

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230001158

APPLICANT REQUESTS: Promotion to colonel (COL) with an effective date prior to his retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- Joint Force Headquarters [REDACTED] memorandum
- U.S. Army Human Resources Command orders

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, he was separated from service with a Department of the Army selection on file, promotion to the next higher grade was conducted prior to separation, and was he notified of this option [sic].
3. The applicant provides:
 - a. Joint Force Headquarters [REDACTED] memorandum, dated 30 July 2013, subject: Notification of the FY13 Department of the Army Mandatory Board Results, conveys a congratulatory message to the applicant on being selected for promotion to Colonel made by the Department of the Army Reserve Components LTC to COL APL Selection Board.
 - b. U.S. Army Human Resources Command Orders C-09-712077, dated 13 September 2017, reflects the applicant was reassigned from the USAR Control Group (Reinforcement) to the Retired Reserve, effective 1 January 2018, reason: completion of maximum authorized years of service.
4. A review of the applicant's service record shows:

- a. On 15 December 1989, he took the Oath of Office as a second lieutenant, Reserve Commissioned Officer.
 - b. His promotions within the Army National Guard are as follows:
 - Appointed to First Lieutenant (1LT), effective 14 December 1992
 - Promoted to Captain (CPT), effective 4 May 1995
 - Promoted to Major (MAJ), effective 9 February 2001
 - Promoted to Lieutenant Colonel (LTC), effective 3 October 2005
 - c. Joint Forces Headquarters [REDACTED] memorandum, dated 4 May 2014, Subject: Selection for Retention under the Provisions of NGR 635-102, notifies the applicant that the 2014 Selection Retention Board adjourned and The Adjutant General had approved their recommendations. In addition, the applicant was selected for retention for 1 year.
 - d. State [REDACTED] Department of Emergency and Military Affairs memorandum, 16 June 2015, subject: Non-Selection for Retention under the Provisions of NGR 635-102, informs the applicant that the 2015 Selection Retention Board had adjourned and forwarded its recommendations to this office. The applicant was considered and unfortunately not recommended for retention.
 - e. [REDACTED] Army National Guard ([REDACTED] ARNG) memorandum, dated 11 August 2015, Subject: Resignation from the Army National Guard to Transfer to the U.S. Army Reserve (USAR) Control Group, reflects the applicant tendered his resignation as an officer of the [REDACTED] Army National Guard under the provisions of paragraph 5a(3), NGR 635-100 and requested to be transferred to the Army Reserve with assignment to the USAR Control Group (Reinforcement) effective 31 October 2015 under the provisions of AR 140-10. He further stated he does not have a remaining reserve obligation and the reason for resignation was based on the letter of Non-Selection for Retention in the [REDACTED] ARNG.
 - f. Joint Forces Headquarters [REDACTED] orders 266-616, dated 23 September 2015, reflects the applicant was honorably separated from the ARNG on 31 October 2015 and transferred to the USAR Control Group (Reinforcement).
 - g. U.S. Army Human Resources Command Orders C-12-517217, dated 7 December 2015, shows he was reassigned from the USAR Control Group (Reinf), effective 7 December 2015, reason: voluntary. Additional instructions state, "Commander agrees to except Soldier currently flagged for weight control."
5. National Guard Bureau advisory opinion, dated 25 September 2023, recommends partial approval further stating:

a. Soldier requests a consideration for retirement grade as COL. In fact, he contends that while in the Army Reserve, he was separated from service without regard to his prior DA selection for promotion. Soldier argues that he was neither promoted to the next higher grade prior to his separation nor notified about such option.

