RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2009-03125

XXXXXXX COUNSEL: NONE

HEARING DESIRED: YES

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

APPLICANT REQUESTS THAT:

His mandatory separation date (MSD) be extended to give him the opportunity to adequately prepare for a promotion board.

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

APPLICANT CONTENDS THAT:

He was unfairly denied the opportunity to adequately prepare for the Calendar Year 2009 (CY09) Line and Non-line Lieutenant Colonel Promotion Selection Board when he was not notified that he was eligible to be considered until a month prior to the deadline for submission of his promotion package. Because his rater and most of the people responsible for putting the package together were deployed, it was impossible to adequately prepare an officer performance report (OPR) and promotion package in time for the board.

In support of his request, the applicant provides an expanded statement, copies of correspondence related to his non-selection for promotion, and various supporting statements.

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

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

STATEMENT OF FACTS:

Information extracted from the Military Personnel Data System (MilPDS) indicates the applicant served in the Kentucky Air National Guard (ANG) in the grade of major (O-4), effective and with a date of rank of 28 Mar 01.

According to information provided by the applicant, Headquarters, Kentucky ANG was notified of the applicant’s second non-selection for promotion to the grade of lieutenant colonel (O-5) on 17 Jun 08, which required his separation from the ANG. His MSD was established as 1 Sep 09, with instructions that he would continue to meet mandatory promotion boards until his MSD, provided his MSD was not within 90 days of the board convening date.

On 18 Jun 08, the applicant’s commander notified him that he was required to be separated on 1 Sep 09 due to being twice deferred for promotion to the grade of lieutenant colonel (O-5). There was no reference to his eligibility to continue to meet mandatory promotion boards.

On 12 Jan 09, the applicant was notified that he would be considered for promotion by the CY09 ANG Line and Non-line Lieutenant Colonel Promotion Selection Board, scheduled to convene on 20 Apr 09.

Information extracted from MilPDS indicates the applicant was discharged from the ANG on 1 Sep 09 and transferred to the Reserve Retired List, effective 2 Sep 09, awaiting retired pay at age 60.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force, which is attached at Exhibit C.

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

AIR FORCE EVALUATION:

NGB/A1POE recommends denial with respect to the applicant’s request for an MSD extension. Instead, they indicate he can file an application for a Special Selection Board (SSB) using a DD Form 149, *Application for Correction of Military Records*. In accordance with paragraph 6.3.2 of AFI 36-2501, *Officer Promotions and Selective Continuation*, “The AFBCMR can grant SSBs when they determine an officer’s nonselection for promotion resulted because of an error or injustice in the officer’s record.”

A complete copy of the NGB/A1POE evaluation is at Exhibit C.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to applicant on 16 Jul 10 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

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

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 an error or injustice warranting an extension of the applicant’s mandatory separation date (MSD). 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 office of primary responsibility and adopt its rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. We considered granting the applicant Special Selection Board (SSB) consideration due to the noted notification delay; however, he has not presented any evidence of a specific error in his records that would warrant an SSB. As such, there would be no new information available for an SSB to evaluate in considering his potential to serve in the higher grade. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting any relief. This decision does not preclude the applicant from submitting a request for reconsideration, provided he submits newly discovered relevant evidence.

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 RECOMMENDS 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 AFBCMR Docket Number BC-2009-03125 in Executive Session on 4 Nov 10 and 12 Jan 11, under the provisions of AFI 36-2603:

Mr. XXXXXXXXXX, Panel Chair

Ms. XXXXXXXXXX, Member

Ms. XXXXXXXXXX, Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2009-03125 was considered:

Exhibit A. DD Form 149, dated 10 Jul 09, w/atchs.

Exhibit B. Applicant's Master Personnel Records.

Exhibit C. Letter, NGB/A1POE, dated 27 Jan 10.

Exhibit D. Letter, SAF/MRBR, dated 16 Jul 10.

XXXXXXXXXX

Panel Chair