

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2024

DOCKET NUMBER: AR20220011777

APPLICANT REQUESTS: promotion to Colonel (COL) with a date of rank (DOR) of 19 May 2020 and backpay.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Personal Statements
- Appendix 1: Timeline
- Appendix 2: Hostile Environment
- Appendix 3: Minimum Suggested Interviewees
- DA Form 67-10-2 (Field Grade Plate (O4 – O5; CW3 – CW5) Officer Evaluation Report), 3 September 2015
- DA Form 67-10-2, 30 September 2016
- DA Form 67-10-2, 31 May 2017
- Fiscal Year (FY) 2018 Basic Branch Board 4
- DA Form 67-10-2, 31 May 2018
- FY19 Basic Branch Board 1
- DA Form 67-10-2, 31 May 2019
- DA Form 67-10-2, 31 May 2020
- DA Form 67-10-2, 31 May 2021
- DA Form 67-10-2, 31 May 2022
- List of Officers Promoted and/or Selected for Command, undated
- State Senior Service College (SSC) Boards Report Format, undated
- Memorandum, subject: Academic Year (AY) SSC Selection Board Appointment Orders, 12 March 2016
- Memorandum, subject: Legal Review – SSC Selection Board, 5 May 2016
- AY 2017 [REDACTED] SSC Selection Board Order of Merit List (OML), 21 May 2016
- List of Officers Declining Consideration on the AY 2017 SSC Selection Board, undated
- Email, 17 August 2016
- Manning Document, 29 September 2016
- AY2017 SSC Selection Board Instructions, undated
- Email, 28 April 2017

- Memorandum, subject: Report of Proceedings for AY 2018 SSC Selection Board, 20 May 2017
- List of Officers Declining Consideration on AY 2018 SSC Selection Board, 20 May 2017
- Memorandum, subject: Legal Review of [REDACTED] Army National Guard (ARNG) SSC Board of Proceedings, 20 May 2017
- FY18-20 Force Manning Level (FML) Assignments Board, 23 October 2017
- Emails, January 2018 and February 2018
- AY 2019 [REDACTED] SSC Selection Board OML, 20 April 2018
- Memorandum, subject: SSC Nominations, 1 May 2018
- Memorandum, subject: Legal Review – [REDACTED] ARNG SSC Selections AY19, 2 May 2018
- Memorandum, subject: AY20 SSC Selection Board Instructions, 1 March 2019
- Memorandum, subject: Report of Proceedings for AY 2020 SSC Selection Board, 15 April 2019
- AY 2020 [REDACTED] SSC Selection Board OML, 15 April 2019
- Memorandum, subject: List of Officers Declining Consideration on the AY20 SSC Selection Board, 15 April 2019
- Emails, May 2019
- Memorandum, subject: Report of Proceedings for AY 2021 SSC Board Selection, 13 April 2020
- Memorandum, subject: List of Officers Declining Consideration on the AY21 SSC Board, 13 April 2020
- Memorandum, subject: After Action Report for AY21 SSC Board, 13 April 2020
- SSC Grading Sheet, undated
- AY 21 Writing Assignment
- Memorandum, subject: Legal Review of the [REDACTED] ARNG SSC Board of Proceedings, 13 April 2020
- Emails, multiple dates
- Memorandum, subject: Notification of Promotion Status, FY20 Lieutenant Colonel LTC – COL Army Promotion List (APL), 19 May 2020
- Order Number 0001114533.00, 11 April 2021
- Order Number 0001114533.01, 14 April 2021
- Emails, October 2021
- Order Number 0001561557.00, 13 December 2021
- Order Number 0001561557.01, 14 February 2022
- Order Number 0001668140.00, 14 February 2022
- Order Number 0001668140.01, 13 June 2022
- Order Number 0001871677.00, 13 June 2022
- Order Number 0001871677.01, 31 August 2022
- Order Number 0002010050.00, 31 August 2022
- Emails, September 2022

- Memorandum, subject: Protected Communication, 20 September 2022

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, in effect:

a. He is writing to seek assistance with the perpetual reprisal, retaliation, and ostracism he has endured since August 2016. If he had not been ostracized by Brigadier General (BG) (Ret) [REDACTED] and COL [REDACTED] he would have been assigned to brigade command in May 2017 or May 2020. For the exploitation of this ostracism by BG [REDACTED] in 2021, he would currently be assigned to one of four brigade commands for which he is eligible. Based on precedence established in the utilization of COL/O6 control grades, every Active Guard Reserve (AGR) assigned to a brigade command has been selected for promotion. He would have been eligible and very competitive for the AGR control grades that were available at those periods of time. There have been six AGR officers promoted to the rank of COL since the time he was initially projected to assume command. Of those, two officers were promoted to COL that were not Department of the Army (DA) select when he was DA select and fully promotable. He states that 19 May 2020 is his date of DA selection for COL/O6 and the culmination of three years in brigade command for COL [REDACTED] COL [REDACTED] extension into a fourth year of command was clearly communicated within the aviation community with intent to allow [REDACTED] to reach his minimum time in grade (TIG) requirements. Prior to his extension, the applicant was the only qualified candidate for the 63rd Theater Aviation Brigade (TAB) Command.

