

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

SEP 21 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-03732

COUNSEL: None

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His retired rank to lieutenant colonel be restored.

APPLICANT CONTENDS THAT:

He was selected for lieutenant colonel below-the-zone in December 1985, however, he did not pin on his new rank until April 1987. At that time, an officer was required to serve three years in-grade in order to retire in-grade unless (as he was led to believe) a waiver was granted by the President. His family and he reluctantly made the decision to retire in December 1989 after 20 years of active duty for a variety of reasons that were best for them as a family. He felt he was a good candidate to receive a waiver to retire in-grade. He was only asking to waive about four months time-in-grade and the quality of his Air Force service warranted special consideration. He sent his request for a waiver through channels. The request never made it above staff level at the Department of the Air Force and was denied so he accepted their decision and retired in the grade of major. Denial of his request was unjust. He doesn't believe his request to retire in-grade was reviewed at the proper level prior to disapproval. The short period of time required for a waiver was insignificant given the totality of his career. He had to wait an inordinate amount of time to pin on lieutenant colonel from the time he was selected thus starting the three year clock late. It is his understanding that subsequent to his retirement, officers were allowed to retire in-grade with less than three years which means the original rule was not written in stone. His entire career was filled with a variety of flying and staff jobs at the squadron, wing and command level at which he worked very hard and achieved excellent results. He risked his life for his country and gave the Air Force 20 years of solid service -- he feels his request is reasonable and justified.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant was selected for promotion to the grade of lieutenant colonel below-the-zone in December 1985; however, he did not assume the grade until 1 May 1987 incurring a requirement to serve three years in-grade in order to retire in-grade.

On 7 April 1989, applicant requested retirement effective 1 December 1989.

On 24 April 1989, applicant applied for a waiver to the three year time-in-grade requirement.

On 6 June 1989, the Secretary of the Air Force Personnel Council (SAFPC) accepted the applicant's application for retirement in the grade of major, effective 1 December 1989.

On 30 November 1989, applicant retired in the grade of major after serving 20 years and 26 days of active service.

AIR FORCE EVALUATION:

The Retirements Branch, Directorate of Personnel Program Management, AFPC/DPPRR, reviewed the application and states the applicant was correctly retired in the grade of major. He did not meet the time-in-grade requirements of law to retire in the highest grade held on active duty (lieutenant colonel) and, therefore, retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the Air Force, for not less than six months. The applicant has not provided any evidence that an injustice or error in his records exists or occurred. Rather, he advises that he believes he was a good candidate to receive a waiver to retire in-grade. The only evidence to support his request for a waiver to the time-in-grade requirement of law for "cases involving extreme hardship or exceptional or unusual circumstances," was his wish to accept a civilian job that might not have been available if he delayed past the date of his requested retirement date. Additionally, they cannot find any evidence of documentation submitted to substantiate that portion of his request. Although they understand the member's concerns, they are not certain that his request involved a case of extreme hardship or exceptional or unusual circumstance. However, his request was processed in accordance with the laws and policies and the SAFPC, on behalf of the Secretary, considered his request and approved his retirement in the grade of major. As a matter of note, the provision of law that allows the "President" to approve a waiver for extreme hardship or exceptional or unusual circumstances does not allow approval authority to be delegated to any position lower than the President; it does not prohibit, however, disapproval by

