

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00498
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His Article 15, imposed on 30 January 2006, be removed from his Officer and Command Selection Record (OCSR) and he receive Special Selection Board (SSB) consideration by his In-the-Promotion Zone (IPZ) Calendar Year 2010D (CY10D) Major Central Selection Board (CSB).

APPLICANT CONTENDS THAT:

He received his Article 15 on 30 January 2006; however, it wasn't until six months later (21 August 2006), that he received notification of his commander's intent to file the Article 15 in his Officer Selection Record (OSR) and OCSR. This action was unjust and unwarranted because he did not do anything wrong after receiving the Article 15 punishment. His commander did not comply with the filing guidance in Air Force Instruction (AFI) 36-2608, paragraphs 2.5 and 2.5.4., and no justifiable reason was provided by leadership for the late decision except that they "forgot to do it." Because his commander neglected to act in accordance with filing procedures, his actions negatively impacted his selection for promotion to major by the CY10D Major CSB.

In support of his appeal, the applicant provides a personal statement, and copies of the Article 15, OSR/OCSR filing decision documents, an excerpt of AFI 36-2608, and an electronic communication.

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

STATEMENT OF FACTS:

The applicant is currently serving on active duty in the Regular Air Force in the grade of captain (O-3). On 30 January 2006, his commander imposed nonjudicial punishment on the applicant for wrongfully having sexual intercourse with a married woman not his wife, in violation of Article 134, Uniform Code of Military Justice (UCMJ). The applicant accepted the Article 15 and did not appeal. On 21 August 2006, the same commander notified the

applicant of his intent to file the Article 15 in the applicant's OSR and OCSR. On 25 August 2006, the applicant submitted matters regarding the decision, to include the timing of the decision, and asked the commander not to place the Article 15 in his OSR/OCSR. Additionally, on 28 August 2006, the applicant's Area Defense Counsel (ADC) provided comments to the commander regarding both the filing decision and the timing of the decision. After reviewing all of the matters provided, both the commander and the appellate/reviewing authority determined the Article 15 action should be placed in the applicant's OSR/OCSR.

The applicant has two non-selections to the grade of major by the CY10D and CY11D Major CSBs.

AIR FORCE EVALUATION:

AFPC/PB recommends denial. PB states that AFI 36-2608, Chapter 8, establishes procedures for filing Article 15's into the OSR. Specifically, paragraph 2.5 indicates a commander imposing punishment must decide at the time punishment is imposed whether or not to file the Article 15 in the OSR. In addition, the commander will process the Article 15 and filing decision letter in an expeditious manner.

PB indicates the commander's decision to file the Article 15 was untimely as is the explanation of "forgetting" regretful. Nonetheless, the imposing commander and reviewing authority heard all of the arguments regarding the decision and the timing of the decision and still opted to file the Article 15. Several subsequent senior Air Force officers have reviewed this case over the years and all of them have stood by the original decision to file. The applicant offers no evidence that the "timeliness" of the original decision negatively impacted his career, beyond the impact of the Article 15 itself. Additionally, even if the Article 15 were to be removed from his OSR, it is highly doubtful the applicant would have been competitive for promotion as the Article 15 and the behavior leading to the Article 15 are also documented in his referral Officer Performance Report (OPR) rendered for the period 13 September 2005 through 12 September 2006.

The complete PB evaluation is at Exhibit C.

AFPC/DPS00 states that their evaluation requires them to rely on opinions of other Air Force experts. As such, based on AFPC/PB's recommendation to deny the applicant's request to remove the Article 15 retroactively, they recommend denial for SSB consideration.

The complete DPS00 evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 10 April 2012, for review and comment within 30 days (Exhibit E). As of this date, this office has received no response.

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 an injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinions and recommendations of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. We note the applicant's contention that the untimely filing of his Article 15 in his OSR negatively impacted his selection for promotion to major. However, based on the fact his referral OPR, which was part of his record at the time he met the promotion board, mentioned the applicant's receipt of an Article 15 and the behavior leading to the Article 15, the untimely filing, did not introduce additional information not already available to the promotion board. As such, in our view, it cannot be concluded that filing the information in his OSR precluded him from receiving fair and equitable consideration for promotion. 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 that the evidence presented did not demonstrate the existence of 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 AFBCMR Docket Number BC-2012-00498 in Executive Session on 2 October 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered in connection with AFBCMR Docket Number BC-2012-00498:

- Exhibit A. DD Form 149, dated 6 Feb 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/PB, dated 16 Mar 12.
- Exhibit D. Letter, AFPC/DPSOE, dated 2 Apr 12.
- Exhibit E. Letter, SAF/MRBR, dated 10 Apr 12.

Panel Chair