b. Every COL/O6 promotion after 19 May 2020 has been awarded to officers assigned to brigade command, but with far less qualifications. For example, joint credit, DA select status, SSC completion and seniority. BG [REDACTED] exploited my ostracism to manipulate the brigade command assignments and limited AGR control grades to promote a very junior field artillery (FA) officer into command of the Field Artillery Brigade (FAB). The FAB had a notification of sourcing for future deployment. COL [REDACTED] verbally acknowledged to the applicant that BG [REDACTED] had no confidence in the ability of the two senior FA officers, LTC [REDACTED] and LTC [REDACTED] to command the FAB during deployment. The intent was for either LTC [REDACTED] or LTC [REDACTED] to take the FAB forward for deployment. LTC [REDACTED] was assigned to command the 238th Regiment Training Institute (RTI), while LTC [REDACTED] was given the Garrison Training Command (GTC). When the 2021 brigade command decisions were made for 63rd TAB, 238th RTI, GTC,

and the 75th Troop Command (TC), the applicant was the senior LTC with SSC completion and he was qualified to assume each of those commands. BG [REDACTED] exploited the situation to preserve the AGR control group grade for his fraternity brother and friend, LTC [REDACTED].

c. BG (Ret) [REDACTED] and COL [REDACTED] used their influence to ostracize him from the [REDACTED] ARNG Aviation Community and have continued to blockade his progression. They used the authority of Major General (MG) (Ret) [REDACTED] to affect the ostracism. Although two of these officers have retired, COL [REDACTED] continues to wield his influence such that current [REDACTED] ARNG senior leadership continue to impose the ostracism. As a result of this retaliatory ostracism, the applicant has been denied multiple opportunities to progress. The financial detriment for base pay alone is more than \$50,000, minimum from May 2020 and more than \$111,000 from the original May 2017 promotion projection. The emotional detriment is immeasurable.

d. He currently serves undergrade. He is a LTC performing COL duties, as the full time Director of Logistics, G4 in the [REDACTED] ARNG, and has over 26 years of continuous service, with nearly 23 of that in active federal service to the organization. He exceeds all written and unofficial requirements for promotion, yet he is continually passed over for much junior officers. He chose not to initiate a formal complaint when he was initially exiled from his organization because he knew the entire senior leadership of the [REDACTED] ARNG was allied through years of JSO service together and there was no appeal authority above The Adjutant General (TAG). He believed at the time he could endure in the organization long enough to overcome the retaliatory ostracization. The Army's Mission First criteria and corps values like Loyalty, Honor, Selfless Service are discouragements to a formal complaint from a senior officer. He feared any action of perceived unprofessionalism from him, would provide BG [REDACTED] the advantage he needed to further his campaign of ostracism. At that time, he feared for his future with the [REDACTED] ARNG AGR program in any capacity.

e. He firmly believes that BG [REDACTED] retaliated for two reasons, his loyalty to the 63rd TAB commanders that succeeded him and because of a private conversation between him and the applicant that occurred on 17 August 2016, in which the applicant verbally identified multiple instances where BG [REDACTED] violated his integrity and violated law.

f. His allegations have been presented in writing and verbally to COL [REDACTED] BG [REDACTED] and MG [REDACTED] the Adjutant General, in a request to reconsider the most recent utilization of their available O6 control grade. The applicant refused to file formal complaints to his point based upon his belief that he could endure long enough to change the perception. Unfortunately, the command has initiated a Medical Evaluation Board (MEB) and he no longer has the option to continue his service. After addressing his concerns with the Inspector General (IG) and the State Equal Employment Manager

(SEEM), he was advised that he had no further administrative avenues to address his complaint.

g. The AY2021 SSC board conducted on 13 April 2020 was manipulated to benefit the only two FA officers who applied. The applicant states he was the facilitator and recorder, and he was present for the entire process. COL [REDACTED] spearheaded a conversation that changed the grading criteria from the TAG's published SSC guidance without authorization. All objective scoring criteria was discounted, and several qualified officer's packets were stricken from consideration.

3. The applicant provides the following:

a. A timeline which shows:

(1) Leading up to the event on 17 August 2016, he was projected to follow COL [REDACTED] into brigade command of the 63rd TAB in the fourth quarter of FY17, when he became eligible for promotion to COL/O6.

(2) On 17 August 2016, LTC [REDACTED] [Applicant] had a private office call with BG [REDACTED] to discuss external training events that 63rd TAB had been committed. During this meeting the conversation turned personal and although the applicant was asked to speak freely, he left BG [REDACTED] office under the impression they had resolved their personal conflict. They agreed to a weekly meeting for mentorship or to just chat.

(3) On 18 August 2016, the applicant's peers and superiors were called to private meetings with BG [REDACTED] where he asked opinions of the applicant's character.

