

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02036

COUNSEL: NONE

FEB 19 1999

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

1. His Officer Performance Report (OPR), closing 1 August 1993 be replaced with the reaccomplished OPR provided.
2. His Promotion Recommendation Form (PRF) for the CY95A (5 June 1995) Major Board (P0495A) be replaced with the reaccomplished PRF provided.
3. His nonselection for promotion to major beginning with the CY95A Central Major Board be declared null and void.
4. He be retroactively selected for promotion to major, that his record be changed to reflect continuous active duty and that all pay, benefits and any other entitlements also be retroactively restored.

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APPLICANT CONTENDS THAT:

His OPR did not comply with regulatory requirements. Specifically, the contested OPR did not include the position description of a higher-ranking billet he filled from Nov 92 until 1 Aug 93. The duty title on the contested OPR is incorrect because it did not reflect him as the branch chief. Although his duties were mentioned in his OPR, the full magnitude of what he did was largely overlooked as the duties of the position were never recorded on the OPR. Omission of the above facts created an inaccurate record of performance for users of the OPR. He also received a Joint Service Achievement Medal (JSAM) for his work as branch chief.

The PRF for the P0495A board was tainted because the contested OPR was inaccurate and thus, his record of performance that met both his Management Level Evaluation Board (MLEB) and the CY95 Central Major Selection Board **was** inaccurate.

The Air Force officer promotion board which considered his record for promotion was held in violation of statute and DoD Directive. An SSB cannot resolve his promotion status. Not only are the benchmark records tainted by the illegalities of the original boards, the scoring procedure itself is arbitrary and capricious,

as it imposes a higher standard for SSB selection than for original board selection. Therefore, he asks that the AFBCMR direct his promotion to major as if selected by the CY95A Major Selection Board.

Had it not been for errors in his August 1993 OPR, which led to errors in his PRF, his record would have been competitive for a Definitely Promote (DP) in the carryover process and he would have been selected by the original central board. An SSB cannot fairly assess his promotion status.

In support of his request, applicant submits a personal statement, copies of statements from his rating chain, copies of the reaccomplished OPR and PRF, and additional documents associated with the issues cited in his contentions (Exhibit A).

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STATEMENT OF FACTS:

On 19 May 1984, the applicant was appointed a second lieutenant, Reserve of the Air Force, and was voluntarily ordered to extended active duty on 16 September 1984. He was integrated into the Regular Air Force on 30 June 1988 and was progressively promoted to the grade of captain, effective and with a date of rank of 17 July 1988. The following is a resume of his OPR ratings subsequent to his promotion to that grade.

<u>Period Ending</u>	<u>Evaluation</u>
29 Sep 88	Meets Standards (MS)
21 Apr 89	Education/Training Report
9 Oct 89	MS
9 Oct 90	MS
1 Aug 91	MS
1 Aug 92	MS
* 1 Aug 93	MS
# 1 Aug 94	MS
30 Jun 95	MS
## 15 Jan 96	MS

\* Contested OPR - Top Report at the time he was considered and nonselected for promotion to major, below-the-promotion zone (BPZ), by the CY93B (6 Dec 93) and CY 94A (22 Aug 94) Major Selection Boards.

# Top report at the time he was considered and nonselected for promotion to major, in-the-promotion zone (IPZ), by the CY95A Major Central Selection Board, which convened on 5 June 1995.

## Top report at the time he was considered and nonselected for promotion to major, above-the-promotion zone (APZ), by the CY96A Major Central Selection Board, which convened on 4 March 1996.

The applicant was awarded the Joint Service Achievement Medal (JSAM) for exceptionally meritorious achievement as Acting Program Support Branch Chief Defense Plant Representative Office (DPRO) from October 1992 to September 1993.

The applicant submitted a similar appeal of the contested OPR and PRF under Air Force Instruction (AFI) 36-2401. The Evaluation Report Appeal Board (ERAB) considered and denied the appeal on 11 January 1996.

On 31 October 1996, the applicant was honorably discharged (involuntary) in the grade of captain under the provisions of AFI 36-3207 (nonselection, permanent promotion). He served a total of 12 years, 1 month and 15 days of active service. He received \$36,691 separation pay.

