

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

JUL 24 1998

IN THE MATTER OF:

DOCKET NUMBER: 95-01732

COUNSEL:

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His nonselection by the CY94A Lieutenant Colonel Central Selection Board, which convened on 11 Oct 94, be set aside; the Promotion Recommendation Form (PRF) prepared for consideration by the CY94A Lieutenant Colonel Board be voided and replaced with a reaccomplished PRF; and, he be given Special Selection Board (SSB) consideration by the CY94A Lieutenant Colonel Board.

APPLICANT CONTENDS THAT:

His prior nonselection to the grade of lieutenant colonel was erroneous, inequitable, and unjustified because he was part of a suspect promotion process which has been officially acknowledged by the Air Force; that suspect process involved the abuse of the PRF. The PRF was improperly used in his case. In addition, he was denied proper PRF consideration because he was not permitted to function in a major's position, the limitation of his assignments due to his enrollment in the Exceptional Family Members Program (EFMP), and his graduate degree was improperly described.

In support of his appeal, the applicant provided his counsel's brief, copies of the original and reaccomplished PRFs, a statement from his former rater, and other documents associated with the matter under review.

Applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

Information extracted from the Personnel Data System (PDS) indicates that the applicant retired, effective 1 Sep 97, in the grade of major. He was credited with 18 years, 2 months, and 10 days of active duty service.

Applicant's OER/OPR profile since 1985 follows:

<u>PERIOD ENDING</u>	<u>EVALUATION</u>
2 Mar 85	1-0-1
2 Mar 86	1-0-1
21 Sep 86	0-0-1
16 Dec 86	Training Report
26 Jun 87	1-1-1
12 Jan 88	1-1-1
12 Jan 89	Meets Standards
6 Jul 89	Meets Standards
6 Jul 90	Meets Standards
6 Jul 91	Meets Standards
24 May 92	Meets Standards
24 May 93	Meets Standards
# 24 May 94	Meets Standards

Top Report - CY94A (11 Oct 94) Lieutenant Colonel Board.

AIR FORCE EVALUATION:

The Evaluation Boards Section, AFMPC/DPPPEB, reviewed this application and recommended denial. DPPPEB indicated that they verified that the Secretary of the Air Force Inspector General (SAF/IG) did conduct an inquiry which confirmed that inappropriate information and procedures were used in preparing PRFs within the Air Force Office of Special Investigations (AFOSI) management level; however, this investigation did not result in positive findings of the use of inappropriate "mini-boards" in the PRF process during the CY94 Lieutenant Colonel cycle.

DPPPEB noted the applicant's allegations that the senior rater used the ratee's age and duty position as discriminators in the PRF process, and possibly favored "younger" individuals or majors who were actually occupying "major" positions for advancement. According to DPPPEB, those allegations lack substantive evidence and, therefore, cannot be validated without senior rater support. Additionally, a letter of support provided by the applicant's rater stated of the senior rater, "I was aware of the absolute integrity with which Brigadier H--- approached the process of reviewing the Record of Performance of those eligible, and was satisfied that the Promote recommendation that he received was the result of a fair process."

DPPPEB indicated that the applicant challenged the final wording of the narrative portion of the PRF. They could only address the technical aspects of this complaint. First of all, the fact that the senior rater failed to adopt the draft recommendation as submitted by the rater is in total compliance with Air Force

directives. Although suggestions for PRF recommendations from subordinate supervisors are encouraged, the senior rater is solely responsible for completion of the PRF. Again, the applicant's rater stated his support of the senior rater's final decision.

