

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230002859

APPLICANT AND COUNSEL REQUESTS: in effect –

- reconsideration of his previous requests for promotion to the rank/grade of colonel (COL)/O-6 in the U.S. Army Reserve (USAR), as awarded by the Special Selection Board (SSB) dated 11 February 2020, and approved by Congress, with entitlement to back pay effective 30 September 2008
- his Date of Rank (DOR) be adjusted to 30 September 2008
- alternatively, he be awarded promotion to the rank of COL (O-6) with a DOR of 30 July 2020, and constructive credit sufficient to allow for his retirement at the grade of COL/O-6
- he be retired at the rank of COL, and receive retirement benefits commensurate with that grade
- alternatively, he be reinstated on Active Duty for the purpose of and with provisions for reinstatement on the promotion list and completion of the required time in grade to retire at the grade of COL
- any other administrative and equitable relief the Board may grant

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum, Subject: Request for Promotion Reconsideration by a SSB [Applicant], 21 August 2019
- Memorandum, Subject: SSB Notification - Reconsideration, 30 December 2019
- Email communication from the U.S. Army Human Resources Command (HRC) with attachments, 30 December 2019
- Memorandum from Secretary of the Army, Subject: SSB (Report Number RS2002-14) - Action Memorandum, 11 February 2020
- Previous Army Board for Correction of Military Records (ABCMR) decision, Docket Number AR20190010245, 13 February 2020
- Action Memorandum, Subject: Army Promotions-Reserve Component (RC) SSB RS2002-14, 16 April 2020
- Senate confirmation documents, 30 July 2020
- Previous ABCMR decision, Docket Number AR20210012018, 21 January 2022

- Memorandum for Record (MFR), Subject: [Applicant] Promotion Status, 28 September 2022
- MFR, Subject: Notification of Selection for Colonel by the SSB for [Applicant], 23 September 2022
- Colleague letter of support, 29 October 2022
- Counsel's memorandum/brief, 17 November 2022

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in:

- Docket Number AR20190010245 on 13 February 2020
- Docket Number AR20210012018 on 21 January 2022.

2. Counsel and the applicant states:

a. The applicant requests reconsideration of the ABCMR decision dated 21 January 2022. The applicant and counsel seek to clarify issues raised by the Board in its January 2022 decision and submits new evidence in support of his request.

b. The applicant has two decisions by the ABCMR:

(1) 13 February 2020 (hereinafter the "February 2020 decision") - Submitted pro se August 2019, requesting a promotion to the rank of COL based on merit and an improper pass-over through the normal promotion process. In February 2020, the Board correctly denied relief based on the fact that the applicant had not shown exhaustion of his administrative remedies (including lack of consideration by an SSB) and the matter was not yet ripe for ABCMR consideration.

(2) 21 January 2022 (hereinafter the "January 2022 decision") - Submitted February 2021, decided in January 2022, and forwarded to the applicant in August 2022, the applicant requested fulfillment of the already granted promotion to the rank of COL by an SSB and fully approved by Congress, but denied by the U.S. Army based on his retired status. The applicant submitted to petition to correct the Government error in failing to notify him in accordance with (IAW) Army Regulations of his selection four months prior to his retirement date of 30 June 2020, rendering him unable to take appropriate action. The ABCMR also denied this request. The applicant requests reconsideration of this decision, as the Board's reasoning was based on a mistaken linkage between his prior pro se petition and the facts of the second request. Additional evidence in support of the respondent's petition is also submitted. The prior petitions are incorporated by reference to this request.

c. Simultaneously with his submission of the first pro se ABCMR petition in August 2019, resulting the February 2020 decision, the applicant submitted a request for an SSB, and was in fact selected for promotion to COL. While he now understands he should have waited to submit that first ABCMR petition until after the SSB took place (and then submit only if needed) he was seeking to avail himself of all possible remedial avenues at the time. While his second ABCMR petition (January 2022 decision) was also, a request for promotion to the rank of COL, it was based on an entirely separate set of facts and circumstances and his request was in a much different procedural posture than the request resulting in the February 2020 decision. He had in fact complied with all the Boards requirements from the February 2020 decision in that he had been selected by an SSB but had been denied promotion due to a new Government error which occurred after the February 2020 decision.

d. As carefully detailed in his second 2021 petition to the ABCMR, the applicant had already been selected by the SSB for promotion to the rank of COL, (as the ABCMR had correctly required previously for exhaustion of remedy purposes). However, the second petition was, and is now, necessary as HRC made an error and failed to comply with all regulatory notification requirements. HRC did not notify either the service member himself or its own internal channels as required, thus denying the applicant the knowledge and opportunity to remain on active duty to take advantage of a promotion he had fought so hard to obtain. The only reason the applicant became aware of his promotion was when a friend read the notice in the Congressional Record by chance. He was and is willing, physically fit, and able to remain on active duty. The main and indeed only factor in his decision to retire was that he mistakenly believed that he would not be promoted, as he was never notified of his selection and believed his request through the SSB had failed.