authorized officials prior to Presidential. No injustices or irregularities occurred in the processing of applicant's retirement request and all provisions of law have been correctly met. Therefore, they recommend denial of applicant's request.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluation and states that he does wish to submit the following as a special circumstance. During his absence from the Air Force from about April 1979 to September 1980, he was employed as a pilot for United Airlines. He was furloughed from United Airlines in 1980 and successfully applied to return to the Air Force. When he was recalled to United Airlines in late 1984, he wrote and told them that he had chosen to remain in the Air Force. He received a letter back from United Airlines informing him that he had to return within five years (by late 1989) to reclaim his position at United Airlines. When he was selected for lieutenant colonel below-the-zone he rated his prospects for increased rank as fairly good and felt confident about his selection for colonel and perhaps later on, general officer. At that point he felt good about his decision to remain in the Air Force and leave United Airlines behind. However, around 1988, his commander informed him that he had not been selected as a candidate for command of an operational squadron - a key indicator of the possibility for future promotions. It appeared to him at this point that he had attained the highest rank he would ever achieve in the Air Force. This would mean that he would face the mandatory retirement point just as his children were about to enter college. It seemed clear to him that the best move for his family would be to retire from the Air Force and return to his guaranteed position at United Airlines. He wishes to reiterate a point that the time from his notification of selection to lieutenant colonel was extraordinarily long. Had a normal amount of time elapsed between notification of selection and actual assumption of rank occurred, he would have been in-grade well over three years and there would be no reason for a request for correction. Additionally, circumstances have been created at certain times where two years of service are suitable to retire in-grade.

Applicant's complete response is attached 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; however, we agree with the opinion and recommendation of the Air Force and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. It is unfortunate that the applicant could not have delayed his retirement for an additional five months in order to retire in the grade of lieutenant colonel. However, his reasons for retiring does not fall in the category of extreme hardship or exception or unusual circumstances to be waived under Section 1370, Title 10, United States Code, paragraph (a)(2)(A). Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

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 18 August 1998, under the provisions of AFI 36-2603:

Mr. Henry C. Saunders, Panel Chair
Mr. Dana J. Gilmour, Member
Ms. Ann L. Heidig, Member
Ms. Gloria J. Williams, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 12 December 1997, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPRR, dated 30 January 1998, . . .
w/atchs.
- Exhibit D. Letter, AFBCMR, dated 9 February 1998.
- Exhibit E. Applicant's Response, date 20 February 1998.

~~HENRY C. SAUNDERS~~
Panel Chair



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

80 JAN 1988

MEMORANDUM FOR AFBCMR

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

SUBJECT: Request for Correction of Military Records [REDACTED]

Requested Action. Restore his retired rank to Lieutenant Colonel (05).

Basis for Request. Applicant was selected for Lieutenant Colonel below the zone in December 1985; however, he did not assume the grade until 1 May 1987. At that time, an officer was required to serve three years in grade in order to retire in grade unless (as applicant was led to believe) a waiver was granted by the President. Applicant reluctantly made the decision to retire in December 1989 after 20 years of active duty for a variety of reasons that were best for his family. Applicant believed he was a good candidate to receive a waiver to retire in grade. He attests that he was only asking to waive about four months time in grade and the quality of his Air Force service warranted special consideration. Applicant submitted a request for waiver and processed it through channels. The requests never made it above staff level at the Department of the Air Force and were denied so he accepted the decision and agreed to retire in the grade of Major.

Discussion.

a. Section 1370, Title 10, United States Code (UCS), paragraph (a)(2)(A) states (Atch 1): "In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the nine-year period beginning on October 1, 1990."

b. Paragraph (a)(2)(B) of that same law also provides that the President may waive paragraph (a)(2)(A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated (Atch 2).

c. Section 1370, Title 10, U.S.C., paragraph (b) states (Atch 3): "An officer whose length of service in the highest grade he held while on active duty does not meet the service in grade requirements specified in paragraph (a) shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned for not less than six months."

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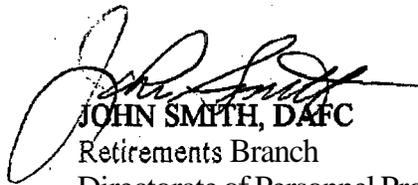
d. Applicant voluntarily applied for retirement on 7 Apr 89 to be effective 1 Dec 89 (Atch 4). His application included a request to waive Section 1370, Title 10, U.S.C. which requires officers in the grade above major or lieutenant commander, to serve on active duty in that grade for not less than three years. Applicant indicated he fully understood the Public Law requirement to remain on active duty through 1 May 1990 to retire in the grade of lieutenant colonel. He also indicated that he wanted to retire in the grade of major on 1 Dec 89, if his request to retire as a lieutenant colonel on that date was denied.

e. By Secretarial memorandum dated 6 Jun 89 (Atch 5), the Secretary of the Air Force Personnel Council accepted the application submitted on 7 Apr 89, by applicant for retirement in the grade of major, effective December 1, 1989.

