

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-03270

COUNSEL: Steven E. McCullough

HEARING DESIRED: No

JUL 31 1996

APPLICANT REQUESTS THAT:

He be awarded compensation for back pay and retirement points (based on an average of the three previous calendar years) for the period 31 December 1994 through 1 November 1996; promoted to the grade of colonel; and reinstated to the same or similar flying position and duties he had before being wrongfully separated.

APPLICANT CONTENDS THAT:

The reasons the applicant believes the records to be in error or unjust and the evidence submitted in support of the appeal are at Exhibit A.

STATEMENT OF FACTS:

Effective 3 November 1996, applicant was assigned to the Retired Reserve, in the grade of lieutenant colonel, awaiting pay at age 60. He has 27 years, 4 months and 1 day of satisfactory federal service for retirement

The remaining relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

Chief, Utilization, HQ ANG/MPPU, reviewed the application and states that partial relief is warranted. Review of the Department of Defense Inspector General (DoDIG) investigation report indicate the 1994 [REDACTED] Retention Review Board procedures were flawed and, as a part of the remedy, applicant was reinstated in the [REDACTED] Air National Guard (ANG) on 6 February 1996. The author recommends that the applicant be given back and retirement points for the time he was wrongfully separated, i.e.,

1 January 1995 to 5 February 1996, but that the applicant's two remaining requests be denied. The author provides rationale for these recommendations.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A complete copy of the Air Force evaluation was forwarded to the applicant on 7 April 1997, for review and comment within 30 days. As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice warranting partial relief. In its advisory, HQ ANG/MPPU recommends the applicant be given pay and points from 1 January 1995 until he was reinstated, but that he should neither be promoted to colonel nor reinstated to his previous, or similar, flying position. After thoroughly reviewing the available documentation, we agree. The applicant was reinstated into the ANG because a DoDIG investigation found that the procedures used by the 1994 Retention Review Board were flawed. Based on his past participation in the ND ANG drills, there is no reason to believe he would not have performed drills and duty as usual had he not been separated on 31 December 1994. As a result, we believe that he should be credited and paid on the basis of what he presumably would have earned, rather than merely an average of his three previous years. His request for points through 1 November 1996 was noted; however, he had an opportunity to accumulate points since he was reinstated in the ANG on 6 February 1996. Therefore, we believe 6 February 1996 should be the cut-off date for awarding points by corrective action. In view of the above, we recommend the applicant's records be corrected to the extent indicated below.

4. Notwithstanding the above determination, with respect to his request for promotion to the grade of colonel, we believe that it would be purely speculative to assume that, had he not been removed from the ANG, he would have been promoted to the grade of colonel. Therefore, we agree with the recommendation of HQ ANG/MPPU and adopt the rationale expressed as the basis for our conclusion that applicant has failed to sustain his burden of establishing the existence of an error or an injustice warranting favorable action on this request.

5. Applicant's request to be reinstated into a flying position is duly noted; however, since applicant has been transferred to the Reserve Retired list, this is a moot issue. As a matter of information, however, even if the applicant were still assigned to the [REDACTED] Air National Guard, we would be reluctant to usurp the State Guard's prerogative to determine how best to utilize its members. Furthermore, we are also not qualified to determine whether or not an individual should be returned to flying duties.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. He was credited with an additional 15 paid Active Duty Training (ADT) points, 48 paid Flying Training Pay (FTP) points, and 24 paid Inactive Duty Training (IDT) points during the retirement/retention year 2 July 1994 to 1 July 1995, resulting in 150 total retirement points.

b. He was credited with an additional 17 paid ADT points, 52 paid FTP points, and 52 paid IDT points during the retirement/retention year 2 July 1995 to 1 July 1996, resulting in 77 total retirement points; and that the period 2 July 1995 to 1 July 1996 is a year of satisfactory Federal Service for retirement.

The following members of the Board considered this application in Executive Session on 14 July 1998, under the provisions of AFI 36-2603:

Ms. Patricia J. Zarodkiewicz, Panel Chair
Mr. Richard A. Peterson, Member
Mr. Dana J. Gilmour, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 29 Oct 96, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ ANG/DPPU, dated 12 Mar 97.
- Exhibit D. Letter, AFBCMR, dated 7 Apr 97.


PATRICIA J. ZARODKIEWICZ
Panel Chair