(4) On 21 August 2016, COL [REDACTED] his commander, advised him that BG [REDACTED] had directed him to relieve him of his duties as the Brigade Executive Officer. COL [REDACTED] declined to relieve the applicant.

(5) On 28 April 2017, the applicant contacted COL [REDACTED] seeking guidance about filing an IG complaint against BG [REDACTED] over the character defamation he was enduring from his false portrayal of their conversation that they had on 17 August 2016.

(6) On 20 May 2017, COL [REDACTED] assumed command of the 63rd TAB while retaining responsibility as the Joint Support Officer (JSO) and the State Army Aviation Officer, two of which are O6 aviation positions, for which the applicant qualified.

(7) On 24 May 2017, the FY18 officer assignments board was conducted.

(8) On 25 May 2017, COL [REDACTED] who was not in the applicant's chain of command, asked him to meet in the pavilion outside the armory. He informed the

applicant that he was not sure of the reason or where the applicant was being moved, but he was directed to close out any open business, transfer any documents related to his duties as the Brigade Executive Officer and full time Administrative Officer to LTC [REDACTED]. The applicant was instructed to empty his office. He was told not to come back to work until COL [REDACTED] advised him of where to report.

(9) On 30 May 2017, he was told to report to the Joint Force Headquarters (JFHQ) staff. He was potentially going to be the G3 or the Chief of Staff. He was told that he had no prospects of returning to aviation and he was no longer being considered for a brigade command.

(10) From 25 January 2018 through 23 May 2019, BG [REDACTED] began sending the applicant encouragements via email to apply for positions outside the [REDACTED] ARNG.

(11) During December 2019, COL [REDACTED] proposed a plan that he replace COL [REDACTED] as the JSO. COL [REDACTED] was projected to retire in May 2020 timeframe and there was not a projected replacement for him. The proposal was that he resign from the AGR program, transition to the JSO for fulltime duties and assume command of 63rd TAB in an M-Day capacity. Once the idea was presented to the senior leadership, there was an immediate plan put in place to transition LTC [REDACTED] to JSO and COL [REDACTED] extended for a fourth year of command.

(12) On 19 May 2020, he was notified of his DA selection for promotion to COL/O6 but was required to waive the promotion due to lack of available positions and control grades. COL [REDACTED] was projected to end his third year of brigade command during this month and retire but elected to extend for a fourth year. The applicant was the only eligible officer to assume command at the time. By extending his command into a fourth year, LTC [REDACTED] was able to obtain his third year TIG as a LTC and be eligible for minimum TIG promotion.

(13) On 13 April 2020, the 2020 SSC board conducted on 13 April 2020 was manipulated.

(14) On 11 September 2020, LTC [REDACTED] assumed command of the GTC. He was not DA select nor SSC complete.

(15) On 2 February 2021, the applicant approached his chain of command, COL [REDACTED] and COL [REDACTED] requesting reconsideration for the soon to be aviation brigade command position. They assisted him with developing a plan and communicating the plan to BG [REDACTED]. Again, the applicant offered to resign his AGR status and perform JSO duties to continue his service to the aviation community without the need of an AGR control grade.

(16) On 7 February 2021, he was counseled by BG [REDACTED] BG [REDACTED] and COL [REDACTED] concerning his request for command of the Aviation Brigade. He was advised to amend his career plan, provide multiple courses of action, and resubmit. He provided his updated leader development card to BG [REDACTED]. He learned that he was not selected for the brigade command position when he received an all-users email invitation to the brigade change of command to [REDACTED].

(17) On 7 March 2021, [REDACTED] assumed command of the 75th TC. His unit vacancy promotion was approved in June 2021, and he was not DA select.

(18) On 18 April 2021, [REDACTED] assumed command of the 238th RTI, and he was not DA select.

(19) On 1 June 2021, the applicant assumed the duties and responsibilities of the Director of Logistics, but he was notified by BG [REDACTED] that he would not be promoted due to lack of available O6 positions and control grades.

(20) On 5 June 2021, COL [REDACTED] assumed command of the 63rd TAB. He was promoted at his minimum TIG into the State Army Aviation Officer position in December 2020 and assumed duties as commander after his May 2021 completion of SSC.

(21) On 5 October 2021, again the applicant petitioned the senior leadership for reconsideration when he learned that an available O6 control grade was being given to an officer who did not exceed the promotion requirements as he did. LTC [REDACTED] had assumed command of the FAB. His predecessor COL [REDACTED] had only commanded since 19 September 2020, one year.

(22) On 19 October 2021, the applicant was called to BG [REDACTED] office to discuss his request and he claimed he would consider the request. He never received any follow up conversation from BG [REDACTED] about the decision.

(23) On 25 October 2021, he conducted an officer call with BG [REDACTED] the Adjutant General, who advised that he would consider his request and personally give him an answer. There was no further communication from BG [REDACTED] or BG [REDACTED] on this topic.

