

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

1840 13 1999

IN THE MATTER OF:

DOCKET NUMBER: 98-00832

COUNSEL: NONE

HEARING DESIRED: NO

Applicant requests that he be reconsidered for promotion to the grade of major and a justification to all damages done to him. Applicant's submission is at Exhibit A.

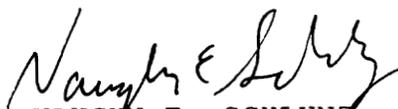
The appropriate Air Force office evaluated applicant's request and provided an advisory opinion to the Board recommending the application be denied (Exhibit C). The advisory opinion was forwarded to the applicant for review and response (Exhibit D). Applicant's response to the advisory opinion is at Exhibit E.

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 opinion 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 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. Vaughn E. Schlunz, Mr. Edward C. Koenig, 11, and Mr. Kenneth L. Reinertson, considered this application on 17 December 1998, in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.

  
VAUGHN E. SCHLUNZ  
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinion
- D. AFBCMR Ltr Forwarding Advisory Opinion(s)
- E. Applicant's Response



DEPARTMENT OF THE AIR FORCE  
AIR NATIONAL GUARD

AUG 27 1998

U.S. AIR FORCE



1947 - 1997

MEMORANDUM FOR AFBCMR

FROM: ANG/DPPU  
3500 Fetchet Avenue  
Andrews AFB, MD 20762-5157

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

The attached Application for Correction of Military Records submitted by the applicant, a former member of the Alaska Air National Guard, is forwarded for your review and action.

We cannot support [REDACTED] request for promotion to Major, because the file supplied is legally insufficient. The applicant claims that he and 90 others had their promotion applications “discarded to the garbage can by a native general (sic) so that his natives could be promoted instead”. If [REDACTED] had presented timely, convincing evidence of this assertion, we could have supported his request.

The requested correction, however, is to an alleged error which occurred in 1974—24 years ago. AFI 36-2603, Air Force Board for Correction of Military Records, paragraph 3.5 states:

“Ordinarily, applicants must file an application within 3 years after the error or injustice was discovered, or, with due diligence should have been discovered. An application filed later is untimely and may be denied by the Board on that basis. The Board may excuse untimely filing in the interest of justice. If the application is filed late, applicants should explain why it would be in the interest of justice for the Board to waive time limits.”

In this case, the application is said to have been filed within 3 years of discovery because the basis is said not to have been known until 1995. This explanation is not satisfactory because “with due diligence” the basis ought to have been discovered earlier. Furthermore, we have no idea how the applicant “discovered” this information. Finally, the applicant fails to state why consideration would be in the interest of justice. The timeliness requirement is critical to the instant case since it is designed to resolve problems before records disappear and memories fade. The agency is no longer able to reasonably defend against the applicant’s claims because the applicant has allowed too much time to pass before filing his complaint. [REDACTED] should have followed Colonel Paul Lindemuth’s advise given in 1975 to appeal the promotion Passover.

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Even if the application is considered, it is insufficient to allow the requested correction. [REDACTED] provides no evidence or reason to believe that "90 promotion applications (sic) had been discarded to the garbage can by a native general (sic) so that his natives could be promoted". He doesn't even advise us how or from whom he learned that such a thing had happened. Furthermore, although he provides us with 2 OERs; promotions are generally based on much more information. At a minimum, he should have provided the entire record that was supplied to him under his Freedom of Information Act request. But even if the 2 OERs were the only relevant documents, we note that the 1972-1973 OER appears to be fine, but that the 1973-1974 OER suggests that [REDACTED] may not have been suitable for promotion to Major. He is marked down in every category in the second OER, whereas he had a perfect OER in 1972-1973. In particular, [REDACTED] performance, leadership, and judgment were rated much lower than his first OER. Considering the fact that many fine officers were not promoted or not retained as the action in Vietnam declined, it is not surprising that [REDACTED] was passed over for promotion.

Under AFI 36-2603, paragraph 4.1: "The applicant has the burden of providing sufficient evidence of probable material error or injustice". This [REDACTED] has utterly and absolutely failed to do.

Questions should be directed to MSgt Gowdy, ANG/DPPUR, DSN 278-7500, or Email: [gowdyt@ang.af.mil](mailto:gowdyt@ang.af.mil).

FOR THE COMMANDER

  
NILDA E. URRUTIA, Lt Col, USAF  
Chief, Utilization

[REDACTED]

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