

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02760

FEB 19 1999

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

The Officer Effectiveness Report (OER) closing 29 July 1966 be investigated and removed from his records and that he be provided a list of agencies that have had access to this effectiveness report or abstracts therefrom since it was filed.

APPLICANT CONTENDS THAT:

This report was based on slanders by several persons who were angered by his refusal to take part in illegal acts. It does not reflect his actual performance during the [rating] period and creates an impression that would have prejudiced his continued active duty in the Air Force. It has also contributed to his civilian employment problems in the United States.

In support of his request, applicant provided his expanded comments and an affidavit outlining the events surrounding the preparation of the contested report; a copy of the contested report; an undated extract from a medical record, subject: In-Flight and "Ground" Psychiatric Evaluation; and copies of individual flight records covering the period January - September 1966. (Exhibit A)

STATEMENT OF FACTS:

On 11 June 1963, applicant was appointed as second lieutenant, Reserve of the Air Force. He was voluntarily ordered to extended active duty on 9 January 1964. He served on continuous active duty, was integrated into the Regular component on 19 March 1964, and progressively promoted to the grade of captain.

A resume of applicant's OERs follows:

PERIOD CLOSING

10 Nov 64
29 Jul 65

OVERALL EVALUATION

Training Report
Very Fine; Performing well in present grade. Consider for promotion with contemporaries.

29 Jan 66	Very Fine; Performing well in present grade. Consider for promotion with contemporaries.
* 29 Jul 66	Very Fine; Performing well in present grade. Consider for promotion with contemporaries.
21 Feb 68	Exceptionally fine; Demonstrates capabilities for increased responsibility. Consider for advancement ahead of contemporaries.

22 Feb 68 - 21 Aug 68 - Report removed by order of ARPC Officer Personnel Records Review Board on 15 Jan 69.

* Contested report.

On 29 January 1968, applicant voluntarily tendered his resignation from all appointments in the USAF. On 22 March 1968, the Secretary of the Air Force (SAF) accepted his resignation; however, the effective date of the resignation was deferred until 9 November 1969. On 21 August 1968, the SAF approved his request for a change of effective date of resignation to 10 November 1968, contingent upon his acceptance of a Reserve commission.

On 10 November 1968, applicant was honorably discharged from all appointments in the Regular Air Force. He was credited with 4 years, 9 months, and 2 days of active duty service. Effective 10 November 1968, he was appointed as captain, Reserve of the Air Force, for an indefinite term. He had active and inactive service in the Air Force Reserve. Effective 23 August 1978, he was assigned to the Retired Reserve Section and his name was placed on the USAF Reserve Retired List (not eligible for retired pay at age 60). An ANG/USAFR Retirement Credit Summary, prepared 28 October 1978, reflects that he had a total of 8 years, 4 months, and 29 days of satisfactory service for retirement.

Examiner's Note: Attempts to locate the applicant's service medical records through the National Personnel Records Center and the Department of Veterans Affairs were unsuccessful.

AIR FORCE EVALUATION:

The Appeals and SSB Branch, AFPC/DPPPAB, reviewed this application and recommended that the application be time-barred, stating the untimeliness of this appeal and lack of documentation, other than the applicant's recollection of events which led to the evaluation, make it virtually impossible to determine the merits of the application.

DPPPAB provided information on locating retired persons through the Air Force Worldwide Locator.

Air Force policy is that an evaluation report is accurate...as written when it becomes a matter of record. It takes substantial evidence to the contrary to have a report changed or voided. In the absence of information from the rating chain of the contested report, it appears the report was accomplished in direct accordance with Air Force policy in effect at the time it was rendered. Further, there is no evidence, other than the applicant's own contentions, the report was not rendered in good faith by the evaluators concerned.

The complete evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

After citing the provisions of the Privacy Act, applicant stated that the contested report was created as a slanderous attempt at discrediting him because he refused to take part in illegal and reprehensible acts that were being perpetrated by a small number of his fellow officers. It was false and libelous at the time it was made and it continues to be false and libelous. Air Force regulations provide for a time limit for correction unless there are serious reasons for extending that limit. Because this record might well have played a major role in his failure to find any employment in the United States for almost 30 years, it should be accepted by any reasonable person that a serious reason for correcting it actually exists.

He further stated that the rest of the record labeled "In Flight and Ground Psychiatric Evaluation" should have been maintained by the Air Force. The missing part of this record provides important material evidence to show why his record should be corrected.

Applicant's complete response is 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. Applicant's request for an investigation of the circumstances surrounding the filing of the contested OER is duly noted. However, the Board is not an investigative body. The decisions of the Board are based on a careful review of the evidence provided, as well as the available military record. The burden of proof rests with the individual applicant to provide evidence to substantiate his/her allegations that an error or injustice has occurred.

4. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice warranting corrective action. Evaluators are tasked with the responsibility of assessing a ratee's performance, honestly and to the best of their ability, based on their observation of an individual's performance. We have noted the documents provided with the applicant's submission. However, other than applicant's own assertions, we find that no evidence has been presented showing that the evaluators on the contested report were unable to render unbiased assessments of the applicant's performance or that the ratings on the report were based on factors other than his duty performance during the contested rating period. In view of the foregoing, and in the absence of evidence to the contrary, we conclude that there is no basis upon which to recommend favorable action on the applicant's request for removal of the contested report from his records.

5. The AFBCMR is not the custodian of the applicant's master military personnel records. Therefore, we are unable to respond to his request for a list of agencies or individuals who have had access to the contested report. The custodian of his official records is the National Personnel Records Center (NPRC). We suggest that the applicant contact that agency with respect to this issue. Their address is NPRC, 9700 Page Boulevard, St. Louis, MO 63132.

6. 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 issues 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 6 October 1998, under the provisions of AFI 36-2603:

- Mr. Michael P. Higgins, Panel Chair
- Mr. Steven A. Shaw, Member
- Ms. Ann L. Heidig, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 14 Aug 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPPAB, dated 24 Oct 97.
- Exhibit D. Letter, SAF/MIBR, dated 10 Nov 97.
- Exhibit E. Letter, Applicant, dated 25 Nov 97.


MICHAEL P. HIGGINS
Panel Chair