

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2024

DOCKET NUMBER: AR20220008343

APPLICANT REQUESTS: correction of his records as follows:

- show there was no break in service from 20010201-20081202 (1 February 2001 to 2 December 2008)
- award of a Military Education Waiver
- promotion consideration to lieutenant colonel (LTC and colonel (COL) by a special selection board (SSB) under the first fiscal years (FY) for which he would have been eligible (FY04 and FY09 respectfully)

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- Military Personnel Message 98-65, 20 January 1998, FY98 Major, Army Competitive Category Promotion Board Zones of Consideration
- MILPER Message 04-036, g 04-236, Lieutenant Colonel, Army Operations, Operational Support, Information Operations, and Institutional Support Zones of Consideration
- MILPER 08-321, 17 December 2008, FY2009 Colonel, Army Promotion List Army National Guard, Army Reserve Active Guard Reserve and Army Reserve Non-Active Guard Reserve, Competitive Categories, Promotion Selection Boards
- Promotion Order to Major (MAJ), published 22 March 2022, effective date of rank 30 June 1999
- Email Exchange with the U.S. Army Human Resources Command (HRC)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states he wants his military records be corrected as recommended by DA Promotions Branch, HRC to show there was no break in service from 20010201-20081202 and that he be awarded a Military Intermediate Level Education Waiver so he may be considered for promotion by a special selection board (SSB) to both Lieutenant Colonel and Colonel under the first years for which he would have been eligible (FY04 and FY09 respectfully). He believes the record to be in error because by initially being omitted from the FY98 Major, Army Competitive Category promotion board (corrected and noted in the ABCMR Record of Proceedings in Docket Number AR20190009737), it created a break in service from 20010201-20081202 which had a cascading effect of not being considered for the requisite level of professional military education for promotion to both LTC and COL.

3. The applicant adds in a personal statement:

a. He was incorrectly omitted from the FY98 Major, Army Competitive Category promotion board (see MILPER Message 98-065). Although corrected as directed by the ABCMR Record of Proceedings for Docket Number AR20190009737 (see attached Record of Proceedings) and subsequently promoted to major (MAJ) with a date of rank of 30 June 1999, the original omission created a cascading effect that resulted in a break of service from 20010201-20081202 as well as not being considered for the requisite level of professional military education for LTC and COL.

b. The omission prevented his consideration for assignment to key developmental and broadening positions as a MAJ from 1998 to when he would have been considered for promotion to LTC in FY04. The cascading effect continued as he was subsequently omitted from the FY04 LTC, Army (Operations (OP), Operational Support (OS), Information Operations (IO) and Institutional Support (IS)) promotion board (see MILPER Message 04-036); subsequently omitted from FY09, Colonel (COL), Army National Guard Of The United States (ARNGUS), Army Reserve Active Guard Reserve (AR AGR), And Army Reserve Non-Active Guard Reserve (AR NON-AGR), Army Promotion List (APL), Competitive Categories, Promotion Selection Board (see MILPER Message 08-321).

c. He requests that his military records be corrected as recommended by DA Promotions Branch, Human Resources Command (HRC) (see attached email from HRC) to show there was no break in service from 20010201-20081202 and that he be awarded a MILED Waiver for promotion consideration by a SSB to both LTC and COL under the first years for which he would have been eligible (FY 04 LTC OP, OS, IO and IS promotion board, and FY09 COL APL ARNGUS, AR AGR and AR Non-AGR, Competitive Categories Promotion

d. He believes the record to be in error because by initially being omitted from the FY98 Major, Army Competitive Category promotion board (noted and corrected in the ABCMR Record of Proceedings in Docket Number AR20190009737 and subsequent promotion via the ABCMR directed SSB), it created a break in service from 20010201-20081202 which had a cascading effect of not being considered for the requisite level of professional military education for promotion to LTC and COL.

e. Chronology (Promotions, required PME (professional military education) and significant assignments)

