

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-01611

COUNSEL: NONE

FEB 25 1999

HEARING DESIRED: YES

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APPLICANT REQUESTS THAT:

He be reinst'ated to the highest rank that he held.

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APPLICANT CONTENDS THAT:

He was informed/told by his commander verbally that he would 'get his stripe back before retirement. She (Major M--- C. W---) stated it will be for two months. He also states that upon retirement he was unaware that a grade determination should have been done. He recently discovered he had this right and he is requesting this issue be done due to the actions that were taken against him. He states that he feels very unjust, as well as being misled by his commander, first sergeant, and supervisor.

In support of the appeal applicant submits a personal statement and a copy of his discharge package.

Applicant's complete submission is attached at Exhibit A.

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STATEMENT OF FACTS:

Applicant enlisted in the Regular Air Force on 31 May 1977.

Applicant was promoted to the grade of staff sergeant on 1 August 1985.

On 17 May 1991, applicant received an Article 15 for operating a vehicle while drunk, on or about 21 April 1991, at Brooks Air Force Base. He received punishment of forfeiture of \$250.00 pay per month for 2 months and 14 days extra duty.

On 19 August 1993, applicant received an Article 15 for being AWOL on or about 29 July 1993 and did so remain until about 2 August 1993. He was reduced to the grade of senior airman.

On 7 January 1994, applicant was notified that his commander was recommending him for discharge in accordance with AFR 39-10, under the provision of paragraph 5-47b, Conduct Prejudicial to Good Order and Discipline. Applicant acknowledged receipt of the notification, reflecting he consulted counsel.

On 12 January 1994, the commander initiated discharge action based upon a 17 May 1991 Article 15 for driving while intoxicated and a 19 August 1993 Article 15 for AWOL. The commander further recommended that applicant's discharge be characterized as Under Other Than Honorable Conditions. On 11 February 1994, applicant received additional notification that a third basis - dereliction of duty - would be added to the two already listed reasons for the discharge recommendation. After consulting legal counsel, applicant elected to exercise his right to a board hearing.

On 17 February 1994, an administrative discharge board was held at Brooks AFB. The board found that: (1) Applicant did absent himself without leave from his place of duty from 29 July 1993 to 2 August 1993; and (2) Applicant did operate a motor vehicle on Brooks AFB while drunk on or about 21 April 1991. (3) On the other hand, the board found that applicant was not derelict in the performance of his duties as alleged.

On 5 April 1994, the applicant requested consideration of lengthy service for having completed over 16 years of creditable service towards retirement eligibility.

On 1 June 1994, it was recommended that applicant not be granted lengthy service consideration and that he be discharged with a general discharge pursuant to AFR 39-10.

On 20 June 1994, the vice commander recommended applicant be separated with a general discharge.

On 12 September 1994, the Secretary of the Air Force denied lengthy service probation, however, approved a waiver of the restriction on early retirement for the applicant and approved his application for retirement effective on 1 October 1994.

The Secretary further found that the applicant did not serve satisfactorily in the higher grade of staff sergeant, within the meaning of Title 10, United States Code 8964.

EPR profile since 1990 reflects the following:

| <u>PERIOD ENDING</u> | <u>OVERALL EVALUATION</u> |
|----------------------|---------------------------|
| 2 Apr 90             | 3                         |
| 25 Nov 90            | 4                         |
| 25 Nov 91            | 3                         |
| 31 Jul 92            | 4                         |
| 31 Jul 93            | 3                         |
| 6 Jan 94             | 1                         |

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AIR FORCE EVALUATION:

The Retirements Branch, AFPC/DPPRR, reviewed the application and quotes the following:

a. Section **8964**, Title 10, United States Code allows the advancement of enlisted members to the highest grade in which they served on active duty satisfactorily as determined by the Secretary of the Air Force. The Secretary of the Air Force has delegated this authority to the Secretary of the Air Force Personnel Council (SAF/PC). On **12 September 1994**, the SAF/PC made the determination that the applicant did not serve satisfactorily on active duty in any grade higher than that in which he was retired—senior airman (SRA).

b. Section **8961**, Title 10, United States Code states, "Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Air Force...who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement."

They also state that the law which allows for advancement of enlisted members of the Air Force when their active service plus service on the retired list totals 30 years is very specific in its application and intent. On **12 September 1994**, the SAF/PC made the determination that the applicant did not serve satisfactorily on active duty in any grade higher than that in which he was retired—SRA. They further state that there are no other provisions of law that would allow for advancement of enlisted members. All criteria of the pertinent law (Section **8964**) have been met in this regard and no error or injustices occurred in the retirement, grade determination or advancement action. However, in accordance with the provisions of law, the applicant was correctly retired in the grade of SRA, which was the grade he held on the date of his retirement. He is not entitled to advancement to any higher grade as the Secretary has determined that he has not served satisfactorily in any higher grade while on active duty. Therefore, they recommend denial of applicant's request.

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

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluation and states that he is not in agreement with the decision made at this time on his request for highest grade held. He states that it is noted in the evaluation stating the denial was due to unsatisfactorily service. He asks, how can a member perform satisfactorily when

there was unsatisfactorily support given by his supervisors. He further requests that his request be reconsidered.

Applicant's complete response is attached at Exhibit E.

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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 not timely filed; however, it is in the interest of justice to excuse the failure to timely file. .
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force and adopt their rationale as the basis for the conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, 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.

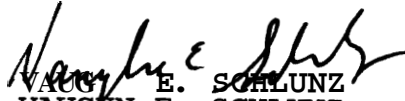
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The following members of the Board considered this application in Executive Session on 12 January 1999, under the provisions of AFI 36-2603:

Mr. Vaughn E. Schlunz, Panel Chair  
 Mr. Frederick R. Beaman 111, Member  
 Mr. Richard A. Peterson, Member  
 Ms. Phyllis L. Spence, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 11 May 98, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPRR, dated 8 Jul 98.
- Exhibit D. Letter, AFBCMR, dated 20 Jul 98.
- Exhibit E. Applicant's Response, dated 13 Aug 98.

  
VAUGHN E. SCHLUNZ  
VAUGHN E. SCHLUNZ  
Panel Chair