

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2011-03684

COUNSEL: NONE

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

His promotion dates for the following grades be corrected as follows:

- a. Second lieutenant (2Lt) as 13 May 02, rather than 19 Mar 03.
  - b. First lieutenant (1Lt) as 13 May 04, rather than 19 Mar 05.
  - c. Captain (Capt) as 13 May 06, rather than 19 Mar 07.
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APPLICANT CONTENDS THAT:

The Air Force Personnel Center (AFPC) corrected his records to reflect his promotion date to 1Lt as 13 May 04. However, on 23 Sep 10, AFPC notified him that an audit of captain officer records scheduled to meet the December 2010 Majors board resulted in an issue with his dates of rank and they were recalculated to reflect his DOR to 2Lt as 19 Mar 03 rather than 13 May 02, 1Lt as 19 Mar 05 rather than 13 May 05, and Capt as 19 Mar 07 rather than 13 May 06. The changes to his DORs by the Air Force Personnel Center (APFC) in 2004 has resulted in a delay in promotion of 10 months for each grade, delayed his promotion to major, created a financial debt, and has affected his past and future income potential.

In support of his request, the applicant provides an expanded statement and copies of leave and earnings statements (LES), reports extracted from the Military Personnel Data System (MilPDS), case management system (CMS) reports, and two supporting statements.

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

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STATEMENT OF FACTS:

On 26 Jan 04, the applicant entered active duty as a 2Lt with a DOR of 13 May 02. He was promoted to 1Lt on 13 May 04 and Capt on 13 May 06. An audit of the 2002 year group records resulted in the applicant's DORs being adjusted to reflect: 2Lt as 19 Mar 03, 1Lt as 19 Mar 05, and Capt as 19 Mar 07. He is currently serving on active duty in the rank of Capt.

According to information provided by the applicant, these adjustments to his DORs resulted in a debt to the government in the amount of \$14,685.23, which was subsequently waived by the Defense Office of Hearing and Appeals.

The remaining relevant facts pertaining to this application are described in the letters prepared by the appropriate offices of the Air Force, which are at Exhibits C, D, and E.

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AIR FORCE EVALUATION:

AFPC/DPSIPV recommends denial, indicating the applicant's DOR was originally established incorrectly by AFPC and corrected in accordance with the provisions of AFI 36-2604, *Service Dates and Dates of Rank*. An audit of officer records to meet the 2002 year group Major Promotion Board revealed the applicant received too much credit for the time he was in the Educational Delay Program; as a result, his promotion dates to 2Lt, 1Lt, and Capt were adjusted. While the applicant indicates that had he known of the effects on his DOR, he would have remained in the Reserve for another four months, the needs of the Air Force determine when a member comes on to active duty and staying in the Inactive Reserves may not have been an option for the applicant.

The complete AFPC/DPSIPV evaluation, with attachments, is at Exhibit C.

AFPC/DPSOO notes they do not calculate initial DORs to 2Lt. Based on the applicant's original DOR to Capt, he was eligible to meet the Calendar Year 2010 (CY10D) Major Central Selection Board. However, on 11 Aug 10, the Service Dates Verification Branch notified DPSOO that an audit conducted on the records of the 2002 year group revealed the initial DOR to 2Lt on at least 200 individuals were miscalculated, thus changing many officers' eligibility to major. In the applicant's case, his DORs were adjusted accordingly. Based on his new DOR to Capt, he was ineligible for promotion consideration by the CY10D board; however, he is now meeting the CY11D major board.

The complete AFPC/DPSOO evaluation is at Exhibit D.

AFPC/JA recommends denial noting the applicant has not established that an error occurred when his dates of rank were corrected. The applicant further believes that an injustice has occurred and will continue to occur since the Air Force incorrectly calculated his initial DOR in 2004. The applicant has failed to establish any injustice. The Federal courts have consistently defined "injustice" within the meaning of 10 USC 1552 as that behavior or action that rises to the level that "shocks the conscious." See *Sawyer v. United States*, 18 Ct. Cl. 800 (1989). JA further notes this is a high standard which requires more than merely deciding that an action taken might be viewed as unfair or which has had arguably adverse consequences. The Air Force has the right--and an obligation--to correct errors such as those that occurred in the applicant's case; and the applicant is not being treated differently than the other airmen whose records were also corrected. The applicant has not provided any evidence that he was treated differently than the other airmen similarly situated in the 2002 year group. In addition, one of his reasons he cites to support his claim of injustice has been mooted by the fact that the Defense Finance and Accounting Service (DFAS) has since waived the monies he owed the government.

The complete AFPC/JA evaluation is at Exhibit E.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 13 Jan 12, for review and comment within 30 days (Exhibit F). As of this date, this office has received no response.

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ADDITIONAL AIR FORCE EVALUATION:

AF/JAA recommends denial noting the applicant did not suffer an error or injustice as defined by the Federal courts. If the applicant's, DORs were changed back and he was promoted through an SSB, it may have ramifications for him when he meets the lieutenant colonel's board as he will have a shorter amount of time between promotions. This may lay open the possibility that if he does not get promoted in the future, he may request the Board to readjust his DORs back to the (erroneous) dates. The Board should consider before granting relief that all other similarly situated officers may be entitled to similar relief.

The complete AF/JAA evaluation is at Exhibit G.

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APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 11 Jun 12, for review and comment within 30 days (Exhibit H). As of this date, this office has received no response.

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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 an 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 AF/JAA and adopt their rationale as the basis for our 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 basis to recommend granting the relief sought in this application.
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THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of an error or an 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.

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The following members of the Board considered AFBCMR Docket Number BC-2011-03684 in Executive Session on 24 Apr 12 and 12 Jul 12, under the provisions of AFI 36-2603:

- , Panel Chair
- , Member
- , Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2011-03684 was considered:

- Exhibit A. DD Form 149, dated 16 Sep 11, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSIPV, dated 20 Oct 11, w/atchs.
- Exhibit D. Letter, AFPC/DPSOO, dated 5 Dec 11.
- Exhibit E. Letter, AFPC/JA, dated 6 Jan 12.
- Exhibit F. Letter, SAF/MRBR, dated 13 Jan 12.
- Exhibit G. Letter, AF/JAA, dated 7 Jun 12.
- Exhibit H. Letter, AFBCMR, dated 11 Jun 12.

Panel Chair