DPPPEB noted the applicant's contention that he was unfairly advantaged by "specific wording," "Cryptic messages" and "gimmicks" contained on the PRF which "a selection board should not have to interpret." DPPPEB indicated that they have reviewed this PRF in detail and find no evidence to support this allegation. The only technical flaw contained in this PRF is the use of uppercase to add emphasis to the comments "A MUST FOR PROMOTION!", and "MUST PROMOTE NOW; SEND TO SSS!". Some senior raters and management used rank eligibles to strengthen a PRF (i.e. Ranks in the top 10 percent in this command). The OES Review Group looked at these "super promote" comments and noted they were not being used consistently throughout the Air Force. Although these statements were never prohibited or encouraged by the regulation, the group recommended that only senior raters, not management levels, could make such statements. They noted senior raters are solely responsible for making promotion recommendations.

Regarding the applicant's statement that the senior rater's recommendation was additionally arbitrary due to the fact that his professional contact with the applicant was virtually nonexistent, DPPPEB indicated that Air Force directives do not require the senior rater to have personal knowledge of the ratee. Although the governing regulation states the senior rater will be knowledgeable of the ratee's most recent duty performance, this information may be obtained from the record of performance, subordinate supervisors, or other reliable sources of information.

In DPPPEB's view, there has been no evidence provided by this applicant to substantiate receiving anything but the same fair and equitable treatment in the PRF process that was provided to each officer meeting the board. Although he did receive a "Definitely Promote" recommendation from his supervisor, a review of the Management Eligibility Listing (MEL) from that board reflects the senior rater had 25 IPZ eligibles with a DP allocation rate of 40%, which resulted in the award of 10 "DPs". Unfortunately, the senior rater's final decision did not result in a "DP" promotion recommendation for the applicant. However, this responsibility remains with the senior rater and the applicant's rater has provided his support for the senior rater in this decision.

According to DPPPEB, the original PRF should stand. However, if the board does rule to grant SSB consideration, they recommend the only change allowed be the correction of that portion of the narrative (Section IV) erroneously submitted in uppercase. The applicant has not provided any senior rater or management level

support in this application. Therefore, the PRF should stand as a "Promote".

A complete copy of the DPPPEB evaluation is at Exhibit C.

The Appeals and SSB Branch, AFPC/DPPPA, reviewed this application and recommended denial. DPPPA stated that the advisory opinion from AFPC/DPPPEB addressed all of the applicant's allegations and supporting documentation. However, as the applicant is also requesting promotion reconsideration by SSB, they added some additional comments.

DPPPA pointed out the necessity of having both senior rater and Management Level Evaluation Board (MLEB) president support in order to effectively challenge the validity of a PRF. In DPPPA's view, the applicant has not provided such support. Although he provided a letter from his rater, it only further enforced the integrity of the original PRF. Except for his own opinion, nothing was submitted to convince them that the original PRF was not accurate as rendered. 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. This evidence has not been submitted. Based on the lack of justification, they presumed the PRF was correct as originally rendered.

According to DPPPA, the applicant seemed to be under the mistaken impression that the selection board's review of an officer's record stops at the PRF and that they do not delve any further into the record. This could not be further from the truth. While it may be argued that the contested PRF was a factor in the applicant's nonselection, there was no clear evidence that the PRF negatively impacted his promotion opportunity. Central boards evaluate the entire officer record which include the PRF, OPRs/OERs, Training Reports (TRs), Letters of Evaluation (LOE), decorations, and the officer selection brief (OSB). This allows the board to assess the whole person factors, such as job performance, professional qualities, depth and breadth of experience, leadership, and academic and professional military education. While the PRF may not be worded the way the applicant would like to describe his accomplishments, the selection board had his entire record available for their perusal.

A complete copy of the DPPPA evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In a detailed response, counsel indicated that the recommendations for denial were based on the government's assertion that there was insufficient evidence to substantiate that the applicant received "anything but the same fair and equitable treatment in the PRF process that was provided to each

officer meeting the board." While it may be asserted that the applicant received equitable treatment at the hands of the board per se, the advisory opinions completely failed to address the nexus of the argument forming the basis of the appeal. That contention was that the actions of the senior rater prior to the board improperly, arbitrarily, and capriciously caused the applicant's opportunity for selection by the board to be greatly diminished.

