

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 January 2024

DOCKET NUMBER: AR20230000378

APPLICANT REQUESTS: reconsideration of his previous request for retroactive promotion to lieutenant colonel (LTC).

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

- Letter of Reconsideration
- Officer Evaluation Reports (OERs), from 1977 to 1996
- Certificates and Orders for Awards
- Legal name Change
- Email Exchange
- Officer Record Brief and Photograph

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180010823, on 14 May 2020.

2. The applicant states

a. He is requesting reconsideration of his case based on further evidence as described in the paragraphs below and enclosures submitted with this letter. Reference paragraph 4, page 4 of ABCMR record of proceedings. The applicant's service records are void of OERs from his accession into the Army to 21 October 1995, a record of his duty assignments for the time applicable to his request, and documentation regarding his promotion packet for promotion to LTC. He has enclosed copies of OERs for the entire service on active duty, the last Officer Record Brief (ORB) dated 9 October 1996, and an additional official photograph he had in his possession in remarkably good condition filed prior to the 1993 promotion board. The DD Form 149 initially submitted on 5 June 2018, and the response letter dated 1 May 2020 (reference paragraph 7 below) was for the concurrent characterization of his period of service for assigned jobs and counterintelligence program from November 1981 to May 1992, pre-promotion board, post non-selection to LTC period of 1993 until retirement on 1 April 1997. The

OERs and awards support the assertion that performance in daily jobs were in the band of excellence while performing special operational duties for national security.

b. Reference paragraph 7, page 8 of ABCMR record of proceedings, that he was provided a copy of the advisory opinion on 20 April 2020 but did not respond, is not accurate. He did not respond. He sent a response via certified mail on 1 May 2020, and a scanned copy attached to an email on 5 May 2020 to the ARBA staffer. The staffer indicated it would be attached to his case file. Enclosed (enclosure 3) are the certified mail receipt, email thread to the staffer, and my response letter dated 1 May 2020.

c. Reference paragraph 2, page 8 of ABCMR Board Discussion. After reviewing the application and all supporting documents, the Board found the relief was not warranted. The applicant's contentions, his military record, a U.S. Army Human Resources Command (HRC) advisory opinion, and regulatory guidance were carefully considered. The Board agreed with the advisory opinion in that, the applicant had the opportunity to submit correspondence to the president of the board and its members to address any issue the officer felt important for consideration. The applicant did not submit a letter and failure to submit a letter to the board does not constitute material unfairness or a material error. The Board determined that there was insufficient evidence of an error or injustice to warrant relief in this case. His response letter dated 1 May 2020 addresses the advisory opinion by the HRC dated 27 March 2020. Furthermore, the Non-Disclosure Agreement (NDA) signed in May 1992 was for a period of no less than twenty-five (25) years. It has now been over thirty (30) years since the NDA was signed. Numerous requests for information pertaining to the program he participated on was chronicled in the DD Form 149 submitted on 5 June 2018.

d. He is requesting reconsideration and promotion to what constitutes an injustice because of a circumstance that was other than normal. The counterintelligence program I was the principal on was based on an aggressive campaign against the former Union of Soviet Socialist Republics (USSR) ideology. Under the Reagan Doctrine (1980's) the mission focus was to defeat the USSR in the Cold War. The Strategic Defense Initiative (SDI) was one of the psychological information tactics utilized in convincing adversaries the U.S. was serious about technological advancements to protect U.S. and allies from any Soviet missile attack. The U.S. was expected to expend vast resources in research and development to accomplish this strategic task. Comprehending and executing difficult operational directives from Army counterintelligence personnel was instrumental in achieving mission success. After action reporting was with Army counterintelligence personnel, other members of the intelligence community, and law enforcement. This process was consistent throughout the entire course of the program. The special operation was successful because of steadfast dedication and resolve until the demise of the USSR in December 1991. Additional counterintelligence tasks and analysis dovetailed into the early 1992 to a successful conclusion in May 1992.

