

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]  
[REDACTED]

BOARD DATE: 27 October 2023

DOCKET NUMBER: AR20230002373

APPLICANT REQUESTS:

- In effect, reinstatement of his status on the Fiscal Year 2021 (FY21) promotion list for sergeant first class (SFC)/E-7
- In effect, promotion to SFC, or, in the alternative, a very low Order of Merit List (OML) number to facilitate promotion within 90 to 180 days
- Permission to appear personally before the Board

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

- Online DD Form 149 (Application for Correction of Military Record)
- Email regarding removal of Headquarters, Department of the Army (HQDA) Flag
- MS (Microsoft) Team conversation
- Two DA Forms 268 (Report to Suspend Favorable Personnel Actions (FLAG))
- DA Form 4187 (Personnel Action)
- Memorandum, Subject: Results of Trial in the Case of [Applicant]

FACTS:

1. The applicant states, during FY21, a Korean National falsely accused him of drugging and raping her; after almost 2 years of improperly conducted investigations, a Korean court finally cleared the applicant of all charges. Throughout this ordeal, the applicant lost a lot of deserved respect, and he was not promoted to SFC.

a. Through no fault on his part, HQDA removed the applicant from the FY21 promotion list; in addition, he was not allowed to attend the Senior Leader Course (SLC) for his military occupational specialty (MOS), 88N (Transportation Management Coordinator).

b. A Senior Promotion Supervisor at the U.S. Army Human Resources Command (HRC) advised the applicant that, to restore his status on the FY21 promotion list, the applicant would need to apply to the Army Board for Correction of Military Records

(ABCMR). The applicant declares, the amount of time he has lost as a result of HQDA's promotion list removal has been extremely frustrating; he asks the Board to grant his request so he can continue serving proudly in the U.S. Army.

2. The applicant provides:

a. DA Form 268 dated 27 September 2021, showing the applicant's command initiated a flagging action against the applicant due to a law enforcement investigation.

b. DA Form 268, dated 20 October 2022, showing the local removal of the applicant's flag based on favorable final action.

c. Headquarters, 2nd Infantry Division, Office of the Staff Judge Advocate memorandum, dated 28 October 2022, which states, "[Applicant] was charged by the ROKG (Republic of Korea government) with infliction of bodily injury and was tried in the S\_\_ District Court, commencing 10 May 2022. On 20 October 2022, the Court found him not guilty."

d. DA Form 4187 dated in November 2022 showing the applicant's request to attend SLC.

e. Email dated 4 December 2022, requesting HQDA to remove the applicant's flagging action, based on an effective date of 17 November 2022; also included is the response, dated 6 December 2022, wherein HQDA acknowledged receipt of the removal request, but the response does not confirm the removal date of the HQDA flag.

f. Applicant's MS Teams conversation with an HRC Senior Enlisted Promotions representative. The applicant asks about his status and the representative advises the applicant that the Army removed him from the FY21 promotion list because he was not educationally qualified; the representative recommends the applicant apply to the Army Board for Correction of Military Records (ABCMR) to reinstate him on the FY21 list. Additionally, the HRC representative states, "once you graduate (from) SLC, your DOR (date of rank) would be the date you graduate (from) SLC."

3. A review of the applicant's service record reveals the following:

a. On 30 November 2006, following periods of service in the U.S. Marine Corps, the Regular Army, and the North Carolina Army National Guard, the applicant enlisted into the Regular Army for 3 years and 2 weeks; at his entry on active duty, he held MOS 19K (M-1 Armor Crewman) and was a specialist (SPC)/E-4.

b. On 1 December 2009, he completed training for MOS 88N, and, effective 1 December 2009, his leadership promoted him to sergeant (SGT)/E-5 in MOS 88N. On

7 June 2013, the applicant completed Advanced Leaders Course, and, effective 1 July 2015, his chain of command promoted him to staff sergeant (SSG)/E-6.

c. Orders subsequently assigned the applicant to Korea, and he arrived at his unit, on or about 1 February 2021. Documents provided by the applicant indicate his command flagged him, on 27 September 2021, and, on an unknown subsequent date, HQDA flagged the applicant and later removed the flagging action. On 23 June 2023, the applicant graduated from SLC. The applicant is currently serving on active duty.