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AIR FORCE EVALUATION:

The **Evaluation Procedures Section, HQ AFPC/DPPPEP**, stated that the applicant has provided no documentation to show he was "*assigned*" to the Lt Col position number (billet) or that he held the formal title. In fact, his supervisor, Mr. I---, stated applicant *did not* hold the *title* of branch chief. It follows that he was also not placed against the Lt Col billet. Further, it is not standard procedure to change the duty title when temporarily filling another position in addition to normal duties. Applicant submits ample documentation stating he was *acting* branch chief, and this information is adequately reflected in both the job description and raters' assessment areas of the contested OPR. DPPPEP stated that none of the letters submitted provide documentation to *support* the claim of inaccurate duty title. Further, the "new" job description is an embellishment only; the changes are not directly supported by accomplishments on the OPR. The original OPR clearly portrays the fact that applicant temporarily filled the position of branch chief, *in addition to* his normal duties, from 23 Jan 93 (the date the position requisition was approved) through the closeout date of the OPR. The report submitted as a replacement merely embellishes original comments in section IV, provides a more grandiose description of the temporary position, and adds a duty title the applicant never officially held. DPPPEP stated that a thorough review **of** the documents provided does not reveal a violation of regulatory provisions or inadequacies in the original OPR. Further, the requested changes are clearly meant to strengthen a valid, filed report; this is strictly prohibited. DPPPEP recommended the applicant's request be denied (Exhibit C).

The **Air Force Evaluations Board Recorder, HQ AFPC/DPPPEB**, provided a technical review of applicant's case. DPPPEB stated that based upon HQ AFPC/DPPPEP's findings that the contested OPR was indeed written within the regulatory guidance of AFR 36-10 (Aug 88), they (DPPPEB) recommended that the applicant's CY95 PRF

stand since no new information has been introduced into the applicant's Record of Performance (ROP). The narrative comments in Section IV (Promotion Recommendation) provided an assessment of the officer's performance which supports the "Promote" recommendation given in Section IX (Overall Recommendation). (See Exhibit D.)

The **Selection Board Secretariat, HQ AFPC/DPPB**, disagrees with the applicant's contention that his promotion boards were in violation of Title 10, United States Code (USC), Sections 616 and 617. DPPB stated that Air Force legal representatives have reviewed their procedures on several occasions during the past few years and have determined those procedures comply with applicable statutes and policy. The Air Force has used the panel concept for many years in conducting selection boards. The panel concept has safeguards to ensure an equal distribution of the quality spectrum of records to each panel. DPPB stated that the applicant attempts to discredit the scoring scale used by the Air Force for many years on its selection boards. That scoring scale is from 6 to 10 in half point increments. Board members are briefed to try to apply a 7.5 score to an "average" record and to try to use the entire scoring range throughout the evaluation process. Recognizing that the scoring of records is a subjective process, it should come as no surprise that individuals may have a slightly different definition of what constitutes an "average" record.

DPPB indicated that the applicant seems to imply that the post-board action of preparing an alpha select list of the board's recommendations constitutes some illegal action and voids the entire board. The alpha select list, which must be attached to the official board report, is merely a recapitulation of the selects from the board in alpha sequence vice numerical sequence. The list is audited to ensure 100 percent accuracy before it becomes part of the board report.

With regard to the applicant's claim that some board members depart prior to the adjournment of the board. Again, applicant implies some illegal action occurred and therefore, the board was illegal. In fact, health professions competitive category boards were held concurrently with the Line competitive category board. When the health professions board members had completed all board responsibilities, they were dismissed. After all board responsibilities were completed by the Line board members, they were dismissed. These procedures are in keeping with 10 USC, Section 621.

DPPB stated that the applicant again seems to imply that another post-board function - preparing the final board report for presentation to the approving authority - was the reason he was nonselected for promotion. DoD Directive 1320.12 directed separate promotion boards be conducted for each competitive category and also authorized conducting those separate boards concurrently. The directive also authorized consolidating the

results of the boards into a single package for presentation to the approving authority. This has been done for many years without challenge or objection by Air Force legal representatives.

