

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 02-5063

September Term, 2002

Filed On: May 14, 2003 [749188]

John F. Schamburg,

Appellant

v.

Thomas White, Secretary of the Army,

Appellee

Appeal from the United States District Court for the District of Columbia
(Civil Action No. 00-2235)

Before: GINSBURG, *Chief Judge*, and SENTELLE and GARLAND, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court and on the briefs of the parties. The court has determined that the issues presented occasion no need for a published opinion. It is

ORDERED AND ADJUDGED that the judgment of the District Court be AFFIRMED. The Secretary of the Army did not act contrary to law or in an arbitrary and capricious manner by denying the promotion of Colonel Schamburg to the rank of brigadier general. Moreover, “[a]ppellant’s request for retroactive promotion falls squarely within the realm of nonjusticiable military personnel decisions. To grant such relief would require us to second-guess the Secretary’s decision about how best to allocate military personnel in order to serve the security needs of the Nation.” *Kreis v. Secretary of the Air Force*, 866 F.2d 1508, 1511 (D.C. Cir. 1988).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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 disposition of any timely petition for rehearing or petition for 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:

Deputy Clerk