e. Concurrent with these duties, he maintained daily job credibility and proficiency. Any period away was on his time. Absence from duty assignment could provoke a perception of not being serious, dedicated, or loyal to the chain of leadership. He had to be measured in scheduling periods away from his job. During the initial stages of the counterintelligence program, he was not married and not serious with anyone until June 1984 when he met his wife, Ka___. The program induced stress on the relationship due to absences several times throughout the year and not being able to communicate with anyone. This scenario was exacerbated even more so after their marriage in May 1986 until the program's finality in May 1992. The decision to take on this counterintelligence program in addition to his assigned daily duties was an important one. The Hispanic ethnicity, Spanish speaking capability, and technical background were a valuable trifecta in filling an attractive role for the operational requirement. After careful consideration, he volunteered for the additional duty with motivation in being part of a bigger effort to defend American ideals.

f. At the time of recruitment, his surname was [REDACTED] a name he assumed from his stepfather, [REDACTED] (a naturalized U.S. citizen now deceased) born in Lima, Peru, South America. He was legally adopted by him on [REDACTED]. He raised him since the age of four (4) after his marriage to his mother, Cl__ Pe__. His biological father, [REDACTED] E. [REDACTED] was also born in Lima, Peru, South America (a naturalized U.S. citizen now deceased). He reassumed the [REDACTED] surname on 21 January 1985. The paperwork for this administrative action in addition to a letter he wrote dated 20 March 1991 regarding the name change to be placed in his personnel file is enclosed (enclosure 4). The administrative action was done to apprise any future promotion board or other Department of the Army branch member his surname change was not done to deceive, defraud or otherwise promote a misperception of any type.

g. A goal in performing his regular duties and counterintelligence activities was a strong desire to excel and be one of the first to successfully participate on a national security program concurrent with regular duties over a long duration. Lieutenant General (LTG) [REDACTED] Commander, U.S. Army Pacific Commander presented the Legion of Merit to him with his wife present and a counterintelligence officer in a closed-door ceremony in June 1992 at Fort Shafter, HI. The General in his laudatory comments remarked that he was a hero. This comment touched him deeply because of his sincerity. He was humbled and did not think of himself in that term. At the near conclusion of his career, his Army Element Commander, Colonel [REDACTED] (deceased) a Military Intelligence officer I had a professional rapport with at the Joint Center had a sense of what he had accomplished without any discussion into any detail of his achievements. He had only read his Legion of Merit short citation. He commented "The best reward for a job well-done in the Army is a promotion." Some leaders have the ability to see value and worth in a person's character. It was his hope and expectation he would be recognized as a person of extreme dedication and loyalty with a promotion to LTC for all duties performed exceptionally on active duty.

h. The short summary of broad activities on the counterintelligence program, personal account, OERs, and awards are offered for consideration to the Board for promotion to LTC. He referred to a response dated 3 May 2018 from the National Archives and Records Administration (NARA) on his request for a Mandatory Declassification Review (MDR) of his personnel file to include briefings, operations, programs, and projects between 1981 and 1992. The NARA response was clear that MDR's are for specific classified documents and his request was being processed under the Freedom of Information Act (FOIA). No records were found. There was no specific unit, program/project name assigned to the counterintelligence operation he participated on. Therefore, it would be impossible to perform a comprehensive search since NARA contains millions of records. The NARA letter was included with his original DD Form 149 submitted on 5 June 2018. He also reviewed Executive Order 13526, dated January 5, 2010, Classified National Security Information for further guidance.

i. His emphasis has been to quantify the high caliber of service to the U.S. Army and characterize complex national security contributions performed in parallel with his daily job. Quantitatively the counterintelligence phase lasted 126 months excluding interview and orientation period. The period after program conclusion, promotion board convening, and non-selection to LTC until retirement was 58 months. A total of (126 + 58) 184 months of the most significant portion of his military career of twenty (20) years or 240 months. The 126 months of the counterintelligence activity consisted approximately 68.48% of the most important 184 months of his career. Entire period requiring emotional maturity, selflessness, technical acumen, and flawless judgment surpassing a great majority of his peers at the time. Lieutenant Colonel (O-5) authorized positions were attained prior to the promotion board convening as described in DD Form 149 with outstanding performance results. Subsequent senior job assignments after non-selection to LTC continued with distinguished achievements in nominative and joint (O-5) positions selected by name. He requests the Board to objectively evaluate his career performance in two distinct roles. In closing, he thanks the Board for its reconsideration, time, and effort in reviewing his case.

