

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-02914
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

He be promoted to the rank of Chief Master Sergeant (CMSgt) effective and with a date of rank (DOR) of 1 Mar 99.

APPLICANT CONTENDS THAT:

1. He was hired by a general for a supervisory military personnel specialist job. Typically, the hiring official for the position was the Military Personnel Flight (MPF) commander; however, it was elevated to the wing level.

2. On 1 Jul 97, AFRC/DPS provided guidance on the MPF reorganization which required one of two positions to move to the Education and Training section. He was moved into the newly created position and a CMSgt was moved into his old position. The CMSgt held the required 3S2X1 (Education and Training), Air Force Specialty Code (AFSC) for the new position and the guidance stated to consider selecting the most qualified member, preferably someone who has previously held the 3S2X1 AFSC. He did not hold the 3S2X1 AFSC and would have had to attend school for the position. The guidance also stated a college degree was needed for position and a waiver of this requirement could be sought. He was informed he was being placed in the Education and Training position due to him having a college degree. He was penalized for having a college degree.

3. His organization has continued to place less qualified minorities in positions where they can be promoted as opposed to promoting those who are doing everything they can to be promoted.

4. The grade of his original position was an E-9 and had he stayed in that position he would have been promoted to CMSgt on 1 Mar 99.

5. The CMSgt was eventually moved for not being able to perform the duties of the position and another minority, junior to him, was placed into the position and promoted to the grade of CMSgt. For more than a decade, commander and first sergeant positions in his squadron have been filled by females.

6. He has appealed to every known avenue to have this reviewed and corrected. Each was met with rejection and retaliation to the point he feared his career would be terminated before he retired.

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

STATEMENT OF FACTS:

According to ARPC memorandum dated 29 Oct 11, the applicant was previously promoted to the rank of chief warrant officer (W-2) and served satisfactorily in that grade.

On 2 Aug 12, the applicant was released from the Air Force Reserves and transferred to the Retired Reserve Section.

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:

AFRC/A1K recommends denial. A1K states it is solely at the discretion of the assigned supervisor/designee to recommend promotion to the promotion authority when an individual has met the eligibility requirements for promotion to the next higher grade.

The applicant has not provided any supporting documentation (i.e. signed promotion roster by the promotion authority or promotion orders) to sustain he should have been promoted to the grade of CMSgt or that he was ever selected for promotion by the promotion authority.

The complete A1K evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The first paragraph of the advisory opinion states that he claims he should have been promoted on 1 Mar 99, to the rank of CMSgt due to him holding the position. However, he contends a management directed reassignment caused him to lose eligibility for promotion.

The second paragraph of the advisory opinion states that he had not provided any supporting documentation (i.e. signed promotion roster by the promotion authority or promotion orders) to

sustain his claim he should have been promoted to the rank CMSgt. He agrees. However, he hopes the additional information he provides will substantiate his claim.

He was told "you will retire as a Chief Warrant Officer-2 (CWO-2) and we do not want CMSgt XXXXX to lose a stripe." CMSgt XXXXX could have and should have been placed into the Education and Training position. Furthermore, the reorganization guidance stated the wing commander could have authorized an over grade in accordance with AFI 36-2215 {sic}, *Assignment within the Reserve Components*. Even if CMSgt XXXXX had to remove a stripe for the Education and Training position, she still would have retired at her highest grade held - CMSgt, just like he retired as a CWO-2.

Based on his interpretation of the reorganization implementation guidance, the applicant states he should have never been moved in the Education and Training position and forced to retrain into another AFSC. In essence, he was penalized for self-improvement. Since CMSgt XXXXX possessed the 3S2X1 AFSC, she should have been moved into the position and a degree waiver should have been requested.

Lastly, if he had remained in the position for which he interviewed and was selected, he would have been promoted to CMSgt on 1 Mar 99. Unfortunately, he had to start training at the one-skill level and lost his promotion eligibility under the unit vacancy promotion system.

In further support of his appeal the applicant provides a three-page supplemental statement, AF Form 2096, *Classification/On-The-Job Training Action*, and various other documents in support of his request.

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

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of 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 the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. We note the applicant states a management directed assignment caused him to

lose his eligibility for promotion to the grade of CMSgt. However, in the absence of evidence that supports the commander exceeded his discretionary authority and that he would have been selected for promotion to the grade of CMSgt, we find the applicant has failed to sustain his burden of proving that he has been the victim of an error or injustice. Therefore, in view of the above and in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

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 Docket Number BC-2012-02914 in Executive Session on 28 Mar 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 26 Jun 12, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFRC/A1K, dated 18 Sep 12.
- Exhibit D. Letter, SAF/MRBR, dated 24 Sep 12.
- Exhibit E. Letter, Applicant, dated 17 Oct 12.

Panel Chair