4. On 27 June 2023, HRC provided an advisory opinion; HRC states it determined there was a lack of substantiation, and that administrative relief was unwarranted.

a. HRC reports, "Centralized Evaluation Boards are not utilized to promote all Soldiers evaluated on any given list. To be promoted, an OML (Order of Merit List) needs to pass and, if the Soldier is fully qualified for pin-on, the Soldier will be promoted. Regarding the FY21 SSG Evaluation Board, [Applicant's] OML of 95 in MOS 88N was only passed once, that was for a 1 October 2021 promotion to SFC. The MA flag (i.e., codes "M" for law enforcement investigation and "A" for adverse action) that was initiated on 27 September 2021 had no impact on [Applicant] not being selected for pin-on for 1 October 2021; he was skipped for not being educationally qualified."

b. "For the remainder of the FY21 SSG Evaluation List, the highest OML promoted to utilizing Temporary Promotions, which went into effect on 1 November 2021, was 82, never reaching his OML of 95. Under the FY22 SSG Evaluation List, his OML of 147 did not pass. Therefore, the favorable closing of his flag had no impact on his eligibility for promotion pin-on, he was not eligible to pin because his OML did not pass. Had [Applicant's] OML passed, he would have received a back-dated promotion."

5. On 20 July 2023, the Army Review Boards Agency (ARBA) provided the applicant a copy of the advisory opinion for review and the opportunity to submit a statement or additional evidence on his own behalf; on 1 August 2023, the applicant responded with a memorandum for the Board and additional evidence.

a. The applicant's evidence includes documents he has already submitted and the following new evidence:

- SLC course reservation and subsequent cancellation
- Documents pertaining to his Korean court case
- SLC course completion certificate
- Brigade commander's request to remove the flag and reinstate the applicant on the FY21 promotion list
- HRC MFR, dated 12 October 2022 and subject: Information Paper on HQDA Flag-Delay of or Removal from Selection List (F)

- Complete copy of AR 600-8-2 (Suspension of Favorable Personnel Actions (Flag)).

b. In his memorandum to the Board, the applicant states he is providing a timeline of events, as well as his clear reasons why he should be either promoted to SFC or given a very low OML number so that the Army will be able to promote him within the next 90 to 180 days.

(1) Due to no fault of his own, law enforcement began an investigation against him on 3 November 2021, and, on 20 October 2022, the investigation concluded. The applicant should have been promoted immediately thereafter because of the following reasons: the allegations against him were untrue; HRC gave the applicant false hope that he would be promoted; and the "negligence of providing false and/or inaccurate information to the Soldier for the past two years until current."

(2) The applicant submits the following timeline:

- Monday, 27 September 2021 – Received notice the command was flagging him due to a Korean National Police investigation; applicant placed on international hold, and this kept him from attending schools
- Wednesday, 20 October 2021 – Received a school reservation for SLC but it later canceled; if he had graduated from SLC, his OML number would not have been skipped; how he could be educationally qualified if on international hold?
- Friday, 18 February 2022 – Attorney and Korean prosecutor notified applicant the rape charges against him had been dropped due to a lack of evidence and inconsistencies in the alleged victim's accounts
- Thursday, 20 October 2022 – Applicant appeared before a Korean National court to receive the final verdict in his case; the judge additionally noted that the Korean National Police had shown prejudice towards the applicant; the court subsequently closed the case
- Monday, 31 October 2022 – Applicant's brigade commander issued a memorandum advocating the applicant's promotion to SFC
- Monday, 31 October 2022 – HRC's representative (Mr. P\_\_) told the applicant his DOR would match the date of the applicant's SLC graduation; additionally, HRC would honor the ABCMR's guidance on reinstating the applicant to the FY21 promotion list
- Thursday, 17 November 2022 – Applicant contacted Mr. P\_\_ and expressed concerns about being promoted after the charges were dismissed; the applicant provided copies of the FY21 and FY22 promotion lists; Mr. P\_\_ said the applicant should contact the ABCMR
- Thursday, 26 January 2023 – Applicant again contacted Mr. P\_\_ of HRC; he repeated his questions and again copies of the FY21 and FY22 promotions