3. Review of the applicant's service records shows:

a. The applicant was appointed a Reserve commissioned officer and executed an oath of office on 28 January 1977.

b. The applicant entered active duty on 8 March 1977. He completed the Electronic Warfare/Cryptological Tactical Operations Course. He also completed the Signal Officer Basic Course (14 March to 3 June 1977) and Signal Officer Advanced Course (6 June to 17 December 1980).

c. He served in a variety of stateside or overseas assignments, including Panama and Korea, and he was promoted to major (MAJ) effective 1 January 1989. He also executed a Regular Army oath of office on 7 January 1991.

d. He provides and his official military personnel file (OMPF) contains all his OERs, beginning on 1 November 1979 to 20 October 1996, generally reflecting "Exceed Requirements" and "Promote ahead of Peers" by his rater and a high rating by his senior rater.

e. On 7 August 1996, by memorandum, the U.S. Total Army Personnel command (PERSCOM) (now known as the U.S. Army Human Resources Command (HRC)), informed the applicant of his scheduled retirement date. His mandatory retirement date has been established as 31 March 1997. By law, Title 10, U.S. Code, Section 637, requires the mandatory retirement of Regular Army officers serving on a period of selective continuation on the first day of the month following the month the officer completes 20 years of active Federal service (AFS).

f. The applicant honorably retired due to length of service on 31 March 1997 and he was placed on the retired list, in his retired grade of MAJ on 1 April 1998. His DD Form 214 shows he completed 20 years and 23 days of active service. One of his many awards listed on his DD Form 214 is the Legion of Merit.

4. On 27 June 2016, the applicant wrote to his Member of Congress requesting assistance in his non-selection for promotion to LTC in 1993. He stated his entire period of service reports and awards pre and non-selection were characterized by narratives indicating a high level of performance. He was the principal on a highly sensitive Army program from 1981 to 1992 for which he was awarded the Legion of Merit. When he was notified of his non-selection, he did not challenge the decision and accepted the situation without question. It occurred to him the promotion board members could not fully understand his contributions to National Security if they had not walked in his shoes or wasn't privy to detailed information that could have made a positive difference in the outcome. It was his assertion the board members are most concerned on how many candidates have walked in shoes similar to their own with templates of typical career progression milestones and block checks. The whole person concept should have been considered when deliberating a recommendation for promotion.

5. On 6 September 2016, HRC responded to the Member of Congress regarding the applicant's non-selection for promotion to LTC. An HRC official stated:

a. The exact reasons for applicant's non-selection for promotion to LTC are unknown because statutory requirements prevent disclosure of board proceedings to anyone outside the promotion board in question. Any comments, conjecture, or hearsay for non-selection are purely speculative. The decision to recommend an officer

for promotion is based upon criteria established by the Secretary of the Army and the collective judgment of the respective board members as to the relative merit of an officer's overall record when compared to the records of other officers being considered for promotion. They could only conclude the previous promotion board(s) determined his overall record, when compared with the records of his contemporaries, did not reflect as high as potential as those selected for promotion.

b. All promotion selection board announcements allow every Officer an opportunity to submit correspondence to the president of the board, and its members to address any issues he or she feels are important during consideration. Failure to do so does not constitute material unfairness or a material error. The decision not to select him for promotion did not mean he was not a quality officer. It was indicative of the very competitive nature of the promotion system and the quality of officers he competed against for promotion selection to LTC.

