

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-01246

JAN 13 1999

COUNSEL: [REDACTED]

HEARING DESIRED: YES

---

APPLICANT REQUESTS THAT:

1. Professional military education (PME) and command recommendations be added to the Officer Performance Reports (OPRs) rendered for the periods 21 February 1990 through 29 June 1990 and 30 June 1990 through 29 June 1991.
2. He be considered for promotion to the grade of lieutenant colonel by Special Selection Board for CY94A, CY96C and CY97C lieutenant colonel boards.

---

APPLICANT CONTENDS THAT:

Both of his raters and additional raters for both OPRs in question made a mistake regarding what comments they thought they could include in their remarks, and all four of these officers have requested that the corrections be made to the OPRs. In addition, the applicant's reviewer for the 1991 OPR concurs that the requested changes be made. These statements from applicant's entire rating chain in the years in question, overcome the presumption of regularity and correctness. All these officers state they made an error, and join in applicant's request that his records be corrected to eliminate the errors.

Applicant's raters, for both OPRs, were U.S. Army officers who misinterpreted the Air Force evaluation system, or may have received some bad guidance. Neither were aware of the Air Force's "unwritten" policy that strong field grade OPRs must include favorable recommendations for both PME and Command positions. Their statements make their intentions crystal clear. They omitted these phrases from applicant's OPRs because they had mistaken impressions about what was permitted. The inconsistencies between the raters and their additional raters highlight this confusion.

Initially, applicant assumed that the omissions were simply due to the fact that he was a brand new major, however, when he later contacted his raters, he found they were not aware that PME and command recommendations were appropriate. When his raters,

additional raters and reviewers were made aware of the unfortunate error, they submitted their statements to correct the injustice. This error has now also cascaded through other personnel decisions, resulting in applicant not being selected for promotion to lieutenant colonel. He was first passed over for lieutenant colonel by the CY94A board, which convened on or about 11 October 1994. He was passed over the second time by the CY96C board, which convened on or about 8 July 1996.

In conclusion, the error of applicant's rating chain for his 1990 and 1991 evaluations are clear, all his raters, additional raters and reviewers join in his request to correct his OPRs, and such correction should be ordered by the BCMR to correct the injustice and prejudice to applicant.

In support of the appeal, applicant submits counsel's statement and statements from the rating chain members of both contested reports.

Applicant's complete submission is attached at Exhibit A.

#### STATEMENT OF FACTS:

The applicant is currently serving on extended active duty in the grade of major.

A similar application was submitted under AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports. The Evaluation Reports Appeal Board was not convinced by the applicant's documentation and denied the appeal.

Applicant was considered and not selected for promotion to the grade of lieutenant colonel by the CY94A, CY96C and CY97C Selection Boards (there was no lieutenant colonel board in 1995): Applicant has a date of separation of 31 May 1999.

OPR profile since 1990, follows:

<u>PERIOD ENDING</u>	<u>EVALUATION OF POTENTIAL</u>
20 Feb 90	Meets Standards
*29 Jun 90	Meets Standards
*29 Jun 91	Meets Standards
29 Jun 92	Meets Standards
14 Jun 93	Meets Standards
14 Jul 94	Meets Standards
14 Jul 95	Meets Standards
14 Jul 96	Meets Standards
21 Mar 97	Meets Standards

\* Contested reports

# Top report at time of CY94A board.

---

AIR FORCE EVALUATION:

The Chief, Appeals and SSB Branch, AFPC/DPPPA, reviewed the application and states that while the raters and additional raters believed the recommendations for PME and command position were prohibited, they point out, AFR 36-10, Chapter 3, paragraph 7a, clearly states promotion recommendations are prohibited; however, "recommendations to select for a particular assignment, PME, augmentation, continuation, or indefinite reserve status are appropriate..." This would include recommendations for command positions. They state that the raters' statements clearly indicate their support because the applicant believes the lack of PME and command recommendations construes a very weak report. The additional raters statements only provide statements to be added to the contested reports. None of the evaluators explain how they were hindered from rendering a fair and equitable assessment of the applicant's duty performance and potential. They find it interesting to note that both of the evaluators on the 29 June 1990 OPR made a PME recommendation, and the additional rater on the 29 June 1991 OPR made a command recommendation. They further state that there is no clear evidence the lack of PME and command recommendations negatively impacted the applicant's promotion opportunity. They are not convinced the contested OPRs caused the applicant's nonselections. While it may be argued that the omission of a recommendation for PME and command position was inadvertent rather than intentional, the purpose of the appeal process is to correct errors or injustices. The purpose is not to recreate history or to enhance one's promotion potential. Evaluation reports receive exhaustive reviews prior to becoming a matter of record. Any report can be rewritten to be more hard hitting or to enhance a ratee's potential. But the time to do that is before the report becomes a matter or record. 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's counsel reviewed the Air Force evaluation and states:

"First, the Air Force argues that applicant's raters and additional raters all want to add language to the two contested OPRs, but that these raters and additional raters either were not confused at the time they wrote the OPRs, or should not have been confused as to what comments they could or could not have included. However, this misses the point. Even if applicant's

raters and additional raters should not have been confused as to what comments they could have included, they clearly state now that their ratings of applicant are in error and must be corrected. The Air Force has not and cannot deny this. Applicant may not be penalized for his raters' and additional raters' error, even if the error was not reasonable. This is not applicant's fault, and it would be arbitrary and capricious to refuse to correct applicant's OPRs to reflect his raters' and additional raters' true intent - as reflected in their written statements (and unrebutted by the Air Force). This is precisely the function of the Air Force BCMR - to correct such injustices.

Next, the Air Force claims that there is no "clear evidence" that the lack of PME and command recommendations in the two contested OPRs negatively impacted applicant's promotion opportunity. However, the Air Force is being disingenuous. The reason why no such evidence exists is because (as is required by Air Force Regulations), the records of the Central Selection Boards are destroyed after adjournment of the Board and announcement of the promotion lists. Therefore, there is no way to tell, from the notes and calculations of the Board members, how the lack of PME and command recommendations impacted their decision to pass over applicant to promotion to lieutenant colonel.

In conclusion, the error of applicant's rating chain for his 1990 and 1991 evaluations are clear, all his raters, additional raters and reviewers join in his request to correct his OPRs, and such correction should be ordered by the BCMR to correct the injustice and prejudice to applicant."

Applicant's counsel'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 the 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 issue(s) 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 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  
Ms. Phyllis L. Spence, Examiner (without vote)

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 1 Feb 97, w/atchs.  
Exhibit B. Applicant's Master Personnel Records.  
Exhibit C. Letter, AFPC/DPPPA, dated 19 May 98, w/atchs.  
Exhibit D. Letter, AFBCMR, dated 15 Jun 98.  
Exhibit E. Counsel's Response, dated 21 Jul 98.



ROBERT D. STUART  
Panel Chair