- 19820401 – BASD (basic active service date)
- 19870523 – Commissioned 2LT (second lieutenant)
- 19880527 – Graduated Infantry Officer Basic Course
- 19881018 – Assigned to HHC (Headquarters and Headquarters Company) TF 1-32 (Task Force 1st Battalion, 32nd Infantry) and assumed duties as the BN (battalion) Heavy Mortar Platoon Leader
- 19900203 – Promotion to 1LT (first lieutenant)
- 19900306 – Assigned to 3rd Platoon, C Company, TF 1-32 and assumed duties as a Bradley Platoon Leader
- 19910305 – Assigned to C Company, TF 1-32 and assumed duties as the Company Executive Officer
- 19920616 – Graduated Infantry Officer Advanced Course
- 19920701 – Promoted to CPT (captain)
- 19920801 – Released from Active Duty and entered the IRR (Individual Ready Reserve)
- 19990630 – Promoted to Major //See new promotion order B-03-201413//
- *20040224 – FY04 Lieutenant Colonel, Army (Operations (OP), Operational Support (OS), Information Operations (IO) and Institutional Support (IS)) promotion board (PZ) //Omitted from the promotion board//
- *20051205 – FY05 Lieutenant Colonel Army Competitive Category Centralized Selection List - Command and Key Billet //Omitted from the promotion board//
- 20081203 – Appointed as a Captain in the [REDACTED] ARNG and assumed duties as the J6, JFHQ(Joint Force Headquarters) (an O-5 billet)
- 20090501 – Assigned to the 3rd BDE, 75th TC (USAR) as a Captain and assumed duties as the Chief of Training (an O5 billet)
- *20090707 – FY09, Colonel (COL), Army National Guard of The United States (ARNGUS), Army Reserve Active Guard Reserve (AR AGR), And Army Reserve Non- Active Guard Reserve (AR NON-AGR), Army Promotion List (APL), Competitive Categories, Promotion Selection Board (PZ) //Omitted from promotion board//

- 20100529 – Assigned to HHC, Combined Joint Special Operations Task Force – Afghanistan (CJSOTF-A) as a Captain and assumed duties as the HHC Company Commander (FWD)/BDOC Commander (an O4 billet)
- 20110529 – Re-assigned to HHC, Great Lakes Division (f/k/a 3rd BDE), 75th TC (USAR) as a Captain and assumed duties as the G33 Operations Officer (an O5 billet)
- 20120529 – Assigned to the HHC, Great Lakes Division, 75th TC (USAR) as a Captain and assumed duties as the Scenario Development Officer and Section Executive Officer (an O5 billet)
- 20140804 – Assigned to 1st BN, Army Reserve Careers Division (USAR) as a Captain and assumed duties as the Battalion Executive Officer (an O4 billet)
- 20170427 – Assigned to HHC, Military Intelligence Readiness Command (MIRC) (USAR) as a Major and assumed duties as the MIRC G33 (an O5 billet)
- 20170817 – Graduated CGSOC (Satellite - FBVA)
- 20180615 – Assigned to HHD, 826th Military Intelligence BN (Interrogation) as a Major and assumed duties as the Battalion Commander (an O5 billet)
- 20190407 – Assumed duties as the Battalion Executive Officer for the 826th MI BN (an O4 billet)
- 20210430 – Assumed duties as the Assistant Chief of Staff – J22 (Reserve Forces Office), for USAICoE (an O6 billet)

4. A review of the applicant's service records shows:

- a. Having had prior enlisted service, he executed an oath of office and was appointed a Reserve commission on 23 May 1987.
- b. He entered active duty on 7 February 1988. He completed the Infantry Officer Basic Course, and he was promoted to CPT on of 1 July 1992.
- c. He was honorably released from active duty on 31 July 1992 and transferred back to the U.S. Army Reserve (USAR) (Reinforcement) under the provisions of Army Regulation 635-100 (Personnel Separations – Officer Personnel) Chapter 3 Section XVI (Voluntary Release from Active Duty).
- d. On 6 December 2000, the U.S. Army Reserve Personnel Command published Orders Number D-12-064455) honorably discharging him from the USAR Control Group (Reinforcement) effective 1 February 2001 at the rank of CPT.
- e. The applicant had a break in service from 1 February 2001 to 1 August 2003.