6. On 9 January 2017, the applicant wrote back to HRC thanking HRC for their correspondence regarding his non-selection for promotion to LTC. He furnished HRC with his FOIA request to keep them informed on the direction he was taking regarding his non-selection for promotion.

a. The FOIA request submitted was to inquire whether specific details of his involvement in a highly sensitive special program from 1981 to 1992 were included and considered by board members on his non-selection to LTC in 1993. He was the principal during the long-term program exhibiting maturity, judgement, and leadership far beyond his grade and the capability of most of his peers. Contributions were deemed of utmost importance to National Security for which he was awarded the Legion of Merit.

b. The letter from HRC indicated the decision to recommend an officer for promotion was based upon the criteria established by the Secretary of the Army and the collective judgment of the respective board members as to the relative merit of an officer's overall record when compared to the records of other officers being considered. His initial letter to the Congressman in June 2016 pointed out the whole person concept should be evaluated when deliberating a recommendation for promotion. If the detailed accomplishments he achieved over a period of 11 years were considered, he was confident he would have surpassed majority of officers he was competing with and given favorable consideration for promotion. He reiterated his duty assignments prior to his non-selection as well as after his non-selection for promotion.

c. His non-selection for promotion had been on his mind for many years. He was reluctant to be his own advocate because he was not a self-serving person by motivation or actions. Settling for something less than what he earned through honest work ethic and utmost dedication to uphold Constitutional values was disheartening and fell short of how he wanted to end his career and a profession he was proud of.

d. He has submitted a FOIA request to determine whether pertinent detailed information relating to his involvement in a highly sensitive program from 1981 to 1992 was included in his file for promotion board members to determine selection/non-selection for promotion to LTC in 1993. His request was solely to know if the promotion board members had access and knowledge of his personal contributions during that period which could have rendered a favorable recommendation for promotion to LTC.

7. On 20 February 2017, HRC responded and returned his FOIA request without action, indicating that HRC was not the custodian for the information requested. The letter further informed the applicant who the custodian of the information was.

8. In his previous application, the applicant provided:

a. A self-authored letter to Chief, FOIA Officer, dated 20 February 2017, wherein the applicant requested the information regarding his non-selection for promotion to LTC to the correct agency. He submitted the FOIA request to the Congressman's officer for their information.

b. An email from NARA regarding a FOIA request from the applicant and informing the applicant it was forwarded to the Office of Research Services, Special Access and FOIA Division.

c. An email from NARA, dated 17 March 2017, which states they did not have custody of any military personnel records related to promotions of personnel. According to the Modern Army Recordkeeping System (MARKS), which the Army used until 2003, such documentation would have been destroyed after a period of two years.

d. A self-authored letter to Army Records Management Division, dated 31 March 2017, wherein he requested information regarding his non-selection for promotion to LTC in 1993.

e. A letter from Records Management Division, dated 18 April 2017, stating the applicant could submit a FOIA request in writing and submit it to the National Security Agency. The Army Records Management Division was a policy office and did not physically maintain or control any records.

f. A letter to the Commander, Intelligence and Security Command (INSCOM), dated 8 May 2017, which states he was requesting whether information relating to his involvement in the sensitive program from 1981 to 1992 was included in his promotion board file. He was seeking the information for personal use and to correct a possible oversight. He furnished a copy of his request to the Congressman's Office.

g. A letter from INSCOM, dated 25 May 2017 stating additional time was needed to search for the records requested. They were unable to comply with the statutory 10-day time limit to process his request. He provided a copy of the response letter to his Congressman's Office. He received a letter from the Congressman, dated 28 July 2017 thanking him for his correspondence.

h. A letter from INSCOM, dated 9 August 2017, which states the search of records responsive to his request had been completed and met with negative results.

i. Multiple other letters to or from his Member of Congress, NARA, and NPRC.

