

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-03112

COUNSEL: None

AUG 14 1998

HEARING DESIRED: No

---

APPLICANT REQUESTS THAT:

The Retirement Order, AC-2109, dated 27 January 1976, be corrected to show he was retired in the grade of lieutenant colonel rather than major.

---

APPLICANT CONTENDS THAT:

The reasons applicant believes he has been the victim of an error and/or an injustice are contained in his complete submission, which is at Exhibit A.

---

STATEMENT OF FACTS:

Applicant was relieved from active duty and retired for physical disability at 30% on 17 February 1976. He had 16 years, 4 months and 27 days of active service and 20 years, 8 months and 16 days of service for basic pay. The Retirement Order in question reflects the highest grade held on active duty as major, a retirement grade of major, and a Reserve Grade of lieutenant colonel.

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

---

AIR FORCE EVALUATION:

The Superintendent, HQ AFPC/DPPPOO, reviewed this appeal and states that applicant was on active duty from 19 March 1962 to 17 February 1976 and his highest grade held was major. He may have met a Reserve promotion board to lieutenant colonel, but there is no indication he ever was promoted.

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

The Director of Personnel, HQ ARPC/DPAR, also evaluated the case and indicates that according to AFR 36-11, Section D, Promotion of US Air Force Reserve (USAFR) Officers to Fill Unit and Mobilization (Mobilization Augmentee) Grade Vacancies, if an officer who has been selected for promotion under this section, as applicant was, enters extended active duty (EAD) before being promoted to fill the vacancy, his name will be removed from the recommended list. Applicant never fulfilled the intent of a unit vacancy promotion by continuing to serve on EAD until 16 February 1976 and eventually retired on 17 February 1976..

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

---

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant states the information provided by ARPC/DPAR is incorrect or does not apply to him because he was not a member of the Ready Reserves and his name was not removed from the recommended promotion list since his retirement orders show that he has the permanent Reserve grade of lieutenant colonel.

A complete copy of applicant's response is at Exhibit F.

---

ADDITIONAL AIR FORCE EVALUATION:

The Chief, USAF Physical Disability Division, HQ AFPC/DPPD, states that Title 10, USC, Section 1372 provides that a member being retired for disability is retired in the grade in which the member is serving at time of retirement or the Reserve grade held by the member at time of retirement, if it is higher than the grade in which serving on active duty. The Reserve grade must be a valid USAFR or Air National Guard (ANG) grade that is still in effect at the time of retirement. At the time his retirement order was accomplished, their office **was** provided with the information he had a Reserve grade of lieutenant colonel. AFPC/DPAR's advisory explains that the applicant was never promoted to lieutenant colonel while in the Reserves. Further, applicant states in his [rebuttal] "My name was removed from the recommended promotion list because I entered active duty before being promoted to fill the vacancy." *[This is incorrect---the applicant was stating what he felt the ARPC/DPAR advisory was implying. His sentence is prefaced with "HQ ARPC/DPAR letter states or implies that . . . ."]* Denial is recommended.

A complete copy of the additional advisory is at Exhibit G.

---

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant reviewed the additional evaluation and reiterates he had the Reserve grade of lieutenant colonel at time of retirement. He was not in the Reserves. He held a Reserve commission from the AF Reserve Officer Training Corp (ROTC) and was on active duty at the time he was selected for promotion. In accordance with Title 10, USC, Section 1372, he should be retired in the grade of lieutenant colonel.

Applicant's complete response is at Exhibit I.

---

ADDITIONAL AIR FORCE EVALUATIONS:

The Deputy Chief, General Law Division, HQ USAF/JAG, reviewed the appeal and states that it appears the error in applicant's record is, in fact, the present contents of Block 13 [of the Retirement Order]. He was *selected* for promotion to lieutenant colonel in 1975, but there is no evidence the new commission was tendered and accepted. There is, for example, no promotion order elevating him to lieutenant colonel (as there is for the grades of captain and major) and none of his records, save the retirement order, reflect such a promotion or any service at the higher grade. In short, he never *held* the grade of lieutenant colonel. Whoever made the Block 13 entry on the Retirement Order had incorrect information. Regardless whether he was selected under AFR 36-11, Section D, to fill a unit or mobilization augmentation grade vacancy, but then removed from the list because he was on EAD, or under Section C by a central board (which did promote EAD officers), he was never actually promoted. And whether he knew it or not, his Reserve commission and EAD status made him a member of the Ready Reserve. One other comment: Title 10, USC, subsections 1372(3) and (4) permit disability retirement in the grade for which the member was merely *selected* for promotion if the physical disability for which the member is retired is discovered as a result of a physical examination for that promotion. In this case, however, this connection is not established. According to the 2 December 1975 clinical record/narrative summary [*attached to this advisory*], applicant's illness dated back to late 1967 when he was first hospitalized for the condition and there is no indication the course of treatment which led to eventual retirement had anything to do with a promotion fitness examination. Denial is recommended.

A complete copy of the additional evaluation, with attachment, is at Exhibit J.

---

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A complete copy of the additional evaluation was forwarded to him on 11 March 1998 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. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that his retirement order should reflect he was retired in the grade of lieutenant colonel. Applicant's contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. In view of the above and absent persuasive evidence to the contrary, we find no compelling basis to recommend granting the relief sought.
- 

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 23 June 1998 under the provisions of AFI 36-2603:

Mr. Wayne R. Gracie, Panel Chair  
Mr. Dana J. Gilmour, Member  
Mr. Allen Beckett, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 17 Oct 96, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPPOO, dated 5 Feb 97, w/atrch.
- Exhibit D. Letter, HQ ARPC/DPAR, dated 7 Apr 97.
- Exhibit E. Letter, AFBCMR, dated 28 Apr 97.
- Exhibit F. Letter, Applicant, dated 22 May 97, w/atrch.
- Exhibit G. Letter, HQ AFPC/DPPD, dated 27 Oct 97
- Exhibit H. Letter, AFBCMR, dated 10 Nov 97.
- Exhibit I. Letter, Applicant, dated 24 Nov 97.
- Exhibit J. Letter, HQ USAF/JAG, dated 6 Mar 98, w/atchs.
- Exhibit K. Letter, AFBCMR, dated 11 Mar 98.

  
WAYNE R. GRACIE

Panel Chair