DPPB disagrees with the applicant's claim that the board president's role violates DODD restrictions. The actions/responsibilities of each board president are in compliance with governing directives.

DPPB disagrees with the applicant's contention that the Air Force has neither developed nor issued standard operating procedures for selection boards. Upon approval and publishing of DODD 1320.12, 4 Feb 92, all Air Force promotion boards were placed on hold pending a complete rewrite of AFR 36-89, Promotion of Active Duty List Officers (recently superseded by AFI 36-2501). Only after the new AFR 36-89 was approved by the Office of the Secretary of Defense and published 17 Apr 92, did they resume promotion boards.

DPPB stated that every board member on each Line board participated in the decision to use the below-the-promotion zone (BPZ) quota.

DPPB disagrees with the applicant's contention that a Special Selection Board (SSB) cannot provide a full measure of relief since the benchmark records used for an SSB are a tainted record sampling. The identification of benchmark records from each selection board is in compliance with governing directives. DPPB disagrees with the applicant's claim that the SSB scoring system is "arbitrary and capricious" because of possible scoring inversions. It should be noted the numerical scores from the original board have nothing to do with the numerical scores given to the benchmark records by an SSB, only the select/nonselect status of the benchmark is important. Because the benchmark records are very similar in quality, it is not unusual to have some inversion in the benchmark order of merit (OOM) created by the SSB.

A complete copy of this evaluation is appended at Exhibit E.

The Appeals **and SSB Branch**, HQ AFPC/DPPP, addressed the validity of the applicant's requests in relation to his request for direct promotion. DPPP stated that they do not understand the purpose behind the applicant's appeal of the contested PRF. PRFs are accomplished for the sole purpose of being reviewed by promotion boards. To replace the applicant's PRF and directly promote him would be pointless. Air Force officer promotions are a competitive process. To directly promote the applicant would circumvent the competitive nature of that process. Were they to recommend approval of any of the applicant's requests for correction to his record, DPPP believes special selection board (SSB) consideration would be appropriate. A duly constituted SSB, comprised of senior officers applying the full range of

promotion criteria, is the most appropriate method of assessing the applicant's potential to serve in the next higher grade. However, DPPP concurs with the advisory opinions from HQ AFPC/DPPPPEP and HQ AFPC/DPPPPEB--the applicant has failed to provide the evidence necessary to support his claims of error in this appeal. DPPP does not believe correction to the applicant's record is supported by this appeal therefore SSB consideration is not warranted. Based on the evidence provided, DPPP recommended the applicant's request be denied (Exhibit F).

The Separations Branch, HQ AFPC/DPPRP, stated that the applicant was considered but not selected for promotion to major for the second time by the P0495A central selection board and was given a mandatory date of separation of 31 Oct 96. The case has been reviewed for separation processing and there are no errors or irregularities in the separation processing causing an injustice to the applicant. The discharge complies with directives and law in effect at the time of discharge. DPPRP stated that the applicant did not identify any specific errors in the discharge processing nor provide facts which warrant reinstatement in the Air Force. DPPRP recommended the applicant's request be denied (Exhibit G).

The **Staff Judge Advocate**, HQ AFPC/JA, stated that with respect to the applicant's claims of a defective record, they can discern no legal issue, and defer to (and agree with) the advisories provided by the other HQ AFPC directorates. JA evaluated the applicant's various allegations and, in their opinion, he has failed to establish any error or injustice warranting relief. For the reasons outlined in the advisory opinion, JA recommended that the application be denied. A complete copy of this evaluation is appended at Exhibit H.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the advisory opinions and indicated that his rating chain tried to have the duty title updated in the personnel system before the OPR became a matter of record. He has provided an additional statement from his former supervisor supporting his request for replacement of the contested OPR. The flaw in his Aug 93 OPR flawed his Record of Performance (ROP), which was used by his senior rater and by the Management Level Evaluation Board (MLEB). As a result, his PRF was flawed as well and his rating chain supports its correction. The staff advisors are conspicuously silent on the error in his PRF, choosing only to rely upon their position on the OPR, which the evidence proves is patently false. AFPC provides no rationale which disproves his senior rater's comments about revision of the PRF. The only conclusion possible based on the facts and evidence is that his original PRF was in error when considered by the central selection board and should be replaced with the corrected PRF provided.

