

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

FEB 24 1999

IN THE MATTER OF:

DOCKET NUMBER: 98-00819

COUNSEL: None

HEARING DESIRED: Yes

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APPLICANT REQUESTS THAT:

He be retired in the grade of captain versus first lieutenant (1Lt)

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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.

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STATEMENT OF FACTS:

During the period in question, applicant was a captain (Date of Rank: 5 Aug 87) assigned as the commander of Detachment 6, Buckley Air National Guard Base, CO. He was the only officer at the Detachment.

According to an AFOSI Report of Investigation (ROI) dated 17 June 1994, witnesses disclosed that during a party hosted by the applicant on 21 May 1994, he was highly intoxicated and the party "got out of hand." During this party, as well as an earlier one, he committed, or attempted to commit, several inappropriate acts with female dependent spouses, particularly while in a hot tub. During witness interviews, admissions were made by a female dependent spouse that she did have consensual sexual intercourse with applicant on 21 May 1994. Applicant admitted to having sexual intercourse with the same dependent spouse but that the other incidents were initiated by the female dependent spouses.

Applicant was subsequently reprimanded and required to forfeit \$1,000 of pay pursuant to Article 15 imposition on 28 July 1994 for the offenses of indecent assault and adultery. Applicant did not appeal the punishment. He submitted an application for retirement which prompted an officer grade determination.

The Air Force Personnel Board considered applicant's case on 19 December 1994 and found that he had "committed not just one

indiscretion, but a whole series of acts which are extraordinarily destructive to the unity of effort every military organization must nurture in order to be effective." In the board's view, the applicant abandoned his rank, if not his very status as an officer, and should deem himself fortunate to be allowed to retire at all, much less to be retired in his current grade. Accordingly, the board unanimously resolved to retire him in the lower rank of 1Lt.

On 2 March 1995, the Secretary of the Air Force (SAF), through the Deputy for Air Force Review Boards, determined the applicant did not serve satisfactorily in the grade of captain and directed he be retired as a 1Lt.

Applicant was retired in the grade of 1Lt on 1 April 1995 with 23 years, 3 months and 4 days of active service, the last 11 years as a commissioned officer.

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AIR FORCE EVALUATION:

The Chief, Retirements Branch, HQ AFPC/DPPRR, reviewed this appeal and states that the procedures to present the officer grade determination package to the SAF Personnel Council were proper and no errors or injustices took place. Therefore, denial is recommend.

A copy of the complete evaluation is at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A complete copy of the Air Force evaluation was forwarded to the applicant on 4 May 1998 for review and comment within 30 days. As of this date, no response has been received by this office.

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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 to warrant retiring the applicant in the grade of captain. Applicant's contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to overcome the substantial evidence of his grave misconduct. Applicant has provided no persuasive documentation that the

officer grade determination process was in error, nor has he demonstrated that the Air Force Personnel Board's recommendation and the SAF's decision to retire him in the lower grade was unjust and not soundly based on the evidence of record. The applicant has failed to sustain his burden of having suffered either an error or an injustice. Therefore, in view of the above and absent persuasive evidence to the contrary, 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 legal 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.

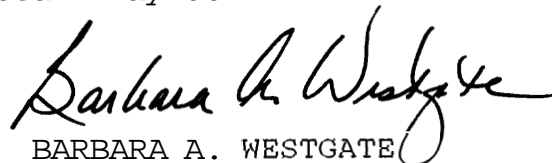
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The following members of the Board considered this application in Executive Session on 3 December 1998 under the provisions of AFI 36-2603:

Mrs. Barbara A. Westgate, Panel Chair  
Dr. Gerald B. Kauvar, Member  
Ms. Rita J. Maldonado, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 19 Mar 98, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPRR, dated 16 Apr 98.
- Exhibit D. Letter, AFBCMR, dated 4 May 98.

  
BARBARA A. WESTGATE  
Panel Chair