b. Soldier is a former [REDACTED] Army National Guard ([REDACTED] ARNG) Member. He was last promoted on 30 September 2005 to the rank of LTC. On 30 July 2013, the DA RC Selection Board selected him for promotion to COL. At the time, Soldier was serving as Supply Management Division Chief at the Joint Force Headquarters (JFHQ). Following the 2015 State Selection Retention Board (SRB), he was non-selected for retention and continued military service. As such, the Adjutant General (TAG) directed his separation from the [REDACTED] ARNG. On 11 August 2015, Soldier resigned as an officer of the [REDACTED] ARNG. At the same time, he requested transfer to the Army Reserve with assignment to the USAR Control Group (Reinforcement) effective 31 October 2015. Consequently, Soldier's federal recognition was withdrawn concurrently with his transfer to the USAR (special orders 231 dated 22 October 2015). On 7 December 2015, he was voluntarily released from the USAR Control Group and assigned to the 655 Regional Support Group (Orders C-12-517217). Effective 12 June 2021, Soldier was retired and placed on the retired list.

c. Pursuant to Army Regulation (AR) 600-8-2, Para 2-3c., noncompliance with Army Body Composition Program (ABCP) is a circumstance that requires initiation of a transferrable Flag (suspension of favorable action). As such, Para 2-8 provides that the losing command is responsible for the web upload of all transferrable Flag documents to the Soldier's temporary administrative folder in the Army Military Human Resources Record (AMHRR). Furthermore, in accordance with (IAW) AR 140-10, Para 4-29c., while assigned to the Individual Ready Reserve (IRR), a soldier flagged under AR 600-8-2 cannot be reassigned to a TPU or IMA duty position until the reason for imposition of the flag has been adjudicated and the flag has been removed.

d. On the other hand, AR 135-155, Chap 4, Section II, para 4-11a., stipulates that before being promoted in the RC, an officer who has been recommended for promotion to the next higher grade must meet the requirements as follows: (1) Be on the RASL or, if a WO of any grade, serving in an active status; (2) Be in the zone of consideration listed in tables 2-1 or 2-3, as appropriate; (3) Be medically qualified; (4) Have undergone a favorable security screening; (5) Meet standards of the Army Body Composition Program (ABCP) (AR 600-9); (6) Be a satisfactory participant as defined in paragraph 2-7. In addition, pursuant to AR 135-155, para 3-18a(11)(b), commanders must submit a recommendation for removal for officers who are non-promotable due to being overweight if after 12 months in a weight control program, the officer still exceeds the maximum allowable body composition/weight control standards (even if he/she has made satisfactory progress toward the standard) and there is no underlying or associated disease found to cause the overweight condition (AR 600-9).

e. On 13 October 2012, Soldier was entered into the Army Weight Control Program due to exceeding his maximum allowable body fat standards specified in AR 600-9. Concurrent with his enrollment, Soldier was also flagged IAW AR 600-8-2. Following his non-selection for retention by the SRB in June of 2015, he was subsequently transferred to the USAR Control Group while still flagged for weight control. This is also illustrated in Soldier's reassignment orders # C-12-517217 dated 7 December 2015. As such, unlike the above provision, the gaining commander agreed to accept Soldier with weight control Flag. This indicates that the Flag was uploaded to Soldier's AMHRR by his losing unit upon his transfer. However, it is uncertain whether the Flag was subsequently removed or the reason for its imposition was adjudicated. Based on the provisions of AR 135-155, it follows that Soldier's compliance with Army weight standards while in the IRR should imply his Flag removal, and therefore promotion eligibility to the next higher grade. On the opposite, his noncompliance with these requirements would mean his ineligibility for promotion. At this time, it is impossible to determine the outcome based on the information in Soldier's AMHRR.

f. Upon further inquiry about this matter, the [REDACTED] ARNG indicated that Soldier was not eligible for promotion due to his failure to maintain ABCP standards. In fact, the State informed that Soldier was enrolled in the ABCP on 13 October 2012. It further noted that Soldier should have been removed from the DA selection list IAW AR 135-55, para 3-18a(11)(b) due to being in the ABCP for more than 12 months. The State also added that at no time after his initial selection by a DA Board did Soldier meet promotion requirements. Upon review of the case, the ARNG Officer Policy Branch concurred with the State's opinion based on Soldier's incompliance with Army weight requirements.

