

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01967
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

He be promoted to the rank of senior master sergeant (SMSgt, E-8).

APPLICANT CONTENDS THAT:

He was informed by the Personnel office that he was selected for promotion to SMSgt. At the same time he was informed that he had an assignment to Vietnam.

He had not seen his relatives for over 20 years; therefore he refused the assignment and was subsequently not promoted to the rank of SMSgt.

The applicant provides no documents in support of his request.

His complete submission is at Exhibit A.

STATEMENT OF FACTS:

The applicant entered active duty on 9 Dec 1951 and was progressively promoted to the rank of master sergeant (MSgt, E-7) effective 1 Mar 1969. His DD 214, *Armed Forces of the United States Report of Transfer or Discharge*, reflects he was honorably retired in the rank of MSgt after serving 20 years, 3 months, and 19 days of active service.

THE AIR FORCE EVALUATION:

AFPC/DPSOE recommends denial. DPSOE states although they cannot determine whether the applicant was actually considered and selected for promotion to SMSgt, they can verify that he would have become ineligible for promotion due to his declination of assignment to Vietnam.

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 40 years after retirement to petition the AFBCMR. His unreasonable delay has also caused prejudice to the Air Force as relevant records have been destroyed or are no longer available, memories have failed and witnesses are unavailable.

A review of the applicant's record reveals no score notice or orders promoting him to the grade of SMSgt. DPSOE was also unable to verify whether the applicant was considered for promotion to SMSgt under WAPS as his promotion history files are only maintained for a period of 10 years as outlined in AFR 4-20, *Records Disposition Schedule*. Ten years is generally considered an adequate period to resolve any promotion inquiries or concerns. However, if the applicant was selected for promotion to SMSgt, he would have incurred a two year Active Duty Service Commitment (ADSC) from his projected "pin-on" date in accordance with AFR 39-29, *Promotion of Airmen*. He states that he would have extended to accept the promotion as required, but did not want to accept a pending assignment to Vietnam. When he declined the assignment, he became ineligible for promotion.

The complete DPSOE evaluation is at Exhibit C.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

He was told that if he accepted the promotion to SMSgt he would have to be reassigned. He assumed it would be to Vietnam since he had not previously been assigned there.

He wasted precious time in submitting his application; however, it is not necessary to insult him by saying that his unreasonable delay caused prejudice to the Air Force. The best years of his life were in the Air Force. He cannot be blamed for his records not being available. He is 80 years old; however, his memories have not failed him.

All involved are aware that there was no order involving his promotion because it was not made official. He was considered even if his records were not located. He did not refuse retention and the recommendation for denial of his request is not justified. There are many active duty members who refused to go to Vietnam. There could never be a better American than himself.

His complete submission is at Exhibit E.

FINDINGS AND CONCLUSIONS OF THE BOARD:

After careful consideration of the evidence of record and the applicant's rebuttal to the Office of Primary Responsibility (OPR) advisory, 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 40 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. Based on the applicant's submission, it would appear that even if he was selected for promotion at the time, he was unwilling to accept an assignment to Vietnam. As such, pursuant to the policy at the time, he became ineligible for promotion. He has not provided evidence that supports he is the victim of error or injustice. The applicant's service to his country is noted and our decision in no way lessens our regard for his service. However, 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-2012-01967 in Executive Session on 18 Oct 2012, under the provisions of AFI 36-2603:

, Chair
, Member
, Member

The following documentary evidence was considered in AFBCMR BC-2012-01967:

- Exhibit A. DD Form 149, dated 20 Apr 2012.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPSOE, dated 8 Jun 2012.
- Exhibit D. Letter, SAF/MRBR, dated 20 Jun 2012.
- Exhibit E. Letter, Applicant, dated 9 Jul 2012.

Chair