

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF **MILITARY** RECORDS

IN THE MATTER OF:

DOCKET NUMBER: **97-02374**

DEC 14 1998

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. The Promotion Recommendation Form (PRF) prepared for the Calendar Year **1992A (CY92A)** Colonel Selection Board be declared void.

2. His nonselection by the **CY92A Col** Board be set aside.

3. He be considered for promotion by Special Selection Board (SSB) using the following procedures:

a. Rather than using "benchmark" records, the records to be reviewed would consist of his record plus those of all the other in the promotion zone" (IPZ) eligibles whose PRFs for the **CY92A** Col Board were prepared by Major General O---.

b. All of the records be reviewed by a single panel.

c. All the records be reviewed with the PRFs removed.

d. If his record scores higher than any of the records of officers previously selected by the **CY92A** Col Board, he replace the officers' records he outscored in the order of merit on the original selection list and be considered a selectee.

APPLICANT CONTENDS THAT:

He was nonselected for promotion to the grade of colonel by the **CY92A** Col Board as a direct result of General O---'s failure to follow the regulation in the preparation of PRFs and the subsequent impact this failure had on the selection process.

The applicant states the regulation governing PRF preparation prohibits senior raters from convening boards or panels of officers to score records and generate a priority list of eligible officers. However, contrary to the regulation, Gen O--- brought his wing, group and center commanders together to review records of performance and advise him on the awarding of promotion recommendations. In addition, the senior rater did not have knowledge of his most recent performance.

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The applicant notes that in an effort to remedy the injustice caused by Gen O---, AF/DP and AF/IN developed a process to review the PRFs awarded by Gen O---. While this attempt to correct the injustice was commendable, the process they used was arbitrary, incomplete, and inconsistent with the governing regulation.

The applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving on active duty in the grade of lieutenant colonel.

The applicant received a "Promote" recommendation on the PRF prepared for the CY92A Col Board.

The applicant was considered and nonselected for promotion to the grade of colonel by the CY92A, CY93A, CY94A, CY95B, and CY96B Col Boards.

On 13 December 1993, the applicant filed an Inspector General (IG) complaint alleging that the former Air Force Intelligence Command Commander (AFIC/CC) convened a board to "rack and stack" officers eligible for promotion to be considered by the CY92A Col Board and then used the priority list to award "Definitely Promote (DP)" recommendations in violation of the governing regulation.

On 31 October 1994, the Secretary of the Air Force, Office of the Inspector General, Senior Officer Inquiries (SAF/IGQ) advised the applicant that on 25 February 1994, the AFIC/IG and Air Force Tactical Applications Center Inspector General (AFTAC/IG) investigated his complaint and found his allegation substantiated. As a result of the IG findings, a "designated senior rater" was tasked to review all PRFs prepared by the AFIC/CC to determine if these individuals' PRFs warranted upgrading to a DP recommendation.

The Air Intelligence Agency completed a review of "flawed" PRF procedures for CY92 and CY93 Col Boards where AFIC/CC was the senior rater. The "designated senior raters" reviewed 366 records and changed the rating and/or narrative on 27 individuals.

A resume of applicant's performance, since 1989, follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
6 Jun 89	Meets Standards (MS)
6 Jun 90	MS
* 6 Jun 91	MS

6 Jun 92	MS
12 May 93	MS
11 Apr 94	MS
11 Apr 95	MS
11 Apr 96	MS
11 Apr 97	MS

* Top report reviewed by the CY92A Col Board.

AIR FORCE EVALUATION:

The AF Evaluations Board Recorder, AFPC/DPPPEB, reviewed this application and states that a PRF is considered to be an accurate assessment of an officer's performance when rendered. The applicant's record of performance (ROP), as it would have appeared to the original senior rater, was made available to the "designated" senior rater to determine whether or not the PRF was accurate. Despite any improprieties by the senior rater, the review of the PRF shows that it was technically accurate and found to be within the regulatory guidelines of the governing regulation. The applicant is correct that the governing regulation has no provisions for cases of senior rater improprieties; however, when the governing regulation was written, the creators of the Officer Evaluation System (OES) did not foresee such problems arising in the future and thus, no provisions were included. When the problem did arise, the Air Force was quick to react to insure that a fair and equitable process was created to correct any wrongs that may have been committed by senior raters. The approved procedures were not incomplete and were in no way in violation of the governing regulation. Therefore, they recommend the original PRF stand since the wording in Section IV, Promotion Recommendation, supports the overall recommendation found in Section IX.

