

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

8EP 23 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-03590

COUNSEL: None

HEARING DESIRED: No

---

APPLICANT REQUESTS THAT:

His date of rank (DOR) to the grade of senior airman (E-4) be changed from 24 Sep 97 to 1 Jan 97.

---

APPLICANT CONTENDS THAT:

His pay grade to senior airman was never updated in Jan 97 but was updated in Sep 97. On 22 Sep 97, someone in promotions promoted him to senior airman when in fact they should have made his promotion date 1 Jan 97. He was denied his proper rank for his final year in the military and he was denied money which is still owed him because of human error.

In support of his appeal, the applicant provided a copy of his DD Form 214 (Certificate of Release or Discharge From Active Duty), a copy of his Referral Enlisted Performance Report (EPR), an Article 15, and an Unfavorable Information File (UIF) Action removing the Article 15.

Applicant's complete submission is attached at Exhibit A.

---

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 23 Nov 93 for a period of four years in the grade of airman basic. He was progressively promoted to the grade of senior airman, effective, and with a DOR of 24 Sep 97.

Applicant's Enlisted Performance Report (EPR) profile follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
22 Jul 95	5
22 Jul 96	4 (Referral Rpt)
1 Jan 97	5

On 10 Apr 97, the applicant received an Article 15, Uniform Code of Military Justice (UCMJ), for on or about 20 Jan 97, at or near Lackland AFB, Texas, operating a vehicle in a reckless manner by accelerating excessively, causing the vehicle to spin out of control. The applicant indicated, by initialing the Record of Nonjudicial Punishment Proceedings that he consulted a lawyer; that he waived his right to court-martial and accepted nonjudicial proceedings under Article 15, UCMJ; that he requested to make a personal appearance before the commander; that he did not desire that it be public; and, that he attached a written presentation. For the foregoing offense, the applicant was reduced from the grade of airman first class to the grade of airman. However, the reduction in grade was suspended until 9 Oct 97, after which time it was to be remitted without further action, unless sooner vacated.

On 23 Jul 97, the Article 15 in question was remitted by the commander.

On 4 Aug 97, the commander removed the 10 Apr 97 Article 15 from applicant's UIF.

On 22 Nov 97, the applicant was released from active duty under the provision of AFI 36-3208 (Completion of Required Active Service) with an honorable characterization of service in the grade of senior airman. He was credited with 4 years of active service.

---

AIR FORCE EVALUATION:

The Chief, Inquiries/AFBCMR Section, AFPC/DPPPWB, reviewed this application and indicated that basic eligibility requirements for promotion to senior airman are a minimum of 36 months' total active federal military service (TAFMS) and 20 months' time-in-grade (TIG) as an airman first class (both requirements must be met) or 28 months' TIG whichever is satisfied first, not be ineligible for any of the reasons outlined in AFI 36-2502, Table 1.1, or Headquarters AFMPC/DPMA AIG 8106, Jun 95 message, possess a 3-skill level Primary Air Force Specialty Code (PAFSC) and be recommended for promotion by the commander. Although the applicant met the 36 months' time-in-service (TIS) and 20 months' TIG requirement on 23 Nov 96 and had the 3-level PAFSC, he had received a referral EPR closing 22 Jul 96. This EPR rendered him automatically ineligible for promotion until he received another EPR with a rating of "3" or higher that was not a referral. He subsequently received another EPR closing 1 Jan 97 with an overall rating of "5" with both the rater and indorser recommending promotion to senior airman. Based on the documentation the applicant provided, DPPPWB cannot determine why he was not promoted on 1 Jan 97.

