

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

NOV 04 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-01100

COUNSEL:

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

He be restored to the grade of colonel (O-6) and that he be retired in that grade with all appropriate retirement pay retroactive to 1 December 1996.

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APPLICANT CONTENDS THAT:

As a result of a Commander directed inquiry, he was forced to take an early (involuntary) active duty retirement on 1 December 1996. This was before he had an opportunity to attain the three years of colonel (O-6) man days that would have allowed him to retire in the grade of colonel. Applicant states that according to AFI 36-3203, "Reserve officers who apply for retirement under Title 10 U.S.C. 8911, after being told they will be released from active duty involuntarily, retire in the highest grade held on active duty satisfactorily for at least six (6) months." Applicant states that he had satisfactorily completed over six months in the grade of colonel.

In support of his appeal, applicant submits newspaper articles, a copy of a request to the DoD Inspector General (IG), subject: "Reopening of Investigation into Funeral Fly over", and a copy of an Air Force Times article with regard to individuals disciplined for unauthorized fly over.

Applicant's submission is attached at Exhibit A.

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STATEMENT OF FACTS:

Applicant was appointed a second lieutenant in the Reserve of the Air Force on 6 June 1970. He was subsequently promoted to the Reserve grade of colonel effective 1 March 1995.

Applicant was subsequently retired on 1 December 1996 in the grade of lieutenant colonel.

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 Office of Primary Responsibility (OPR). Accordingly, there is no need to recite these facts in this Record of Proceedings.

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AIR FORCE EVALUATION:

The Chief, Military Personnel Division, HQ AFRC/DPM, recommends the application be denied based on the legal review **from** HQ AFRC/JAG and their reasons for denial. The AFRC/JAG states that they believe the basic premise of applicant's application is fatally flawed and his application should be denied.

A copy of the Air Force evaluation, with attached HQ AFRC/JAG evaluation, is attached at Exhibit C.

The Director of Personnel Program Management, HQ ARPC/DPAR, states that the applicant completed 20 years, 8 months and 22 days of creditable active duty service. This service qualified him for retired pay under the provisions of Title 10, U.S.C., Section 8911. **To** be eligible to retire in the grade of colonel under this section, a member must have served satisfactorily on active duty for a minimum of three (3) years unless involuntarily separated from active duty. Applicant completed six (6) months on active duty in the grade of colonel, however, since he was not involuntarily separated from active duty the three-year time in grade (TIG) applies. There is no indication in his record that he was ever advised he would be involuntarily separated which would have allowed him to receive retired pay in the grade of colonel. They recommend the applicant's request be denied.

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

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations, with attachments, were forwarded to applicant's counsel on 12 May 1998 for review and response. Counsel submitted a ten page response, with attachments, which is attached at Exhibit F.

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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 he should be restored to the grade of colonel and retired in that grade with retirement pay retroactive to 1 December 1996. His 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 note that the applicant was promoted and had assumed the grade of colonel effective on 1 March 1995. As stated by HQ ARPC/DPAR, there is no indication in the applicant's record that the applicant was ever advised he would be involuntarily retired. Applicant also stated that he was not technically told that he would be released from active duty involuntarily. It appears that he could have continued to serve in the Reserve grade of colonel and retire in that grade. However, he voluntarily submitted a request for retirement on his own and clearly did not serve the required number of years to retire in that grade. 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. Therefore, we find no compelling basis to recommend granting the relief sought.

4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without counsel, would not have materially added to that understanding. Therefore, the request for a hearing is not favorably considered.

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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.

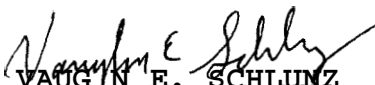
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The following members of the Board considered this application in Executive Session on 29 September 1998, under the provisions of AFI 36-2603.

Mr. Vaughn E. Schlunz, Panel Chair  
Mr. Richard A. Peterson, Member  
Mr. Patrick R. Wheeler, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 27 Mar 97, w/atchs.
- Exhibit B. Applicant's Microfiche Records.
- Exhibit C. Letter, HQ AFRC/DPM, dated 8 Sep 97, w/atchs.
- Exhibit D. Letter, HQ ARPC/DPAR, dated 9 Mar 98.
- Exhibit E. Letter, AFBCMR, dated 12 May 98.
- Exhibit F. Counsel's Letter, dated 28 Aug 98, w/atchs.

  
VAUGHN E. SCHLUNZ  
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Panel Chair