

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS AUG 19 1998

IN THE MATTER OF:

DOCKET NUMBER: 98-00030

[REDACTED]  
COUNSEL: NONE

[REDACTED]  
HEARING DESIRED: YES

Applicant is the widow of a former service member who requests that the former service member's disability retired grade be changed from captain to major. Applicant's submission is at Exhibit A.

The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant for review and response (Exhibit D). A response to the advisory opinions in the applicant's behalf is at Exhibit E.

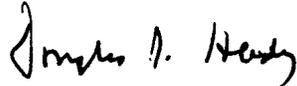
We sympathize with the difficult circumstances and choices with which the applicant was faced, and we appreciate the applicant's pride in her husband's selection for promotion to major and the pride he would have felt. However, after careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinions appear to be based on the evidence of record and have not been adequately rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

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 staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Mr. Douglas J. Heady, Mr. Joseph G. Diamond, and Mr. Henry Romo, Jr. considered this application on 11 Aug 98 in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C. 1552.



DOUGLAS J. HEADY  
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinions
- D. SAF/MIBR Ltr Forwarding Advisory Opinions
- E. Response in Applicant's behalf



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

24 Feb 98

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPPO

SUBJECT: Application for Correction of Military Records · [REDACTED]

Requested action: Applicant's spouse is requesting her husband's grade be corrected to reflect his selection to major. We will only address the promotion aspect of this application.

Basis for request: Applicant's spouse contends her husband was selected for major on the 5 Jun 95 board.

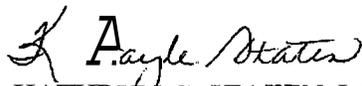
Recommendation: Denial.

Facts and Comments:

- a. Application is timely.
- b. Applicant's husband was selected for promotion to the grade of major by the **CY95A** Major Central Selection Board which convened at HQ AFPC on 5 Jun **95**. The results of the board were approved by the Assistant Secretary of Defense for Force Management **Policy** (ASD/FMP) on 2 Aug 95 and released to the public on 15 Aug **95**. All promotions to the grade of major and above must be confirmed by the Senate before an officer can be promoted. The Senate confirmed the CY95A major list on 1 Nov 95 and the first increment began 1 Jan 96. Based on his sequence number of 1591, had he remained on active duty, he would have been promoted 1 Jul 96.
- c. Applicant's husband was placed on the Temporary Disability Retirement List on 3 Aug 95. Although he was a major select, he was not on active duty to accept his promotion on 1 Jul 96; therefore, **the** promotion is without effect.
- d. An officer who is on a promotion list and dies while on active duty, but prior to his projected promotion date, may be posthumously promoted with a date of rank equal to date of death. There are no monetary allowances authorized with a posthumous promotion.

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**Summary:** There **are** no provisions in law to allow an officer to be promoted prior to Senate confirmation, or when not on active **duty**, with **the** exception of a posthumous promotion. This does not apply **as** officer was not on active **duty** at the time of his death. We have no recommendation if the board's decision is **to** grant relief to the applicant.



KATHRYN G, STATEN, Lt Col, USAF  
Chief, Officer Promotion & Appointment Branch  
Directorate of Pers Prog Mgt

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

20 Mar 98

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPD  
550 C Street West Ste 06  
Randolph AFB TX 78150-4708

SUBJECT: Application for Correction of Military Records [REDACTED]  
[REDACTED]

**REQUESTED ACTION:** Applicant's widow [REDACTED] requests that her husband's disability retired grade be changed from Captain to Major.

**FACTS:** Applicant entered into the military disability evaluation system through the imminent death process on 4 Aug 95. Following a massive stroke which occurred on 3 Jun 95, member was rushed from his home in [REDACTED] to a local hospital, subsequently airlifted to John H. [REDACTED] where he remained for approximately one month, and then transferred to Walter [REDACTED] in [REDACTED]. On 4 Aug 95, he suffered a severe massive seizure and the attending physician initiated imminent death processing. Imminent death processing was also requested by the next-of-kin (NOK) and was finalized at this time, resulting in his placement on the Temporary Disability Retired List (**TDRL**) with a 100 percent disability rating.

**DISCUSSION:** A Medical Evaluation Board (MEB) was conducted on 5 Jul 95 at [REDACTED] for a diagnosis of "Basilar *artery* thrombosis with resultant inability to communicate, left hemiplegia, right hemiparesis, multiple cranial nerve deficits." Based on a subsequent massive seizure suffered by the member on 4 Aug 95, the hospital requested imminent death processing (imminent death confirmed by attending physician within 72 hours). During this period member was also found to be incompetent for pay and records. The medical data was presented to the Informal Physical Evaluation Board (IPEB) for evaluation and they recommended he be placed on the TDRL with a 100 percent disability rating. Due to his incompetent status, the member's NOK (his spouse) acting on his behalf requested expeditious processing of her husband's case. Subsequently, she concurred with the IPEB's recommendation of TDRL with a 100 percent disability rating and the member was placed on the **TDRL** effective 4 Aug 95. Member died while on the TDRL on 22 Dec 95.

Applicant's retired grade was established under the provisions of 10 United States Code (USC) 1372, which stated,

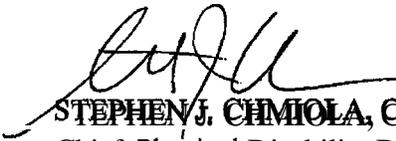
"Unless entitled to a higher retired grade under some other provision of law, any

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member of **an** armed force who is retired for physical disability ...is entitled to the grade **equivalent** to the highest of **the** following: **(1) the grade or rank in which he is serving when his** name is placed on the Temporary Disability Retired List; **(2) the highest temporary grade in which he served** satisfactorily, **as** determined by the Secretary of the armed force from which he is retired; **(3) the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of a physical examination for promotion;** **(4) the temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination for promotions."**

A thorough review of the case file and the governing statute revealed no errors or irregularities in the processing of the applicant's case within the disability evaluation system. **The** applicant was appropriately retired in the grade of captain, the grade in which he was **servng** at the time of his retirement.

**RECOMMENDATION** : We recommend denial of the applicant's request.

  
**STEPHEN J. CHMIOLA, Colonel, USAF**  
Chief, Physical Disability Division  
Directorate of Pers Prog Management