

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01359
COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His records be corrected to reflect he was promoted to the rank of airman third class (A3C, E-2) at the completion of Basic Military Training.

APPLICANT CONTENDS THAT:

His promotion was mistakenly given to someone else. Had he been promoted on time, he would have been separated one rank higher (E-5 versus E-4).

In support of his request the applicant provides a personal statement, copies of his DD Form 214, *Report of Separation from the Armed Forces of the United States*, and available copies of his military records.

His complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

On 17 Jul 1950, the applicant enlisted in the Regular Air Force.

On 4 Dec 1953, the applicant was honorably discharged in the rank of airman first class (A1C, E-4). He served 3 years, 4 months, and 18 days on active duty.

The remaining relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force at Exhibit B.

THE AIR FORCE EVALUATION:

AFPC/DPSOE recommends the applicant's request be time barred. Should the Board choose to decide the case, DPSOE recommends it be denied based on lack of official documentation. DPSOE states the application has not been filed within the three-year time limitation imposed by AFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. In addition to being untimely under the statute of limitations, 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. Laches consists of two elements: Inexcusable delay and prejudice to the Air Force resulting there from. In the applicant's case, he waited more than 58 years after discharge before he petitioned the AFBCMR.

Due to the passage of time and lack of promotion history files, DPSOE is unable to determine why the applicant was promoted to his various ranks on the dates reflected in his record. However, the total time-in-grade required to be considered for promotion from E-1 to E-4 was 30 months, and the applicant was promoted at the 31-month timeframe. In the absence of any documentation to the contrary, DPSOE has no choice but to assume he was promoted when eligible and recommended, and he was discharged in the correct grade.

The complete DPSOE evaluation is at Exhibit B.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

On 8 Aug 2012, a copy of the Air Force evaluation was forwarded to the applicant for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit C).

FINDINGS AND CONCLUSIONS OF THE BOARD:

After careful consideration of the evidence of record, we find the application untimely. The applicant did not file within three years after the alleged error or injustice was discovered as required by Title 10, United States Code, Section 1552 and Air Force Instruction 36-2603. The applicant has not shown a sufficient reason for the delay in filing on a matter now dating back over 58 years, which has greatly complicated the ability to determine the merits of his position. We are also not persuaded

the record raises issues of error or injustice which require resolution on the merits. He has not provided evidence that supports he is the victim of error or injustice. Therefore, in view of the above, we cannot conclude it would be in the interest of justice to excuse the applicant's failure to file in a timely manner.

DECISION OF THE BOARD:

The application was not timely filed and it would not be in the interest of justice to waive the untimeliness. It is the decision of the Board, therefore, to reject the application as untimely.

The following members of the Board considered Docket Number BC-2011-2012-01359 in Executive Session on 15 Nov 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered in AFBCMR BC-2012-01359:

- Exhibit A. DD Form 149, dated 8 Mar 2012, w/atchs.
- Exhibit B. Letter, AFPC/DPSOE, dated 6 Jul 2012.
- Exhibit D. Letter, SAF/MRBR, dated 8 Aug 2012.

Panel Chair