9. Also in the previous case, prior to adjudicating his case, the Board requested and received an advisory opinion from HRC Officer Promotions Special Actions in the processing of the applicant's case. The advisory official stated:

a. Based on a review of their records and the information provided, HRC found that the applicant's request for a Special Selection Board (SSB) for promotion to LTC does not have merit. The applicant is requesting reconsideration for promotion to LTC based on his claim that a material error existed within his board file. HRC conducted a review of his Army Military Human Resource Record (AMHRR) and was unable to identify any error. All promotion selection board announcements allow every officer the opportunity to submit correspondence to the President of the Board and its members to address any issue the officer feels important for consideration. HRC records indicate that the applicant did not submit a letter. Failure to submit a letter to the promotion board does not constitute material unfairness or a material error.

b. The reasons for the applicant's non-selection are unknown. Statutory requirements set forth in Title 10, USC, § 613 and § 14104 Nondisclosure of Board Proceedings, prevent disclosure of these proceedings to anyone outside the promotion board in question. The decision to recommend an officer for promotion is based upon the criteria established by the Secretary of the Army and the collective judgment of the respective board members as to the relative merit of an officer's overall record when compared to the records of other officers being considered.

10. The applicant responded to the advisory opinion, but his response was not recorded in the previous case. He stated:

a. The advisory opinion indicates a review of his record was performed and no error was identified. The letter further states that every officer has the opportunity to submit correspondence to the President of the Board and its members to address issues felt important for consideration. Records also indicate that he did not submit a letter to the Board President and its members, and failure to submit a letter does not constitute material unfairness or error. Failure to do something implies a conscious effort to

complete an act in which one is unsuccessful. The DD Form 149 submitted by him on 5 June 2018 to ARBA describes in paragraphs 5 & 6 the restrictions of a signed non-disclosure agreement he had 'prior to the promotion board convening for any dissemination of information pertaining to my involvement in a National Security Program. He could not submit correspondence with achievements or classified files on his behalf to the board because such an action would breach his agreement with the DoD. The DD Form 149 with attachments further chronicles his attempts since 2016 with various agencies to obtain and declassify documents and files in accordance with Defense Mandatory Declassification Review procedures and FOIA that could assist him with his case in later years. He was unsuccessful in obtaining any files or documents on the classified program.

b. The only evidence he has that he was the principal in a Counter-Intelligence Program lasting nearly twelve years is a Legion of Merit citation presented to him in June 1992. A citation purposely lacking details because of classified accomplishments at that time. The opportunity to exercise the option of submitting a letter in 1993 or not would be a valid argument under normal circumstances. The basis of his request for reconsideration and promotion was that his circumstance was other than normal. He could not submit a letter therefore the numerous achievements supporting his case over a period of nearly twelve years would not be known. In his estimation, this is the equivalent of having twelve OERs not included for consideration. The achievements do have significant merit and would have made a difference in his selection to LTC. He thanks the Board for time, effort, and consideration on this matter of importance to him.

11. On 17 March 2021, after reviewing the application and all supporting documents, the Board found the relief was not warranted. The applicant's contentions, his military record, a Human Resources Branch advisory opinion, and regulatory guidance were carefully considered. The Board agreed with the advisory opinion in that, the applicant had the opportunity to submit correspondence to the president of the board and its members to address any issue the officer felt important for consideration. The applicant did not submit a letter and failure to submit a letter to the board does not constitute material unfairness or a material error. The Board determined that there was insufficient evidence of an error or injustice to warrant relief in this case.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant was considered for promotion to LTC, but he was not selected. Each promotion/selection board considers all officers eligible for promotion consideration, but it may only select a number within established selection

constraints. The Secretary of the Army, in his Memorandum of Instruction, establishes limits on the number of officers to be selected. The selection process is an extremely competitive process. It is an unavoidable fact that some officers considered for promotion will not be selected. There are always more outstanding officers who are fully qualified to perform duty at the next higher grade, but who are not selected because of selection capability restrictions. Accordingly, promotion boards are tasked with choosing the best qualified Soldiers to meet the needs of the Army at the time.

b. Since promotion selection boards are not authorized by law to divulge the reasons for selection or non-selection of any officer, specific reasons for the board's recommendations are not known. A non-selected officer can only conclude that a promotion selection board determined that his overall record, when compared with the records of contemporaries in the zone of consideration, did not reflect as high a potential as those selected for promotion.