- f. On 2 August 2003, following this break in service, the applicant enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) at the rank of Sergeant (SGT)/E-5.
- g. On 17 May 2004, HRC notified the applicant that a Department of the Army Special Selection Board was convened to consider special selection board requests. The special selection board (SSB) examined the performance portion of his official military personnel record. He was considered under 1999 criteria, but unfortunate were not selected for promotion by the board. His non-selection by the special selection board does not constitute an additional failure of selection but is confirmation of the action of the regularly convened board. The specific reasons for his non-selection are not known, as selection boards do not record their reasons for selection or non-selection.
- h. On 6 July 2004, the applicant was ordered to active duty as an enlisted Soldier, in support of Operation Enduring Freedom (no deployment).
- i. On 8 January 2005, he was honorably released from active duty and discharged from the ARNG under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations) Chapter 6 Paragraph 6-3(b.) Hardship at the rank of SGT.
- k. The applicant had a break in service from 9 January 2005 to 2 December 2008.
- l. On 14 January 2006, HRC informed him that a Department of the Army Reserve Components Mandatory Selection Board was convened on 10 January 2006 to consider officers of his grade for promotion. The board examined the performance portion of your official military record according to the Memorandum of Instructions provided by the Secretary of the Army. He was considered but, unfortunately, was not among those selected for promotion by the board.
- m. On 3 December 2008, the applicant was appointed as a ARNG commissioned officer in the ARNG following a favorable recommendation for reappointment as a commissioned officer at the rank of CPT by the May 2006 Army Special Review Board; his two-time non-selection for promotion waiver request was approved.
- n. On 30 March 2009, the National Guard Bureau published Order 71 AR extending him federal recognition of initial appointment as a commissioned officer in the [REDACTED] Army National Guard ([REDACTED] ARNG) effective 3 December 2008.
- o. On 22 April 2009, by Orders 112-052, the applicant was separated from the [REDACTED] ARNG and transferred into the USAR Control Group (Reinforcement) effective 23 April 2009.

p. On 30 April 2009, by authority of Orders C-04-908464, the applicant was reassigned from the USAR Control Group to a Troop Program Unit (TPU) of the USAR effective 29 April 2009.

q. On 6 July 2009, he was ordered to Active Duty Operational Support at the rank of CPT, and on 28 May 2010, he was released from active duty at the rank of CPT.

r. On 26 September 2011, by authority of Orders R-09-190400) he was ordered to active duty in the Active Guard Reserve (AGR) program effective 29 September 2011.

s. On 16 October 2015, the U.S. Army Human Resources Command published Orders Number B-10-504552) promoting the applicant to MAJ in the USAR with an effective DOR of 1 October 2015.

t. On 26 April 2017, the applicant completed the Military Intelligence Officers Captains Career Course (CCC) and on 17 August 2017 he completed the Command and General Staff Officers Officer Course (CGSOC).

5. In July 2019, the applicant petitioned the ABCMR requesting consideration for promotion to MAJ by a Special Selection Board (SSB).

a. He argued that he was mistakenly omitted from the FY98 Major Army Competitive Category Promotion Board. He contests that this omission deprived him of the opportunity to be promoted resulting in a cascading effect causing a break in service from 1 February 2001 through 2 December 2008, not being considered for the requisite level of professional military education for promotion to LTC nor considered for assignment to a key developmental and broadening assignment as a MAJ from 1998 to when he would have been considered for promotion to LTC in FY05. This cascading effect continued as he was subsequently omitted from the FY05 LTC promotion board, the FY07 LTC Army Competitive Category Centralized Selection List – Command and Key Billet, the FY06 SSC Attendance Slate for AY06/07, the FY10 COL ARNG, AGR and Army Reserve Non-AGR), APL, Competitive Categories PSB.

b. On 22 May 2021, after reviewing the application and all supporting documents, the Board found relief is warranted.