- lists; Mr. P\_\_ reiterated his advice and gave the applicant an email address; he also said again that the applicant's DOR would be his SLC graduation date
- Tuesday, 21 February 2023 – Applicant contacted Mr. P\_\_ and advised the Commanding General (CG) had signed his DA Form 4187 (Personnel Action) and his ABCMR application was sent; since he was not on the FY22 and FY23 OML, would the Army be promoting him?
  - Tuesday, 21 February 2023 (continued) – In response, Mr. P\_\_ said the ABCMR would decide and direct HRC's next steps; however, as far as promotion was concerned, the applicant's date of rank would coincide with his SLC graduation date
  - Monday, 13 March 2023 – Applicant received a reservation for SLC; after questioning the HRC representative on the phone, the HRC representative told the applicant that SLC was necessary to be promoted, but the ABCMR would decide on the backdating of the applicant's DOR
  - Monday, 13 March 2023 – Applicant states he graduated from SLC; "HRC gave me the challenge to take the course and pass, and I did. After graduating...I couldn't get ahold (of HRC) Senior Promotions to get my promotion orders as he had promised"

(3) The applicant cites language from an HRC Memorandum for Record (MFR), dated 12 October 2022. Paragraph 6c (When the Unit Flag is Closed Unfavorably (D), IAW (in accordance with) AR 600-8-2), describes the preparation of a memorandum that includes a brief explanation of the flag circumstances, the action received, and whether or not the flagged Soldier should remain fully qualified for promotion.

(4) The applicant additionally quotes paragraph 2-2e (Circumstances requiring a nontransferable Flag – Flag Code F), which states, "'delay of promotion or consideration for removal' from a command, promotion, or school selection list, to include an Army National Guard of the United States unit vacancy promotion list (Headquarters, Department of the Army initiated). HQDA initiated Flag are authenticated by HRC (AHRC – PDV – P) or the Director, ARNG (ARNG – HRP)."

6. On 23 August 2023, the applicant submitted additional arguments and evidence in response to HRC's advisory.

a. The applicant stated, "I have obtained an OML, which clearly shows that I ranked within the top 105 individuals eligible for promotion in FY21. Notably, my position on the list was number 95. Despite this evidence, my promotion was unjustly denied.

b. "Furthermore, while reviewing the correspondence from the Human Resources Command (HRC), I noticed that a civilian signatory appended their signature to a memo that includes the signature block of the Sergeant Major (SGM). This act has been

executed in violation of proper protocols, as the term "for" should precede the signatory's name when someone else is signing on behalf of another individual."

c. The OML shows October 2021 promotions for the ranks of SFC through SGM and indicates, for the applicant's MOS, HRC promoted a total of 18 SSGs; for the applicant's MOS, the OML number ended at "105." The document additionally includes HRC's promotion orders for Soldiers promoted to SFC through SGM in October 2021.

7. Army Regulation (AR) 15-185 (ABCMR) states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

#### BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board agreed that the documentation available for review met the burden of proof in determining the existence of injustice and a recommendation for relief is warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	:	:	GRANT FULL RELIEF
:	█	█	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by adding the applicant's name to the FY 2021 SFC promotion OML list and he be promoted to SFC/E7 if educationally qualified.

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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. AR 600-8-19 (Enlisted Promotions and Reductions), currently in effect, outlines policies and procedures for SFC promotions in chapter 4 (Centralized Promotions (Sergeant First Class, Master Sergeant, and Sergeant Major)).

a. The CG, HRC promotes Soldiers to the ranks of SFC, MSG, and SGM. A centralized promotion system has been in effect for promotion of Regular Army enlisted Soldiers since 1 January 1969 for SGM, 1 March 1969 for MSG, and 1 June 1970 for SFC.

