RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-01196

 INDEX CODE: 131.09

 XXXXXXX COUNSEL: NONE

 HEARING DESIRED: NO

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT REQUESTS THAT:

He be promoted to the grade of technical sergeant (TSgt – E-6) or a comparable rank designated to B-26 flight engineers during World War II.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT CONTENDS THAT:

He was a B-26 flight engineer between 1943 and 1945, and the Board should consider the experience required as a flight engineer for test flight operations as well as the amount of hours flown.

In support of his appeal, the applicant provides copies of a WD AGO Form 53-55, *Enlisted Record and Report of Separation Honorable Discharge*; his *Army of the United States Honorable Discharge Certificate*; numerous documents, pictures, and media correspondence pertaining to his experiences and training on the B-26 aircraft; his *Individual Flight Record*; medical documentation clearing him for flying duties following a minor aircraft crash; documentation from the Laughlin Heritage Foundation pertaining to accidents at Laughlin Field from March 1943 to March 1945; his WD AGO Form 100, *Army of the United States Separation Qualification Record*; and two certificates of aircraft training.

Applicant’s complete submission, with attachments, is at Exhibit A.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATEMENT OF FACTS:

The National Personnel Records Center (NPRC) advises the applicant's military personnel records were apparently destroyed by fire in 1973; therefore complete records could not be reconstructed. Documents provided by the applicant and his partially reconstructed records reflect he entered active duty with the Regular Army on 6 August 1942 and served as an aerial engineer with the Army Air Force (AAF) until being honorably discharged on 22 January 1946. The WD AGO Form 100 and the *Army of the United States Honorable Discharge Certificate* provided by the applicant reflect he was discharged in the grade of private first class (E-2), and Item 38 of the WD AGO Form 53-55 provided by the applicant reflects the highest grade he held while serving on active duty was private first class (E-2).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AIR FORCE EVALUATION:

AFPC/DPSOE recommends the requested relief be time barred. If the Board should decide to adjudicate the case, they recommend that it be denied based on its merits.

This request should be time-barred as it was not filed within the three-year time limitation. In addition to being untimely, the applicant’s request may also be dismissed under the equitable doctrine of laches, which denies relief to one who has unreasonably and inexcusably delayed asserting a claim. In this case, the applicant waited over 62 years after his discharge to petition the AFBCMR. He states the date of discovery of the alleged error was 1 October 2008, but provides no reason for his delay in submitting this application and merely asks the Board to consider the experience required as a flight engineer for test flight operations and the amount of hours flown when rendering their decision.

The applicant’s unreasonable delay has also caused prejudice to the Air Force as relevant records have been destroyed or are no longer available. Promotion policies in effect at that time are no longer available as promotion history files are only maintained for a period of 10 years which is considered an adequate period to resolve any promotion inquiries or concerns.

The rank structure during the time in question was private (E-1), private first class (E-2), corporal (E-3), sergeant (E-4), staff sergeant (E-5), technical sergeant (E-6), and master sergeant (E-7). Although there are no promotion orders in the applicant’s record, all documentation refers to him as either private or private first class. Therefore, he would have had to bypass three ranks in order to be promoted to the rank of technical sergeant, all in less than 3.5 years. They believe that supervisors and commanding officers at the time were in a better position to evaluate the applicant’s potential and eligibility for promotion, and the applicant’s delay regarding a matter now dating back over 62 years has greatly complicated their ability to determine the merits of his position.

The AFPC/DPSOE evaluation is at Exhibit C.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A complete copy of the evaluation was forwarded to the applicant on 12 June 2009, for review and comment, within 30 days. However, 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 not filed within three years after the alleged error or injustice was discovered, or could have been discovered, as required by Section 1552, Title 10, United States Code (10 USC 1552), and Air Force Instruction 36-2603. Although the applicant asserts a date of discovery which would, if correct, make the application timely, the essential facts which gave rise to the application were known to applicant long before the asserted date of discovery. Knowledge of those facts constituted the date of discovery and the beginning of the three-year period for filing. Thus the application is untimely.

3. Paragraph b of 10 USC 1552 permits us, in our discretion, to excuse untimely filing in the interest of justice. We have carefully reviewed the applicant's submission and the entire record, and we do not find a sufficient basis to excuse the untimely filing of this application. The applicant has not shown a plausible reason for delay in filing, and we are not persuaded the record raises issues of error or injustice which require resolution on the merits at this time. Accordingly, we conclude that it would not be in the interest of justice to excuse the untimely filing of the application.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of material error or injustice; the application was denied without a personal appearance; and 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 Docket Number BC-2009-01196 in Executive Session on 1 September 2009, under the provisions of AFI 36-2603:

 Mr. XXXXXXX, Panel Chair

 Ms. XXXXXXX, Member

 Mr. XXXXXXX, Member

The following documentary evidence was considered:

 Exhibit A. DD Form 149, dated 2 Oct 08, w/atchs.

 Exhibit B. Letter, NPRC, dated 2 Apr 09.

 Exhibit C. Letter, AFPC/DPSOE, dated 1 Jun 09.

 Exhibit D. Letter, SAF/MRBR, dated 12 Jun 09.

 XXXXXXXXXX

 Panel Chair