(1) The Board noted that the applicant reports that HRC has confirmed he was eligible for consideration for promotion to MAJ in 1998 but was not considered. The Board found this evidence sufficient to support a recommendation for relief. The Board determined the applicant's record should be referred to an SSB for the FY98 Army Competitive Category Promotion Board for MAJ. If selected by the SSB, the Board recommends that the applicant submit a new application to this Board to determine if any further relief is warranted.

(2) The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by referring his record to a Special Selection Board to be considered for promotion to major/O-4 under the applicable criteria for Fiscal Year 1998.

6. As a result of the ABCMR's decision, the applicant was considered by a special selection board (2021RS211102 that adjourned on 16 November 2021. The SSB selected him for promotion to Major.

7. Prior to HRC executing the applicant's promotion to MAJ by the SSB, on 29 September 2021, HRC published Orders B-09-104945 promoting hm to LTC with an effective date and date of rank as 1 October 2021.

8. On 22 March 2022, the U.S. Army Human Resources Command published Orders B-03-201413 promoting him to Major with an effective date and date of rank as 30 June 1999.

9. On 6 November 2023, following approval of his retirement, the U.S. Army Human Resources Command published Orders 310-0002 retiring him from active duty effective 31 December 2023 and placing him on the retired list in the rank of LTC effective 1 January 2024.

10. He was honorably retired on 31 December 2023. His DD Form 214 for this period of service shows his retirement is in accordance with Army Regulation 600-8-24 (Officer Transfers and Discharges) due to reaching maximum years of service in grade. He completed 12 years, 3 months, and 2 days of active service and he had 7 years, 9 months, and 25 days of prior active service. This DD Form 214 lists his rank/grade as LTC/O-5 and effective date pf pay grade as 1 October 2021.

11. On 9 January 2024, the U.S. Army Human Resources Command provided an advisory opinion in the processing of this case. An HRC advisory official stated:

a. Based on a review of our records and after careful consideration of all the information that was provided, a Special Selection Board (SSB) for the FY04 LTC APL and FY09 COL APL can only be granted if relief is granted by the ABCMR. On March 25, 2022, an HRC official (Mr. [REDACTED]) advised the applicant via email to " ... go back to the ABCMR and ask them to amend your original directive to state that if selected under the FY98 criteria, that the records be corrected to show no break in service ... ". Because of the two breaks in service periods from 2001020-20030801 and 20050109-20081202, the applicant was not promotion eligible for the FY04 LTC APL. To be eligible for the FY09 COL APL, the applicant would have had to be promotable under the FY04 to LTC. The reason he was not eligible was due to entering the Army National

Guard as an enlisted Soldier with the rank of Sergeant (E-5) on August 2, 2003. Further, to be eligible for promotion consideration, in accordance with 10 U.S.C, §14301, an officer must be on the reserve active-status list (RASL) for a minimum of one year before they are eligible for promotion to the next grade.

b. To grant an SSB under the FY04 LTC APL, relief must be granted to direct the correction of military records reflecting no break in service. Additionally, regarding the Military Education (MILED) waiver, the applicant completed the Command and General Staff College (CGSC) on August 17, 2017, however, the board file for an SSB under the FY04 criteria would mirror the board file at the time of the original board, which at the time, was not MILED qualified. This is the reason for the waiver.

12. The applicant was provided with a copy of this advisory opinion to give him an opportunity to respond and/or provide a rebuttal.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the Human Resources Command – Officer Promotions-Special Actions advisory opinion, the Board concurred with the advising official finding sufficient evidence to amend the applicant's original directive to state that if selected under the FY98 criteria, that the records be corrected to show no break in service. Because of the two breaks in service periods from 2001020-20030801 and 20050109-20081202, the applicant was not promotion eligible for the FY04 LTC Army Promotion List (APL). To be eligible for the FY09 COL APL, the applicant would have had to be promotable under the FY04 to LTC.