(1) The centralized promotion system produces an annual promotion selection list of best qualified Soldiers for promotion to the next higher rank. The intent and purpose of the selection list is to provide the Army a means to promote Soldiers, on a monthly basis, to satisfy personnel manning requirements by skill and grade.

(2) Each promotion month, HQDA will only select fully qualified Soldiers by-name for promotion pin-on. Soldiers who are not fully qualified will not be selected by HQDA to satisfy a monthly promotion requirement and will remain on the selection list.

(3) Each successive promotion month, HQDA will select Soldiers by-name for promotion pin-on, limiting those selections to fully qualified Soldiers. The selection list will expire effective the 1st day of the 25th month from the date it is published. A Soldier, who is not otherwise selected for promotion pin-on because they were not fully qualified for by-name selection by the expiration date of the list, will be administratively removed and must re-compete for selection by the next scheduled board.

b. Eligibility Criteria. To be eligible for promotion to SFC, Soldiers must:

- Meet announced eligibility criteria prescribed within the board announcement message
- Be serving on active duty in an enlisted status on convene date of the selection board
- Have a minimum high school diploma equivalent
- Not be barred from reenlistment
- Not be ineligible to reenlist because of a declination of continued service statement (DCSS), retirement, or court-martial
- Fulfilled Noncommissioned Officer Professional Development System requirements; for SFC, Soldiers must have completed SLC

c. Board results. The CG, HRC will announce the results of a selection board by command memorandum. The memorandum will include the names of Soldiers considered for promotion will be placed in alphabetical order. Soldiers who are



recommended will be assigned sequence numbers for promotion to SFC and MSG, however, sequence numbers will not be published and will only be used by HRC. Sequence numbers (within each recommended MOS) will mirror a Soldier's status on the promotion selection board's OML.

d. Monthly promotions.

(1) HRC will determine and announce the total number of promotions to SFC, on a monthly basis, of fully qualified NCOs based on their MOS and sequence number. HQDA will not publish sequence numbers when announcing monthly promotions. The DOR and effective date of promotion will be the same for all Soldiers announced. Commanders will advise HRC when a Soldier is in a non-promotable status.

(2) Soldiers who are not otherwise fully qualified for promotion will not be selected for promotion pin-on. Graduation of SLC must be made a matter of record no later than the 8th calendar day of each board month to fully qualify a Soldier for promotion to SFC. Soldiers who are not fully qualified for promotion pin-on will remain on the selection list but will not be selected for promotion pin-on until after they are fully qualified and a promotion requirement exists for their respective MOS and rank.

e. Removal from a Centralized Selection List. Commanders will promptly forward documentation to HRC pertaining to Soldiers on a HQDA selection list who are in one or more of the below-listed categories:

- Reduced in rank
- Discharged from enlisted status to accept appointment as a commissioned or warrant officer
- Discharged without reentry within 24 hours
- Dropped from the rolls as a deserter
- Approved retirement as of the date the selection list is approved
- Ineligible to reenlist, due to DCSS, AWOL, confinement, local bar to reenlistment, qualitative management program, or court-martial conviction
- Considered an error
- Recommended by an approved reduction board to be removed from a promotion list
- Declines promotion after officially selected for promotion
- Qualifying conviction for domestic violence under the Lautenberg Amendment
- Failure to fully qualify for by-name selection (promotion pin-on) upon expiration of the selection list

f. Removals from a Centralized Selection List by Headquarters, Department of the Army. HRC will continuously review selection lists against all information available to ensure that no Soldier is promoted when there is cause to believe that a Soldier is

mentally, physically, morally, or professionally unqualified to perform duties of the higher rank; this includes Soldiers who have been flagged, in accordance with AR 600-8-2, and have not met the requirements in the time prescribed.

2. AR 15-185 states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//