF by reason of resignation acceptance.

On 1 August 1956, the applicant enlisted in the Reserve of the Air Force in the grade of technical sergeant (E-6) and was recalled to active duty. He was honorably discharged from the Air Force Reserve, in the grade of master sergeant (E-7) for the purpose of reenlistment. On 12 December 1958, the applicant enlisted in the Regular Air Force in the grade of E-7, with the date of rank (DOR) of 1 September 1957. His last enlistment in the Regular Air Force was on 12 December 1964.

A copy of the applicant's statement of service is appended at Exhibit B.

On 25 May 1967, a Medical Evaluation Board (MEB) convened at ██████████ AFB and recommended the applicant be transferred to another facility for further hospitalization and disposition for symptoms resulting from chronic dislocating right shoulder since 1951, peptic ulcer since 1962 and gout for approximately 3 years' duration, prior to his voluntary retirement. On 21 September 1967, the MEB at ██████████ AFB recommended the applicant be referred to a Physical Evaluation Board (PEB). On 5 October 1967, a PEB convened and found the applicant unfit because of physical disability and that the disability was incurred in the line of duty. The PEB recommended the permanent retirement, with a compensable disability rating of 40% and the applicant concurred with the findings and recommendations of the PEB.

On 7 November 1967, the applicant, while on active duty in the grade of master sergeant, submitted an application for appointment in the Reserve for the purpose of transfer to the Retired Reserve in the highest grade held (captain). On 2 January 1968, the Secretary of the Air Force approved the applicant's request for reappointment in the Air Force Reserve in the grade of captain and for assignment to the Retired Reserve. On 19 January 1968, the applicant was appointed a captain, Reserve of the Air Force. On 23 February 1968, the applicant was relieved from active duty in the grade of master sergeant and retired for physical disability in the grade of captain, Reserve of the Air Force, with a compensable percentage of 40 percent. He had a total of 20 years, 9 months and 1 day of active service for retirement and 25 years, 10 months and 8 days of service for basic pay at the time of his retirement.

AIR FORCE EVALUATION:

The Acting Director of Assignments and Readiness, HQ AFPC/DAO, reviewed this application and recommended denial. DAO stated that the applicant enlisted on 16 April 1942 then separated to accept a commission on 5 March 1943. On 1 August 1956, his request to resign his commission to enlist for the opportunity to return to active duty was approved. He retired in the grade of

captain, effective 24 February 1968. After review of the records, DAO found no error or injustice in the application of procedures in effect at the time of applicant's appointment. The applicant presented no documentation to support his claims of discrimination and there is no evidence that the alleged discrimination precluded the applicant from being considered for opportunities available to other uniformed members (e.g. promotions and assignments). A copy of this evaluation is appended at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinion and indicated that in World War 11, pilots and co-pilots were routinely promoted over Navigator-Bombardiers and other commissioned aircrew members. This was common practice. He was the officer responsible for putting the bombs on the target and navigating to the target. He was a member of "D" flight which was then labeled the "Polack Flight." Persons with foreign-sounding names were assigned to this flight.

In support of his request, the applicant submitted a commentary describing the attributes required of a Warrior Combat Officer. Applicant's complete submission is appended at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We took notice of the applicant's complete submission in judging the merits of the case and noted his contributions in the service and his numerous decorations. However, we found no evidence of discrimination on the part of the Air Force. Other than his own assertions, the applicant has provided no substantiation for his claim that he was denied promotion because of his Polish descent. The applicant has failed to provide evidence showing any discrimination, regulatory violation or that the alleged discrimination prevented him from being considered for promotion/assignment opportunities available to other members. In view of the foregoing, and in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.
4. 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.

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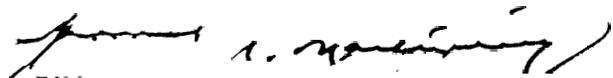
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence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

The following members of the Board considered this application in Executive Session on 9 July 1998, under the provisions of AFI 36-2603:

Mr. Thomas S. Markiewicz, Panel Chair
Mr. Jackson A. Hauslein, Member
Mr. Michael P. Higgins, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 26 Apr 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ ARPC/DAO, dated 3 Dec 97.
- Exhibit D. Letter, SAF/MIBR, dated 22 Dec 97.
- Exhibit E. Letters from applicant, dated 30 Dec 97 and 16 Mar 98; and, a commentary, dated 26 Apr 98.



THOMAS S. MARKIEWICZ
Panel Chair