

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 01-5440**

**September Term, 2002**

**Filed On: April 22,**

**2003** [745119]

Eddi Z. Zyko,

Appellant

v.

Department of Defense and

Department of the Army,

Appellees

Appeal from the United States District Court for the District of Columbia

Before: EDWARDS, RANDOLPH, and TATEL, *Circuit Judges*

## **J U D G M E N T**

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs by the parties and oral arguments of counsel. It is

**ORDERED AND ADJUDGED** that the District Court's dismissal of appellant's complaint is hereby affirmed. Appellees have admitted error in this case: Although the Selected Reserve Transition Program requires that certain members of the Selected Reserve whose units were deactivated should be given priority for affiliation over other equally qualified applicants for vacancies with Selected Reserve Units, the proper procedures were not in place to ensure that appellant would receive such priority. However, the error in this case was harmless, because the undisputed record indicates that appellant would not have been assigned by a General Officer Assignment Selection Board even if the proper procedures had been in place. In two instances, better qualified candidates were selected over appellant, so appellant was not entitled to a priority as an "equally qualified" applicant; and in one instance, in which appellant was initially selected, the vacancy failed to materialize, because the incumbent's tour of service was extended. Therefore, the judgment for appellees was fully warranted.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

*Per Curiam*

**FOR THE COURT:**

Mark J. Langer, Clerk

By:

Michael C. McGrail  
Deputy Clerk