(24) On 14 February 2022, he was moved into the actual O6 position as the G4, Director of Logistics but still could not be promoted because the only available control grade was being reserved for LTC [REDACTED] who was not DA select and needed to go through the DA selection process.

(25) On 13 June 2022, the applicant was moved out of the G4, Director of Logistics position so that LTC [REDACTED] could be assigned to the position on paper for promotion, while the applicant continued to perform the duties.

(26) On 7 September 2022, he was provided a complete copy of a drafted Equal Opportunity (EO) complaint with all supporting documentation to the Human Resources Officer (HRO), Mrs. [REDACTED] for her confidential review and advice. She requested to keep the packet overnight and agreed to keep the complaint confidential and stated that she would provide him with her assessment on the validity of his concerns. On 8 September she advised him that his complaint was thorough and professionally prepared, and she also stated that there had been two recent Department of Defense (DOD) IG investigations into the [REDACTED] ARNG utilization of controlled grades that found no wrongdoing.

(27) On 10 September 2022, the applicant met with the Chief of Staff (CoS), COL [REDACTED] who stated that he had been informed that he was disgruntled, and he was concerned that he not "do anything to tarnish [my] reputation." The CoS asked the applicant if he had utilized TAG's open-door policy, which the applicant had not. The CoS also pointed out that there were multiple officers in his exact predicament and there was nothing the command could do.

(28) On 19 September 2022, the applicant provided his packet to the SEEM, Ms. [REDACTED] and asked if she would assist him with preparing an Equal Employment Opportunity (EEO) complaint. During their initial meeting she pointed at his packet and said, "I haven't read this yet." He expressed concern at that moment that his confidential communication with Mrs. [REDACTED] had been shared with COL [REDACTED] and that he feared Ms. [REDACTED] had also received this communication based upon her friendship with Mrs. [REDACTED]. He did not have proof, but he felt as if Ms. [REDACTED] was prepared for his complaint and had a readily available rebuttal for all concerns.

(29) On 20 September 2022, Ms. [REDACTED] informed the applicant that he did not meet the EO complaint criteria and that she would refer him to the IG. He did not file an IG complaint but ensured that he had the right to do so if his attempts to resolve his issues with the current chain of command was unsuccessful. After the IG visit, he forwarded his complaint in writing to COL [REDACTED] requesting through his chain of command, an office call with TAG. COL [REDACTED] stated that he did not think his request would be supported by BG [REDACTED] because it implicated him in the process but said he would approach him.

(30) On 27 September 2022, the applicant sent an email to COL [REDACTED] asking if he would be more supportive if he focused only on the 2017 brigade command selection rather than the 2020 and 2021 decisions in which he believed BG [REDACTED] intentionally excluded him from consideration for brigade command to posture his FA senior leaders in four of the seven O6 commands. The applicant's promotion in 2020 or 2021 would have prevented his ability to promote LTC [REDACTED] or LTC [REDACTED] into the FAB command.

(31) On 1 October 2022, he approached BG [REDACTED] at the [REDACTED] ARNG conference and he acknowledged that he was aware of the applicant's request.

(32) On 3 October 2022, BG [REDACTED] and COL [REDACTED] met with the applicant and they were not supportive of the applicant's request to pursue an Army Board of Corrections request. BG [REDACTED] asked that he forget about the past mistakes that cannot be changed and let him try to get him promoted before his MEB completion to earn a little of the O6 high three time. The applicant was not granted an audience with the TAG.

(33) On 2 November 2022, he learned that BG [REDACTED] had received information from the DA IG that he had been cleared from the complaint that was delaying his federal recognition. They also discussed COL [REDACTED] progression to BG in the Spring of 2023.

(34) On 3 November 2022, the applicant learned through a private conversation with COL [REDACTED] that there was no longer any plan to pursue his promotion prior to completion of his MEB and that the chain of command would not be supportive of delaying the MEB process to consider other avenues to validate his claims and possibly pursue recompence.

b. A hostile environment document, wherein the applicant outlines COL [REDACTED] (now BG (Ret)), hostility towards him, as well as several of his violations of law and how the applicant was personally targeted by the senior leadership of the organization.

c. A list of suggested personnel that should be interviewed.

d. Page one of his evaluations from 2015 to 2022 and Basic Branch Board Information:

(1) DA Form 67-10-2 for the rated period from 1 October 2014 through 30 September 2015 and shows in Part IIIa (Principal Duty Title), Brigade Executive Officer. It shows in Part IVc (This Officer Possesses Skills and Qualities for the Following Operational Assignments), Brigade Command.

(2) DA Form 67-10-2 for the rated period 1 October 2015 through 30 September 2016 and shows in Part IIIa (Principal Duty Title), Executive Officer. It shows in Part IVc (This Officer Possesses Skills and Qualities for the Following Operational Assignments), Brigade Commander.