Counsel's complete response is at Exhibit F.

Applicant provided a subsequent, dated 30 Apr 96, which is attached at Exhibit G.

By letter, dated 16 Oct 96, applicant provided a point paper which he believed would help facilitate the Board's understanding of the issues which have impacted his nonselection for promotion to the grade of lieutenant colonel. He indicated that, while the point paper was not intended to substitute for the material previously provided to the Board for consideration, he believed it would be useful in summarizing the most salient issues raised (Exhibit H).

ADDITIONAL AIR FORCE EVALUATION:

Pursuant to the Board's request, AFPC/DPPPA again reviewed this application and the documents initiated to date and again recommended denial. DPPPA indicated that they did not find anything requiring comment in addition to their original advisory opinion.

A complete copy of the DPPPA evaluation is at Exhibit I.

The Evaluation Boards Section, AFPC/DPPPEB, provided another advisory opinion and indicated that, based on the information provided, there was no evidence to support the applicant's claim that the "Promote" recommendation was unjustly given due to his assignment to Mountain Home AFB. Similarly, there was no proof that the applicant was unfairly represented by his senior rater. The original PRF should stand since the narrative comments in Section IV, Promotion Recommendation, provided an assessment of his performance which supported the "Promote" recommendation given in Section IX, Overall Recommendation.

A complete copy of the DPPPEB evaluation is at Exhibit J.

The Assignment Issues Division, AFPC/DPAIO, reviewed this application and indicated that they found no evidence which indicated the applicant was treated improperly based on the fact that his son required specialized care, nor was there any indication his son was not provided the care required by him during the applicant's tour at Mountain Home AFB.

A complete copy of the DPAIO evaluation is at Exhibit K.

The Staff Judge Advocate, AFPC/JA, reviewed this application and recommended denial. According to JA, the corrections process requires an applicant to bring evidence to the Board, not just reconfigured arguments. In their view, the applicant has not presented any new evidence warranting reconsideration of his request. Furthermore, there has been no legal error or an injustice in this case.

A complete copy of the JA evaluation is at Exhibit L.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to applicant on 11 Aug 97 for review and response. As of this date, no response has been received by this office (Exhibit M).

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. The applicant's complete submission was thoroughly reviewed and his contentions were duly noted. However, we do not find the applicant's uncorroborated assertions, in and of themselves, sufficiently persuasive to override the rationale provided by the Air Force offices of primary responsibility (OPRs). We did note that the contested PRF erroneously contained comments that were in the uppercase. However, in our view, this was a harmless error. In view of the above, and in the absence of sufficient evidence to support a determination that the applicant's record before the original selection board was so inaccurate or misleading that the board was unable to make a reasonable decision concerning his promotability in relationship to his peers, we agree with the recommendations of the OPRs and adopt their rationale 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 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 28 May 98, under the provisions of AFI 36-2603 :

Mr. Wayne R. Gracie, Panel Chair
Ms. Rita S. Looney, Member
Ms. Ann L. Heidig, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 28 Apr 95, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFMPC/DPPPEB, dated 28 Jul 95.
Exhibit D. Letter, AFPC/DPPPA, dated 21 Feb 96.
Exhibit E. Letter, SAF/MIBR, dated 4 Mar 96.
Exhibit F. Letter, counsel, dated 29 Apr 96.
Exhibit G. Affidavit, applicant, dated 30 Apr 96.
Exhibit H. Letter, applicant, dated 16 Oct 96, w/atch.
Exhibit J. Letter, AFPC/DPPPEB, dated 14 Jul 97.
Exhibit I. Letter, AFPC/DPPPA, dated 10 Jul 97.
Exhibit K. Letter, AFPC/DPAIO, dated 16 Jul 97.
Exhibit L. Letter, AFPC/JA, dated 31 Jul 97.
Exhibit M. Letter, SAF/MIBR, dated 11 Aug 97.


WAYNE R. GRACIE
Panel Chair