2. The Board determined based on the advisory opine, the applicant was not eligible due to entering the Army National Guard as an enlisted Soldier with the rank of Sergeant (E-5) on August 2, 2003. Further, to be eligible for promotion consideration, in accordance with 10 U.S.C, §14301, an officer must be on the reserve active-status list (RASL) for a minimum of one year before they are eligible for promotion to the next grade. Based on the preponderance of evidence, the Board granted relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by directing the amendment of the applicant's original directive by awarding a military educational waiver and forwarding the applicant's record to an FY98 SSB and, if selected under the FY98 criteria, the records be corrected to show no break in service.

2/6/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. MILPER Message 98-065 (Fiscal Year (FY) 98 Major (MAJ), Army Competitive Category Promotion Board Zones of Consideration) dated 20 January 1998 reflective of

the promotion to MAJ selection consideration criteria. Eligible officers to be considered have the following active duty (DOR) to CPT:

- 1 March 1992 or earlier (above the zone)
- 2 March 1992 through 1 February 1993 (primary zone)
- 2 February 1993 through 1 February 1994 (below the zone)

The name and DOR of the junior and senior officers in the promotion zone were indicated on this document. His name is not reflected as considered. Further noted is the statement that officers with an approved separation date within 90 days of the board convene date (separation dates through 27 July 1998) were not eligible for consideration.

3. MILPER Message 05-014 (FY05 Lieutenant Colonel (LTC) Army (Operations (OP), Operational Support (OS), Information Operations (IO), and Institutional Support (IS) Zones of Consideration) dated 21 January 2005 reflective of the promotion to LTC selection consideration criteria. Eligible officers to be considered have the following active duty (DOR) to MAJ (all categories):

- 1 July 1999 and earlier (above the zone)
- 2 July 1999 through 1 June 2000 (primary zone)
- 2 June 2000 through 1 June 2001 (below the zone)

The name and DOR of the junior and senior officers in the promotion zone were indicated on this document. His name is not reflected as considered. Further noted is the statement that officers with an approved separation date within 90 days of the board convene date were not eligible for consideration.

4. MILPER Message 05-300 (Release of FY07 Lieutenant Colonel (LTC) Army Competitive Category Centralized Selection List – Command & Key Billet) dated 12 December 2005 reflective of the schedule release date of the selected principals and alternates for both key billet and command positions (15 December 2005).

5. MILPER Message 05-308 (FY06 SSC Selection Board MILPER Message) dated 21 December 2005 reflective of the eligibility criteria, methodology and administrative instructions for use by the FY06 AO, IO, IS and OS Senior Service College Selection Board criteria. This board was conducted to select eligible officers to attend the academic year 2007/2008 resident SSC and the Army War College (Distance Education Program). The Board convened on 4 April 2006. To be eligible for consideration officers must:

- Have completed a minimum of 16 years (192 months) of active federal commissioned service as of 30 September 2007 and -

- be in the grade of COL or LTC as of the convene date
- promotable MAJ's must be promoted to LTC by the convene date to be eligible
- completed no more than 25 years (300 months) of active federal commissioned service as of 30 September 2007
- have credit for completing Intermediate level educations (formerly known as CGSC)

Further noted is the statement that officers with an approved retirement or separation date within 90 days of the board convene date were not eligible for consideration.

6. MILPER Message 10-048 (FY2010, Colonel (COL), Army National Guard of the United States (ARNGUS), Army Reserve Active Guard Reserve (AGR), and Army Reserve Non-AGR, Army Promotion List (APL), Competitive Categories, Promotion Selection Boards) dated 17 February 2010 reflective of the Board consideration criteria for promotion to the rank of COL for USAR LTC's. The following zones of consideration consists of all USAR LTC's with a DOR of:

- 31 March 2005 or earlier (above the zone)
- 1 April 2005 through 31 March 2006 (primary zone)
- 1 April 2006 through 31 March 2007 (below the zone)

The name and DOR of the junior and senior officers in the promotion zone were indicated on this document. His name is not reflected as considered. Officers must also be educationally qualified. LTCs must have completed the CGSOC and the resident or nonresident Intermediate Level Education (ILE) – Common Core. Officers not educationally qualified would not be considered

//NOTHING FOLLOWS//