(3) DA Form 67-10-2 for the period 1 October 2016 through 31 May 2017 and shows in Part IIIa (Principal Duty Title), Brigade Executive Officer. This form shows in Part IVc (This Officer Possesses Skills and Qualities for the Following Operational Assignments), Brigade Command.

(4) FY18 Basic Branch Board 4 document, which shows the applicant's overall performance was above average, he was enrolled in SSC, and his OER performance was above average.

(5) DA Form 67-10-2 for the period 1 June 2017 through 31 May 2018 and shows in Part IIIa (Principal Duty Title), Force Integration Officer. It shows in Part IVc (This Officer Possesses Skills and Qualities for the Following Operational Assignments), 63d TAB Commander.

(6) FY19 Basic Branch Board 1 document, which shows the applicant's overall performance as above average, SSC enrolled, and above average OER performance.

(7) DA Form 67-10-2 for the period from 1 June 2018 through 31 May 2019 and shows in Part IIIa (Principal Duty Title), Mobilization and Readiness Branch Chief and shows in Part IVc (This Officer Possesses Skills and Qualities for the Following Operational Assignments), Aviation Brigade Commander.

(8) DA Form 67-10-2 for the period from 1 June 2019 through 31 May 2020 and shows in Part IIIa (Principal Duty Title), Deputy G3. It shows in Part IVb (This Officer Possesses Skills and Qualities for the Following Broadening Assignments), JSO Commander and in Part IVc (This Officer Possesses Skills and Qualities for the Following Operational Assignments), Brigade Commander.

(9) DA Form 67-10-2 for the period from 1 June 2020 through 31 May 2021 and shows in Part IIIa (Principal Duty Title), Deputy J3/United States Army War College (USAWC) Faculty Instructor. It does not list Brigade Command in Part IVb (This Officer Possesses Skills and Qualities for the Following Broadening Assignments), or in Part IVc (This Officer Possesses Skills and Qualities for the Following Operational Assignments).

(10) DA Form 67-10-2 for the period from 1 June 2021 through 31 May 2022 and shows in Part IIIa (Principal Duty Title), G4/Deputy Chief of Staff for Logistics (DCSLOG) and shows in Part IVc (This Officer Possesses Skills and Qualities for the Following Operational Assignments), Command Brigade.

e. A spreadsheet which contains a list of LTCs and contains notes from the applicant which states all the officers highlighted in yellow have been or are scrolling for promotion. All the names which contain an asterisk have been selected for commands in which the applicant qualified for after he was a DA select and SSC complete. None of the officers were DA select and only one of them was SSC complete.

f. State SSC Boards Report Format which shows the documents that must be submitted by each State following conclusion of the State SSC Selection Board.

g. AY 2017 SSC Selection Board documents, which shows on 21 May 2016 the [REDACTED] SSC selection board OML was approved. The applicant was listed as number three on the OML and LTC [REDACTED] was listed as number 5. These documents also contain a list of the officers that declined consideration on the FY17 SSC board.

h. A manning document dated 29 September 2016, which shows the applicant was projected to progress to COL/O6 and assume command of Headquarters and Headquarters Company (HHC), 63rd TAB for FY18 and FY19. COL [REDACTED] was projected to progress to COL/O6 and State Army Aviation Officer.

i. An email dated 28 April 2017 from the applicant to COL [REDACTED] which states he believed with no uncertainty that BG [REDACTED] was perpetuating false information about his character and attempting to sabotage any chance for success that he may have in the future. He explains that he has no proof, but the command climate had gotten to the point that he lost any desire to continue his service to the Commonwealth. He stated that he believed it was time for either an intervention from BG [REDACTED] or he needed to file an IG complaint. He asked that COL [REDACTED] suggest a way ahead. There is a handwritten note on the document which states he did not file a complaint.

j. AY 2018 SSC Selection Board documents, which shows the [REDACTED] SSC board convened on 20 May 2017 and the [REDACTED] ARNG was authorized one resident (SSC/Fellowship) and two nonresident (USAWC Distance Education Program (DEP)) seats. It also contained a list of officers that declined consideration on the AY18 SSC selection board.

k. FY18-20 FML assignments board spreadsheet, dated 23 October 2017, which shows for FY19 the applicant had no identified position.

l. Emails from January 2018 and February 2018, which contains out of state job opportunities that were forwarded to the applicant.

m. AY 2019 Kentucky SSC Selection Board OML, dated 20 April 2018, and contains a handwritten note from the applicant which states [REDACTED] and [REDACTED] had their seats taken away without due process and it was the TAG's decision. Also, handwritten is a note that states LTC [REDACTED] and LTC [REDACTED] were 2019 class members that surpassed the applicant.

n. AY 2020 SSC Selection Board documents, which shows the [REDACTED] SSC board convened on 15 April 2019. There is a handwritten note on the AY2020 [REDACTED] SSC Selection Board OML which states LTC [REDACTED] LTC [REDACTED] and LTC [REDACTED] of the

2020 class surpassed the applicant. The AY20 documents also contain a list of the officers that declined participation during the AY20 SSC selection board. COL [REDACTED] name is highlighted.