R _____ l _____ Denial.

a. The applicant was correctly retired in the grade of Major. He did not meet the time-in-grade requirements of law to retire in the highest grade held on active duty (Lieutenant Colonel) and, therefore, retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the Air Force, for not less than six months.

b. The applicant has not provided any evidence that an injustice or error in his records exists or occurred. Rather, he advises that he believes he was a good candidate to receive a waiver to retire in grade. The only evidence to support his request for a waiver to the time-in-grade requirement of law for "cases involving extreme hardship or exceptional or unusual circumstances" was his wish to accept a civilian job that might not have been available if he delayed past the date of his requested retirement date. (Additionally, we cannot find any evidence of documentation submitted to substantiate that portion of his request.) Although we understand the member's concerns, we are not certain that his request involved a case of extreme hardship or exceptional or unusual circumstance. However, his request was processed in accordance with the laws and policies and the SAF Personnel Council, on behalf of the Secretary, considered his request and approved his retirement in the grade of Major. (As a matter of note, the provision of law that allows the "President" to approve a waiver for extreme hardship or exceptional or unusual circumstances does not allow approval authority to be delegated to any position lower than the President; it does not prohibit, however, disapproval by authorized officials prior to Presidential.) No injustices or irregularities occurred in the processing of this retirement request and all provisions of law have been correctly met.


JOHN SMITH, DAFC
Retirements Branch
Directorate of Personnel Program Management

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Attachments

1. **Section 1370, Title 10, U.S.C.**
2. **Section 1370, Title 10, U.S.C., paragraph (a)(2)(A)**
3. **Section 1370, Title 10, U.S.C., paragraph (b)**
4. **AF Form 1160**
5. **Secretarial memorandum, 6 Jun 89**

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FOR NON-REGULAR

CHAPTER 69—RETIRED GRADE

- &c.
- 1370. Commissioned officers: general rule; exceptions
- 1371. Entitlement to commission: commissioned officers advanced on retired list.
- 1372. Entitlement to higher grade: disability; members of
- 1373. Higher grade for later disability; retired officers recalled to active duty.
- [1374. Repealed.]
- 1376. Entitlement to commission: commissioned officers advanced on retired list.
- 1376. Temporary disability retired lists.

pay for nonregular service title (beginning with section

3005.)

transferred to §§ 12731 to

§ 1370. Commissioned officers: general rule; exceptions

(a) **RULE FOR RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.**—(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, except as provided in paragraph (2), be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(2)(A) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the nine-year period beginning on October 1, 1990.

(B) The President may waive subparagraph (A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.

(C) In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under this paragraph may not exceed the number equal to two percent of the authorized active duty strength for that fiscal year for officers of that armed force in that grade.

(3) A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) **RETIREMENT IN NEXT LOWER GRADE.**—An officer whose length of service in the highest grade he held while on active duty

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DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1000

8 JUN 1989

OFFICE OF THE ASSISTANT SECRETARY

JUN 06 1989

MEMORANDUM FOR HQ AFMPC/DPMARR

SUBJECT: Voluntary Retirement in Lower Grade - ACTION MEMORANDUM

The Secretary of the Air Force accepts the application submitted on April 7, 1989, by [REDACTED], for retirement in the grade of major, effective December 1, 1989.

Robert L. Cole
ROBERT L. COL^{ON}
Colonel, USAF
Acting Deputy Director
SAF Personnel Council

16 JUN 1989

FILE IN MASTER PERSONAL RECORDS	
Initials	<i>F</i>
Office Symbol	<i>1702332</i>
Date	<i>29 Dec 89</i>

appl 7 Apr 89

RBD

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