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

The Chief, Promotion, Evaluation & Recognition Programs Division, AFPC/DPPPP, reviewed this application and notes that the applicant's allegation of improprieties by the senior rater were investigated by SAF/IGQ and found to be substantiated. As a result, a "designated senior rater" was tasked to review all PRFs prepared by the original senior rater to determine if these individuals' PRFs warranted upgrading to "definitely promote (DP)." Those officers who did not receive a DP recommendation were advised by the Major Air Command (MAJCOM) that there would not be any change to their PRFs as they were accurate as rendered. This is what happened in the applicant's situation. The applicant does not have a reaccomplished DP PRF for the CY92A Col Board and does not have the support from the appropriate chain of command for reconsideration. They defer to AFPC/DPPPEB advisory for the remainder of the issues relating to the PRF.

AFPC/DPPP, states that applicant has been afforded the same consideration as every other officer whose PRF received an independent review based on substantiated impropriety in the PRF process. While the applicant has his own opinions on how he would like SSBs to be conducted, the fact is that to treat him differently would not be fair to other officers in the same situation, nor is it feasible to let each individual dictate the condition under which **SSBs** should be conducted. Therefore, they recommend the application be denied.

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

The Senior Attorney-Advisor, AFPC/JA, reviewed this application and states that applicant's underlying complaint that his original senior rater held "mini-boards" prior to the Management Level Review Board (MLRB) **was** remedied by the use of a "designated senior rater" to review the impropriety of the promotion recommendations of those being considered for promotion. As AFPC/DPPPEB points out in their advisory, the use of a "designated senior rater", while not expressly provided in the governing regulation, certainly was not inconsistent with the regulation, nor was it arbitrary or incomplete. In fact, the use of a "designated senior rater" to evaluate applicant's ROP and compare it to his PRF served to insure the PRF was accurate. In addition, given the date of the selection board, it is apparent the applicant's next OPR, which would have closed out in June 1992, would not have been a part of his ROP considered in formulating the PRF considered by board. Even if his next OPR could, or should, have been part of his ROP, the fact that it was not included would not necessarily mean he would be entitled to any relief, since he has not proven a causal connection between the alleged error and the promotion passover. Since the applicant has failed to establish there was any error in his ROP which would have contributed to an inaccurate PRF, they do not believe he is entitled to SSB consideration. However, if the Board were to find some basis to recommend SSB consideration, they believe any SSB should be conducted pursuant to applicable law and regulation.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluations and states that he disagrees with AFPC/DPPPEB's contention that his PRF and its content can be based solely upon his ROP. In addition to requiring the senior rater to review his ROP, the governing regulation states that senior raters will be knowledgeable of the ratee's most recent performance. He believes the Air Force was

so certain that it wanted its senior raters to be knowledgeable of a ratee's most recent performance that when AFI-36-2402 was published it changed the paragraph's wording to 'must be knowledgeable.' While he can understand that the need for a "designated senior rater" may not have been anticipated when the promotion recommendation process was created in 1988, it is now almost 10 years later and the process has still not been formally documented. By AFPC's own admission, the sole function of the "designated senior rater" is to determine whether an officer's PRF warrants upgrading to a DP, the implication being that the narrative-portion of the PRF is irrelevant when it comes to promotion consideration. Yet, AFPC repeatedly reminds Air Force officers that a significant percentage of "promote" recommendations are selected by promotion boards. Certainly the quality and accuracy of the narrative portion of a "promote" PRF, as well as any differentiation provided in the narrative, plays a significant role in the promotion board's deliberation. While it is not his intent to request any action which is contrary to law, considering the circumstances surrounding his case and the impact the missing PRF would have on the selection board deliberations, he believes the alternative to the standard SSB process would better correct the injustice he suffered.

The applicant's complete response, with attachment, is attached at Exhibit G.

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; however, a majority of the Board agrees with the opinions and recommendations of the Air Force and adopts their rationale as the basis for the conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, a majority of the Board finds no compelling basis to recommend granting the relief sought in this application.

RECOMMENDATION OF THE BOARD:

A majority of the Board finds insufficient evidence of error or injustice and recommends the application be denied.

The following members of the Board considered this application in Executive Session on 15 October 1998, under the provisions of AFI 36-2603:

Mr. Robert D. Stuart, Panel Chair
Mr. Henry Romo, Jr., Member
Mr. Richard A. Peterson, Member
Mr. Phillip E. Horton, Examiner (without vote)

By majority vote, the Board recommended denial of the application. Mr. Peterson recommended favorable consideration of the applicant's requests that the CY92A PRF be voided, his nonselection by the CY92A board be set aside, and he be considered for promotion by SSB for the CY92A board. However, he does not wish to submit a minority report. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 5 Aug 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPPPEB, dated 22 Aug 97.
- Exhibit D. Letter, AFPC/DPPP, dated 17 Sep 97.
- Exhibit E. Letter, AFPC/JA, dated 31 Oct 97.
- Exhibit F. Letter, SAF/MIBR, dated 24 Nov 97.
- Exhibit G. Letter, Applicant, dated 16 Dec 97.



ROBERT D. STUART
Panel Chair