o. Emails from May 2019, which show that COL [REDACTED] reached out to the applicant concerning a mobilization opportunity. The applicant declined the opportunity stating COL [REDACTED] would be completing his third year in command in May 2020 and he wanted to be available for consideration and wanted an opportunity to deploy with 63rd TAB.

p. AY 2021 SSC Selection Board documents, which shows the [REDACTED] SSC board convened on 9 April 2020. The AY21 documents also contain a list of the officers that declined participation during the AY21 SSC selection board, and COL [REDACTED] name is highlighted. In the after action report the board members stated that the current scoring criteria did not allow for consideration of timing. Several outstanding candidates were extremely junior, and they could afford to wait another year to allow other great candidates who were more senior the opportunity to attend SSC. The board's recommendation was to keep all current packet requirements but make the objective scoring categories pass/fail so all consideration for the selection of SSC attendees is based upon the subjective discussion of the board members concerning the future potential of the applicants. Combine the two files labeled Old AY21 and New AY21 score sheets for the next board. Board members also stated that the minimal guidance allowed for the required written essay allowed for too much variation in writing style and syntax. They recommended that excerpts from the USAWC standardized writing style be included in the memorandum of instruction (MOI). The AY21 SSC selection board documents provided by the applicant also contained a copy of the scoring sheet and copies of the writing assignment from the officers.

q. A memorandum dated 19 May 2020, which shows the applicant was selected for promotion. The memorandum stated that should his command wish, with the concurrence of the officer career board and the officer personnel manager, he could be promoted at any time, given all promotion requirements had been met. If he could not be promoted at that time, as an AGR he was granted an indefinite delay.

r. Orders Number 0001114533.00, issued by the [REDACTED] ARNG, Augoe Army Element Joint Force Headquarters, Frankfort, KY, dated 11 April 2021 show the applicant was assigned to the ARNG Staff Element, Joint Force Headquarters, Frankfort, KY with a report date of 2 September 2020 and an end date of 31 August 2029, as the Division Chief.

s. Orders Number 0001114533.01, issued by the [REDACTED] ARNG, Augoe Army Element Joint Force Headquarters, Frankfort, KY, dated 14 April 2021, show an amended end date from 31 August 2029 to 12 April 2021.

t. Emails from October 2019, wherein the applicant appeals to the command team for consideration of the available AGR O6 control grade. He states in the email that he was the most senior [REDACTED] ARNG LTC of any pay status with SSC complete.

u. Orders Number 0001561557.00, issued by the [REDACTED] ARNG, Augoe Army Element Joint Force Headquarters, Frankfort, KY, dated 13 December 2021 show the applicant was assigned to ARNG Staff Element, Joint Force Headquarters, Frankfort, KY with a report date of 13 December 2021 and an end date of 31 August 2029, as the Deputy IG.

v. Orders Number 0001561557.01, issued by the [REDACTED] ARNG, Augoe Army Element Joint Force Headquarters, Frankfort, KY, dated 14 February 2021, show an amended end date from 31 August 2029 to 13 February 2022.

w. Orders Number 0001668140.00, issued by the [REDACTED] ARNG, Augoe Army Element Joint Force Headquarters, Frankfort, KY, dated 14 February 2022 show he was assigned to ARNG Staff Element, Joint Force Headquarters, Frankfort, KY with a report date of 14 February 2022 and an end date of 31 August 2029, as the G4. There is a handwritten note on the document which states he has been performing the G4 duties full time since 1 June 2021.

x. Orders Number 0001668140.01, issued by the Army Element Joint Force Headquarters, Frankfort, KY, dated 13 June 2022 show an amended end date from 31 August 2029 to 12 June 2022.

y. Orders Number 0001871677.00, issued by the [REDACTED] ARNG, Army Element Joint Force Headquarters, Frankfort, KY, show he was assigned to the ARNG Staff Element, Joint Force Headquarters, Frankfort, KY with a report date of 13 June 2022 and an end date of 29 September 2022, as the G2. There is a handwritten note on the document which states he was transferred out of the G4 position into the G2 position where he was not qualified. LTC [REDACTED] was moved administratively to the G4 position where he qualified to submit a unit vacancy promotion. He was selected as the next 75th TC Commander at his minimum TIG.

z. Orders Number 0001871677.01, issued by the Augoe Army Element Joint Force Headquarters, Frankfort, KY, dated 31 August 2022 and show an amended end date from 29 September 2022 to 1 September 2022.

aa. Orders Number 0002010050.00, issued by the Augoe Army Element Joint Force Headquarters, Frankfort, KY, dated 31 August 2022 show he was assigned to Army Element, Joint Force Headquarters, Frankfort, KY with a report date of 2 September 2022 and an end date of 31 August 2029, as the J2. There is a handwritten note which states there was no explanation for the transfer. The applicant writes that he was still performing G4 duties and LTC [REDACTED] was still assigned to the G4.

bb. Emails from September 2022, wherein the applicant requests to use the TAG's open-door policy. The applicant states in his email that after consulting with the HRO, COL [REDACTED] SEEM, IG, and counsel, he believed he had a no cost and nonpunitive option if the command had a desire to assist. He desired the leadership's support in an Army Board of Corrections request.