The issues before the Board are whether the requirements of statute, directive, regulation, and even secretarial instruction can be met by the Air Force selection board procedures. The evidence, Air Force documents detailing these procedures, proves the Air Force process does not allow compliance with these requirements. AFPC has not provided the Board with any explanation as to how its procedures allow Air Force selection boards to meet the statutory requirements. While AFPC claims Doyle does not apply as no error has been shown in the procedures, it does so only by **completely ignoring** its own procedures - **procedures which were documented using official Air Force documents**. The Air Force selection board procedures used by the boards which considered his file were contrary to law and DoD directive. He believes that AFPC has provided **no evidence** to dispute his position. He therefore asks the Board to set aside all promotion nonselections he received as a result of the tainted, illegal process.

He asks the Board to correct his record to reflect selection to major as if selected in the promotion zone by the CY95 Major Board. As with the analysis of the illegal board issues, AFPC adds only fluff to the discussion of the SSB process. Their own documents prove their position false: The benchmarks are loaded, the score system disallows majority consensus, and their certification in blank leaves board members unable to form any conclusion about a candidate's promotion status. And, of course, the impact of the illegal boards themselves are ignored. The evidence proves direct promotion is within the Board's authority and that SSBs cannot provide a full, let alone fitting measure of relief.

He has provided an additional statement from his former rater supporting his request for replacement of the contested OPR.

In summary, he asks the Board to review **all the evidence** and he believes the Board will find that not only was his record in error, but the selection board which considered his file was also flawed. For these reasons, he asks the board to correct his file to reflect promotion to major and restoration of all rights, benefits and entitlements denied him because of the defective record and tainted selection board process. The additional information provided herewith confirms the AFPC tactic has been only to confuse and with that tactic this Board's advisors have certainly lost focus of the truth.

Applicant's complete response is attached at Exhibit J.

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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 his requests should be granted. His contentions are duly noted; however, we do not find his assertions, either singularly or collectively, sufficiently compelling to override the rationale provided by the Air Force offices of primary responsibility. It appears to us that the statements provided in support of the appeal to replace the contested OPR and PRF constitute retrospective assessments of the applicant's performance and potential, written as well-meaning after-the-fact attempts to enhance the applicant's promotability. Such motivations are not sufficient to support findings that the reports themselves are erroneous or unjust. The applicant's numerous assertions concerning the statutory compliance of central selection boards, the legality of the promotion recommendation process, and the legality of the SSB process are duly noted. However, we do not find these assertions, in and of themselves, sufficiently persuasive to override the rationale provided by the Air Force offices of primary responsibility. Therefore, we agree with the recommendations of the appropriate Air Force offices and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden of establishing that he has suffered either an error or an injustice. Accordingly, 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.

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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 14 October 1998, under the provisions of AFI 36-2603:

Mr. Thomas S. Markiewicz, Panel Chair  
Mr. Charles E. Bennett, Member  
Ms. Martha Maust, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 30 Jun 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPPPEP, dated 22 Jul 97.
- Exhibit D. Letter, HQ AFPC/DPPPPEB, dated 23 Jul 97
- Exhibit E. Letter, HQ AFPC/DPPPB, dated 31 Jul 97.
- Exhibit F. Letter, HQ AFPC/DPPP, dated 7 Aug 97.
- Exhibit G. Letter, HQ AFPC/DPPRP, dated 25 Aug 97.
- Exhibit H. Letter, HQ AFPC/JA, dated 17 Oct 97.
- Exhibit I. Letter, SAF/MIBR, dated 20 Nov 97.
- Exhibit J. Letters from applicant, dated 3 Dec 97, w/atchs,  
and 3 Feb 98, w/atchs.



/ THOMAS S. MARKIEWICZ  
Panel Chair