c. The ABCMR is not a promotion board; the ABCMR corrects military records. Official promotion and selection boards select members for promotion based upon their performance and potential; the Board does not. The Board may refer records to appear before a special selection board (SSB) for promotion consideration when there is a clear error or injustice. An SSB is appropriate in those cases where an officer was not considered from in or above the promotion zone by a regularly scheduled board because of administrative error; or when a promotion board that considered an officer from in or above the promotion zone acted contrary to law or made a material error; or when a promotion board that considered an officer from in or above the promotion zone did not have before it some material information. In the applicant's case, the Board found insufficient evidentiary basis to support the applicant's promotion consideration by an SSB.

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 evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20180010823, on 14 May 2020.



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, § 637, Selection of regular officers for continuation on active duty.

a. Sub-paragraph (a) states in:

(1) An officer subject to discharge or retirement in accordance with section 632 of this title may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer who holds the regular grade of captain in the Army, Air Force, Marine Corps, or Space Force, or the regular grade of lieutenant in the Navy, and who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 20 years of active commissioned service unless he is promoted to the regular grade of major or lieutenant commander, respectively.

(3) An officer who holds the regular grade of major or lieutenant commander who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 24 years of active commissioned service unless he is promoted to the regular grade of lieutenant colonel or commander, respectively.

(4) An officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with section 632 of this title.

(5) Each officer who is continued on active duty under this subsection, is not subsequently promoted or continued on active duty, and is not on a list of officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—(A) be discharged upon the expiration of his period of continued service; or (B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service. Notwithstanding the provisions of clause (A), any officer who would otherwise be discharged under such clause and is within two years of qualifying for retirement under section 7311, 8323, or 9311 of this title, shall unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(6) The retirement or discharge of an officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

2. Title 10, U.S. Code, § 628 - Special selection boards

a. (a) Persons Not Considered by Promotion Boards Due to Administrative Error.—

(1) If the Secretary of the military department concerned determines that because of administrative error a person who should have been considered for selection for promotion from in or above the promotion zone by a promotion board was

not so considered, the Secretary shall convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record would have appeared to the board that should have considered him. That record shall be compared with a sampling of the records of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that should have considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person shall be considered to have failed of selection for promotion.

b. (b) Persons Considered by Promotion Boards in Unfair Manner.—

(1) If the Secretary of the military department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine that—

(A) the action of the promotion board that considered the person was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or

(B) the board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record, if corrected, would have appeared to the board that considered him. That record shall be compared with the records of a sampling of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration, the person incurs no additional failure of selection for promotion.

3. Army Regulation (AR) 600-8-29 (Officer Promotions) prescribes policies, operating rules, and steps governing promotion of Army commissioned and warrant officers on the active duty list. The regulation in effect at the time:

a. Paragraph 7-2 states the special selection boards (SSBs) may be convened under Title 10, USC, section 628 to consider or reconsider commissioned or warrant officers for promotion when Headquarters Department of the Army (HQDA) discovers one or more of the following:

(1) An officer was not considered from in or above the promotion zone by a regularly scheduled board because of administrative error. This would include officers who missed a regularly scheduled board while on the temporary disability retired list and who have since been placed on the active duty list (SSB required).

(2) The board that considered an officer from in or above the promotion zone acted contrary to law or made a material error (SSB discretionary).

(3) The board that considered an officer from in or above the promotion zone did not have before it some material information (SSB discretionary).

b. Paragraph 7-3 (Cases not considered) states an officer will not be considered or reconsidered for promotion by an SSB when an administrative error was immaterial, or the officer, in exercising reasonable diligence, could have discovered, and corrected the error in the Officer Record Brier (ORB) or Official Military Personnel File (OMPF). It is the officer's responsibility to review his or her ORB and OMPF before the board convenes and to notify the board, in writing, of possible administrative deficiencies in them.

c. Paragraph 7-11, officers who discover that material error existed in their file at the time they were non-selected for promotion may request reconsideration.

//NOTHING FOLLOWS//