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

a. He enlisted in the ARNG of the United States on 26 March 1996. He was honorably discharged on 25 August 1999.

b. On 26 August 1999, he took his oath of office as a Reserve Commissioned Officer as a second lieutenant (2LT).

c. On 16 September 1999, he took his oath of office in the [REDACTED] ARNG.

d. He was promoted to:

- first lieutenant (1LT) on 25 August 2001
- captain (CPT) on 18 October 2002
- major (MAJ) on 21 February 2008
- LTC on 18 June 2014

e. DA Form 268 (Repot to Suspend Favorable Personnel Actions (Flag)) shows the applicant was flagged on 25 May 2006 for weight control. The flag was removed on 28 June 2006.

f. A DA Form 268 shows the applicant was flagged on 22 April 2008 for weight control.

g. A DA Form 268 shows he was flagged on 21 October 2009 for weight control.

h. A DA Form 268 shows a flag was removed on 27 March 2012, for case being closed favorably.

i. Orders Number 0004472199.00, issued by the [REDACTED] ARNG, dated 13 April 2023, shows he was reassigned to the 238th Regiment, Greenville, KY, as the Commander, effective 1 April 2023.

j. Orders Number 0005112819.00, issued by the [REDACTED] ARNG, dated 20 June 2023, shows he was promoted to COL, effective 1 April 2023, with a rank entry date of 1 April 2023, and a grade entry date of 19 May 2020.

k. Orders Number 016-002, issued by the Department of the Army and the Air Force, Joint Force Headquarters, Kentucky National Guard, Frankfort, KY, dated 16 January 2024, show he was ordered to active duty in Active Guard or Reserve status for the purpose of serving as the Commander, 238th Regiment, with a report date of 16 January 2024.

5. The Chief, Personnel Policy Division, NGB, provided an advisory opinion in this case on 2 May 2024 and recommended disapproval.

a. After review of the Soldier's submission and record, the Soldier was DA select for promotion to COL on 19 May 2020. Soldier's AGR status allowed him to be detailed to the G4 position from a fulltime perspective while filling an LTC/O5 position on the MTOE/TDA document when Soldier became DA select. Soldier was moved to an O6/COL position in the G2 effective 13 June 2022, however, because of his AGR status there were no control grade (CG) authorizations available as [REDACTED] ARNG is only allotted four O6 CGs and they were occupied at the time of Soldier's DA selection. The G4 /O6 position was filled by a MDAY Soldier that did not require a CG for promotion. Soldier cites several other AGR Soldiers that were promoted to O6 and told brigade command that he believes should not have been selected over him.

b. Soldier was selected to receive an O6 CG and take brigade command effective 1 April 2023. His promotion packet was promptly submitted to National Guard Federal Recognition branch on 12 April 2023. His promotion order was published 14 June 2023 with an effective date of rank of 1 April 2023 when he was eligible for promotion to COL as an AGR status Soldier.

c. It is the recommendation of this office that the applicant's request be denied. Soldier met the requirements for promotion to Colonel but was not selected by senior leadership due to lack of AGR control grade positions allotted to the [REDACTED] ARNG. Soldier should file an IG complaint for a complete investigation if he feels he was unfairly not selected for brigade command and an O6 CG in a timely manner.

d. [REDACTED] Army National Guard concurs with this advisory opinion.

6. The applicant provided a response to the advisory opinion on 8 May 2024. He stated that he would like to clarify the availability of COL/O6 control grade (CG) authorizations as discussed in the advisory opinion. While there were in fact no available control grades on 19 May 2020, two COL/O6 CGs were available prior to his promotion and were awarded to Officers who were not DA Select. These quality officers were promoted through Unit Vacancy Authorization on 21 June 2021 and 29 September 2022, while he was performing the AGR COL/O6 duties of the G4 Director of Logistics since 1 June 2021 as the only DA Select AGR Officer. His DA Select status and

performance of COL/O6 duties are the justification for his belief that he should have been awarded one of the two CGs available prior to his 1 April 2023 promotion.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.
2. Notwithstanding the recommendation of the advisory official, a majority of the Board found the applicant's argument has merit. A majority of the Board found the applicant was unjustly denied placement into a COL/O-6 position that would have permitted his immediate promotion with an effective DOR of 19 May 2020, and instead, less qualified officers (i.e., officers who were not DA selected) were placed in COL/O-6 positions ahead of him. Based on a preponderance of the evidence, a majority of the Board determined the applicant's effective DOR for COL/O-6 should be changed to 19 May 2020 and he should receive any additional pay and allowances he is due as a result of this correction.
3. The member in the minority concurred with the conclusion of the advisory official that the lack of COL/O-6 control grade positions in the ■■■ ARNG was ultimately the reason for the delay in the applicant's promotion as an AGR officer. The member in the minority found insufficient evidence to support the applicant's claim that he was a victim of reprisal, retaliation, and ostracism. Based on a preponderance of the evidence, the member in the minority determined there is no error or injustice related to a delay in the applicant's promotion to COL/O-6.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■■■	■■■	:	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 the Army and Army National Guard records of the individual concerned be corrected to show the effective date of his promotion to COL/O-6 is 19 May 2020. The individual concerned should be paid any additional pay and allowances he is due as a result of this correction.