The suspended reduction applicant received due to an Article 15 rendered him automatically ineligible for promotion until 9 Oct 97 (AFI 36-2502, Table 1.1, Rule W). The documentation included in the case file reflects the Article 15 was removed from the UIF on 4 Aug 97 and the applicant's former base of assignment (Lackland AFB) was contacted and the Article 15 was remitted by the commander on 23 Jul 97. DPPPW cannot determine why the applicant was not promoted on 23 Jul 97 when the Article 15 was remitted and the suspended reduction (ineligibility condition) no longer existed. Regardless, no individual may be promoted unless recommended and approved by the commander. The applicant has provided no documentation regarding a commander's recommendation. Without a statement from the commander supporting an earlier date of promotion than 24 Sep 97, DPPPW does not recommend the applicant's request be approved. If the Board disagrees, it could promote him to senior airman with a DOR and effective date of 1 Jan 97 or 23 Jul 97 when the Article 15 was remitted.

A complete copy of the Air Force evaluation, with attachments, is attached at Exhibit C.

---

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 27 Jan 98 for review and response. 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 thoroughly reviewing the evidence of record, we find insufficient documentation to recommend changing applicant's DOR to 1 Jan 97. It appears from the documentation submitted that applicant met the eligibility requirements for promotion to senior airman on 1 Jan 97; however, we find insufficient evidence that his commander formally recommended him for promotion as required by the governing instructions. We are aware that promotions to senior airman are done by roster list which is prepared approximately on the 20<sup>th</sup> of each month. In view of the fact that the incident for which applicant received the Article 15 occurred on 20 Jan 97, it is very likely that the commander did not recommend him for promotion to senior airman because undoubtedly, he was reviewing the situation to determine what action was to be taken with respect to the misconduct.

Therefore, we find no compelling basis upon which to recommend changing his DOR to 1 Jan 97.

4. Notwithstanding the above determination, we believe some form of relief is warranted. In this respect, we believe applicant's DOR to senior airman should be changed to 23 Jul 97, the day the Article 15 was remitted. In coming to this conclusion, we noted that applicant met the TIS and TIG requirements; possessed a 3-skill level in his PAFSC; and, he had received a rating of "5" on his EPR closing 1 Jan 97 which also included promotion recommendations by both the rater and indorser. In view of the fact that the commander who imposed the Article 15 remitted it 2% months early, it is unclear as to why the commander did not recommend promoting applicant at that time. Clearly, the applicant met the eligibility criteria. Therefore, we believe any doubt regarding this situation should be resolved in favor of the applicant. In view of the foregoing, we recommend that his records be corrected as indicated below.

---

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that he was promoted to the grade of senior airman (E-4) effective and with a DOR of 23 Jul 97, rather than 24 Sep 97.

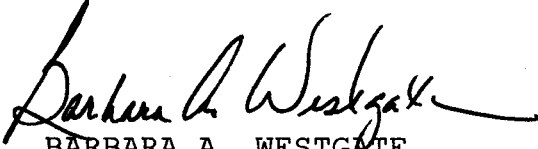
---

The following members of the Board considered this application in Executive Session on 25 August 1998, under the provisions of AFI 36-2603:

Mrs. Barbara A. Westgate, Panel Chair  
 Ms. Olga M. Crerar, Member  
 Ms. Patricia D. Vestal, Member  
 Mrs. Joyce Earley, Examiner (without vote)

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

Exhibit A. DD Form 149, dated 3 Dec 97, w/atchs.  
 Exhibit B. Applicant's Master Personnel Records.  
 Exhibit C. Letter, AFPC/DPPPWB, dated 8 Jan 98, w/atchs.  
 Exhibit D. Letter, AFBCMR, dated 27 Jan 98.

  
 BARBARA A. WESTGATE  
 Panel Chair



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

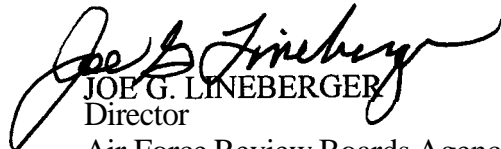
SEP 23 1997

Office of the Assistant Secretary  
AFBCMR 97-03590

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that he was promoted to the grade of senior airman (E-4) effective and with a date of rank (DOR) of 23 July 1997, rather than 24 September 1997.

  
JOE G. LINEBERGER  
Director  
Air Force Review Boards Agency