6. U.S. Army Human Resources Command (HRC) advisory opinion, dated 22 December 2023, conducted a review of the information provided, their records, laws, regulations, policies, and the systems available to HRC Officer Promotions and found that the applicant's request does not have merit. Further stating:

a. There are several Army regulations, publications, websites and/or point of contact information listed Army wide which list the required documents, such as an AHRC Form 56-R (required at the time) for promotions, to include but not limited to the processes for proper flag removal to affirm/reestablish promotion eligibility status whereby promotion orders may be published (unless proven otherwise eligible). It appears that no request to promote was never submitted to our office during the time [the applicant] was assigned to the IRR or TPU.

b. We can only speculate that the applicant did not meet the criteria for promotion and has remained in an ineligible status shortly after selection to separation, due to his inability to meet the standards of the Army Body Composition Program, also documented on his final two OERs. Although the applicant did not submit a copy of the

DA Form 268 (Flag) initiated on him for failing to meet the Army Body (Fat) composition tolerance and the Memorandum certifying his enrollment into the Body Composition Program. As of today these documents are still available within his Army Military Human Resource Records.

c. Only the commanding officers in the applicant's chain will be able to explain their reasoning for failure to initiate separation procedures under the provisions of AR 600-9, or to inform our office of the need to initiate notice to consider removal from the promotion list by a Promotion Review Board (PRB). Nonetheless this failure does not automatically render him as fully eligible to promote, nor are there any documents which were submitted or otherwise to support criteria to promote was met to include by the ARNG.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board concurred with the conclusion of the advisory official that, although the applicant had been selected for promotion to COL by a DA mandatory board, subsequent to that selection, he was not fully qualified for promotion. Based on a preponderance of the evidence, the Board determined the applicant's Retired List grade is not an error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 for correction of the records of the individual concerned.

7/23/2024

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, USC, section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10 U.S. Code, section 741 (Rank: commissioned officers in the armed forces), states, in pertinent part, the Secretary concerned may adjust the date of rank of an officer appointed under section 624(a) of this title to a higher grade that is not a general officer or flag officer grade if the appointment of that officer to that grade is delayed from the date on which (as determined by the Secretary) it would otherwise have been made by reason of unusual circumstances (as determined by the Secretary) that cause an unintended delay in (i) the processing or approval of the report of the selection board recommending the appointment of that officer to that grade; or (ii) the processing or approval of the promotion list established on the basis of that report.
3. Title 10 U.S. Code, section 14308 (Promotions: how made) provides:
 - a. The effective date of a promotion of a reserve commissioned officer of the Army or the Air Force who is extended Federal recognition in the next higher grade in the Army National Guard or the Air National Guard under section 307 or 310 of title 32 shall be the date on which such Federal recognition in that grade is so extended.
 - b. If the Secretary concerned determines that there was an undue delay in extending Federal recognition in the next higher grade in the Army National Guard or

the Air National Guard to a reserve commissioned officer of the Army or the Air Force, and the delay was not attributable to the action (or inaction) of such officer, the effective date of the promotion concerned under paragraph (a) above may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion.

4. Department of Defense Instruction 1310.01 (Rank and Seniority of Commissioned Officers) provides that The Secretary of the Military Department concerned may adjust the date of rank of an officer, except a general or flag officer, appointed to a higher grade under Title 10 U.S. Code, section 624(a) or 14308(a) if the appointment of that officer to the higher grade is delayed by unusual circumstances. The Secretary of the Military Department concerned must determine that the unusual circumstance caused an unintended delay in processing or approval of the selection board report or promotion list in order for an officer's date of rank to be adjusted and will notify the Under Secretary of Defense for Personnel and Readiness (USD (P&R)) of adjustments exercised under this authority. The notification will include the name of the officer(s) and a discussion of the reasons for the adjustment of the date of rank.

5. National Guard Regulation 600-100 (Commissioned Officers – Federal Recognition and Related Personnel Actions), in effect at the time, provides procedures for processing all applications for Federal recognition. Paragraph 2-2(b) states the effective date of Federal recognition for original appointment is that date on which the commissioned officer executes the oath of office in the State.

//NOTHING FOLLOWS//