9/24/2024

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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. National Guard Bureau Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), prescribes policies and procedures governing the appointment, assignment, temporary Federal Recognition, Federal Recognition, reassignment, transfers between States, branch transfers, area of concentration designation, utilization, branch detail, and attachment of commissioned officers of the Army National Guard (ARNG). Exceptions to this regulation will be considered on an individual basis; they will neither be considered as a precedent for changes in policy, nor blanket approval for future requests.

a. Paragraph 8-3. Promotion for other than General Officers. A commissioned officer who has been promoted by the State and extended Federal Recognition in the higher grade will be concurrently promoted to the higher grade in the Reserves of the Army with assignment to the ARNGUS.

(1) An officer's effective date and date of rank (DOR) as a Reserve of the Army will be determined by their duty status, type of selection board which selected the officer, and delay status (if applicable), and will be as defined below, unless otherwise provided by law. CNGB will extend Federal Recognition in the higher grade to an ARNG commissioned officer using NGB Form 0122E series orders (NGB Special Federal Recognition Orders).

(2) The Effective Date determines the officer Federal pay and allowances in the next higher grade. The Effective Date is determined when CNGB in conjunction with the Secretary of Defense approval or the Senate confirmation date (COLs only). The Effective Date is displayed as the "A" Date on the Promotion as a Reserve Commissioned Officer of the Army Memorandum for Commissioned Officers.

(3) The DOR is the date the Officer actually or constructively was appointed or promoted to a specific grade. The DOR is used in calculating time in grade toward promotion consideration in the next higher grade. It is the date used to determine the relative seniority for Officers holding the same grade. The DOR is displayed as the "B" Date on the Promotion as a Reserve Commissioned Officer of the Army Memorandum for Commissioned Officers. If the Officer is recommended for promotion via the FRB/UVP process, the "B" Date will match the "A" Date.

(4) Unit Vacancy Promotion (UVP). Effective Date and DOR are the same date and are established when the scroll is either approved by the SECDEF (LTCs and below) or the Senate confirmation date (COLs only).

(5) Department of the Army (DA) Select M-Day Commissioned Officers. Effective Date and DOR will be the DA Board approval (LTCs and below) or Senate confirmation date (COLs only) if the Officer was assigned to position in the next higher grade. If the Officer was not assigned to a position in the next higher grade, the

Effective Date and DOR will be the date of assignment to the next higher-grade position. If a DA Select M-Day Officer requests a voluntary delay, the Effective Date and DOR will be established after the delay when Federal Recognition is extended after the Officer is assigned to a position in the next higher grade.

(6) DA Select AGR Commissioned Officers promoted upon DA Selection. If an AGR Officer is recommended for promotion by a DA Board to the grade of LTC or below, is already assigned to the next higher-grade position on the day the board report is approved and AGR controlled grade is available, the Officer's Effective Date and DOR will be the date the board report is approved by the SECDEF. The Effective Date and DOR of an Officer in a COL position who is promoted to the rank of COL is the date of Senate confirmation.

(7) DA Select AGR Commissioned Officer who are involuntarily delayed due to lack of controlled grade. If a DA Select AGR Officer is involuntarily delayed and not assigned to the next higher-grade position, the DOR will be the date the Officer is subsequently assigned to the position of higher grade or the Maximum Time in Grade, whichever is earlier. The Effective Date will be the date the controlled grade authorization is available per ARNG-HRA. Backdated Effective Dates due to AGR controlled grade limitations in previous fiscal years are not authorized.

b. Paragraph 8-7. Eligibility for Promotion. To be considered for Federal Recognition following State promotion to fill a unit vacancy, an ARNG commissioned officer must:

- be in an active status; for a minimum of one consecutive year immediately preceding promotion consideration.
- this 1-year period will be on the active-duty list (ADL), retired active status list (RASL), or combination of the two.
- be medically fit in accordance with Army Regulation 40-501 and meet the height and weight standards prescribed in Army Regulation 600-9
- have completed the minimum years of TIMIG indicated in paragraph 8-8
- have completed the minimum military education requirements prescribed in paragraph 8-10
- have completed the minimum civilian education requirements prescribed in chapter 9.
- have passed an APFT/ACFT within the time frame dictated by AR 350-1. An officer who has failed the APFT/ACFT or failed to take the APFT should be flagged in accordance with AR 600-8-2 and is not eligible for Federal Recognition

//NOTHING FOLLOWS//