

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

AUG 25 1998

IN THE MATTER OF:

DOCKET NUMBER: 96-03370

[REDACTED]
COUNSEL: NONE

[REDACTED]
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

The Air Force Form 709, Promotion Recommendation Form (PRF), rendered for the Calendar Year (CY) 1993B (6 December 1993) Major Selection Board be deleted and he be given consideration for promotion to the grade of major by Special Selection Board (SSB) without the promotion recommendation.

APPLICANT CONTENDS THAT:

Previous AFBCMR approval for removal of his Officer Performance Report (OPR) closing 20 December 1992 authorized reconsideration for major. The SSB was convened on 31 July 1995 but did not select him for promotion because of the unfavorable promotion recommendation, which was based on unfavorable comments on the OPR closing 20 December 1992. Deletion of the contested PRF will allow an unbiased consideration for selection to major.

In support of his appeal, applicant provided documentation associated with removal of the OPR closing 20 December 1992, a letter to the CY93B Major Selection Board, notification that he was scheduled to meet an SSB on 31 July 1995, and a copy of his letter to the senior rater requesting reconsideration of the contested PRF. (Exhibit A)

STATEMENT OF FACTS:

The applicant is a former Regular Air Force officer who was honorably discharged on 31 March 1994 in the grade of captain by reason of "Resignation: Reduction in Force." He was credited with 11 years, 1 month, and 1 day of active duty service.

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the Record of Proceedings, dated 30 January 1995 (see Record of Proceedings, AFBCMR 94-00738, at Exhibit C). Accordingly, there is no need to recite these facts in this Record of Proceedings.

As a result of favorable consideration of his appeal by the AFBCMR on 10 November 1994, it was directed that the OPR rendered for the period 21 December 1991 through 20 December 1992, be declared void and removed from the applicant's records and that he be considered for promotion to the grade of major by Special Selection Boards (SSBs) for the CY93B (6 December 1993) and any subsequent boards for which the report closing 20 December 1992 was a matter of record (see Record of Proceedings, AFBCMR 94-00738, at Exhibit C).

On 31 July 1995, the applicant was considered for promotion to the grade of major by SSB for the CY93B Major Selection Board. He was not selected for promotion.

On 10 March 1997, the AFBCMR considered and denied an application submitted by applicant requesting that the nonjudicial punishment under Article 15, UCMJ, imposed on 6 August 1993, be removed from his records (see Record of Proceedings, AFBCMR 95-01955, at Exhibit D).

AIR FORCE EVALUATION:

The Evaluation Boards Section, AFPC/DPPPEB, reviewed this application and recommended denial, stating the applicant has not provided any evidence (i.e., senior rater support/MLR president concurrence) to substantiate his allegations or prove that he may have been treated unfairly by the officer evaluation system.

Although the applicant contends the PRF recommendation resulted from inclusion of the now-removed OPR, he provided no evidence or documentation to substantiate this allegation. It should also be noted that even if the (removed) report contained derogatory information, the senior rater could still consider it in his promotion assessment if knowledge of the behavior was obtained from a reliable source. The documentation provided by the applicant does not prove the PRF is inaccurate; particularly since the senior rater who rendered it was not involved in the completion of the (removed) OPR. Although applicant believes the PRF was based on the OPR, he provides no senior rater support to validate his belief.

The complete evaluation is at Exhibit E.

The SSB and BCMR Section, AFPC/DPPPAB, reviewed this application and recommended denial based on the evidence provided. DPPPAB concurred with the DPPPEB assessment of applicant's request for removal of the contested PRF. DPPPAB reiterated the necessity of having the support of the senior rater and management level evaluation board (MLEB) president to effectively challenge the validity of the PRF. Without removal of the PRF, there is no valid reason for the SSB. (Exhibit F)

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant stated that since DPPPAB states that "Air Force personnel have remained accountable for their off duty conduct and behavior throughout the evolution of the Officer Evaluation System and reference to it has never been prohibited" (except by AFR 36-10, para 1-71, one can only conclude that his senior rater on the contested PRF, did not have sufficient information with which to make a valid recommendation for his promotion to major. He provided a copy of his PRF for the CY92C Major Board and an AF Form 90 from 20 April 1990, which he believes contradict the senior rater's assessment of his potential, leadership, and professionalism. He also provided certificates and letters of appreciation to reflect his continued desire to assist in the community and give back the skills and good fortune he has experienced.

He further stated that if the senior rater had access to all of his off duty activities (he did not include church activities nor intramurals within the squadron), he would have had a different opinion of his potential.

Applicant's complete response is at Exhibit H.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
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, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, 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 issues involved. 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 20 July 1998, under the provisions of AFI 36-2603 :

Mr. Charles E. Bennett, Panel Chair
Mr. Thomas S. Markiewicz, Member
Mr. Vaughn E. Schlunz, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 13 Nov 96, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Record of Proceedings, AFBCMR 94-00738, w/o Exhibits.
- Exhibit D. Record of Proceedings, AFBCMR 95-01955, w/o Exhibits.
- Exhibit E. Letter, AFPC/DPPPEB, dated 15 Jan 97.
- Exhibit F. Letter, AFPC/DPPPAB, dated 21 Feb 97, w/atchs.
- Exhibit G. Letter, SAF/MIBR, dated 17 Mar 97,
- Exhibit H. Letter, Applicant, dated 10 Apr 97, w/atchs.


CHARLES E. BENNETT
Panel Chair