e. The January 2022 decision is incorrect that the record is "void of any promotion board considerations." As part of the second 2021 petition, the applicant did submit documentation showing his selection to the rank of COL through the SSB process, and subsequent approval by Congress. The applicant's name appeared in the Congressional Record with promotion to COL only because he had been selected by a promotion board entity for promotion, indeed there is no other mechanism that would result ratification by Congress and a notation of promotion in the Congressional Record. Clear and uncontroverted evidence exists and is provided showing the applicant's selection and promotable status.

f. The January 2021 decision placed weight on the fact that his available record is "void... of any non-selection memoranda for Colonel in 2008." The reason that the applicant's file does not contain any documentation of his 2008 non-selection is further Government error. He requested all documents from that selection board as part of the process, and was informed that, due to Government mishandling of the records during the HRC's move from the St. Louis, MO Headquarters to Fort Knox, KY in 2010, those

specific 2008 records were lost. He cannot show formal documentation of his non-selection in the 2008 timeframe due solely to Government error. Notwithstanding, the applicant reached out to colleagues intimately familiar with his promotion struggles over the years, and in support of his request for reconsideration, submits an affidavit from COL (Ret) G__ N__, his supervisor at the time, documenting his selection failure in 2008. The Army should not deny the applicant's request based on a lack of records when destruction of the records was caused by the Army itself.

g. Equitable relief would allow the applicant a proper promotion with back pay from September 2008. He was selected for promotion by the SSB as required. He would have been granted a DOR commensurate with the original promotion board, had that board not erred, and it was solely Government error in losing records of that original promotion.

h. Finally, the applicant does not dispute that by the time he finally found out that he had been selected for promotion to COL, he was hours away from retirement and that as a retiree, he would not have been eligible for the approved promotion. However, the January 2022 decision does not address the Government error which was the cause of his premature retirement. The evidence clearly shows (as previously detailed) that he was not timely notified in violation of Army Regulation of his promotable status, despite multiple calls, emails and inquiries to the single HRC point of contact. Army Regulation (AR) 600-8-29 (Officer Promotions) (2005) (in effect in 2020 at all relevant times) states in paragraph 7-4 (Notification), (1) The Army Human Resources Command will send written notification to an officer slated to be considered by an SSB at least 30 days before the board convenes. (2) Officers considered or reconsidered by an SSB will be informed of the results, in writing, through their chain of command. Notice will be sent on approval of the board's recommendations by the appropriate authority. (emphasis added)

i. None of the required regulatory notices occurred. The applicant submits new evidence with this request in the form of affidavits confirming that his unit was not notified or even aware, nor was he, of his review by the selection board, or his selection for promotion at any time prior to his retirement. The unit G-1 (Lieutenant Colonel (LTC) N__) confirms that she did not know, nor did she notify the applicant, until October 2020, well after he had retired and had already inquired of her as to the issue, and it was too late to take action. HRC's complete failure to notify the applicant personally, and his chain of command, meant that no person was ever able to notify the applicant as required by regulation, and which would have resulted in a much different life decision on his part. Had he been timely notified; he would have been able to adjust his career plans in order to take advantage of this promotion that he had worked so hard for and fought for since 2008.

j. In conclusion, it is uncontroverted that the applicant earned his promotion to the rank of COL, and that the only reason he did not have the opportunity to accept that promotion is multiple Government errors. Unlike many requests for correction, there was no misconduct by the service member. This is not a request for correction based on equities, it is a request to correct a manifest injustice caused solely by Government error. There is no doubt that the applicant earned his promotion and would have accepted it if he knew about it. To continue to deny him that opportunity is unjust. The applicant and counsel's requests are listed above.

3. A review of the applicant's official military records show the following:

a. Having had enlisted service in the Montana Army National Guard as a Cadet in Simultaneous Membership Program, he executed an oath of office and was appointed as a second lieutenant on 17 June 1981.

b. On 6 August 2002, DA Form 1059 (Service School Academic Evaluation Report) shows the applicant achieved course standards and completed the Command and General Staff Officer Course.

c. His Officer Record Brief shows he was promoted to the rank/grade of lieutenant colonel (LTC)/O-5 with a DOR of 1 June 2003.

d. On 16 July 2003, the USAR issued him a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

e. He entered active duty on 7 August 2006 in support of contingency operations and/or active duty operational support, and he was honorably released from active duty on 16 June 2009.

f. On 21 September 2009, HRC-St Louis published Orders Number A-09-925828, that ordered the applicant to active duty with a report date of 15 January 2010. The orders show his rank as LTC with a DOR of 1 Jun 2003. He entered active duty on 24 November 2009.

g. Orders Number 264-006, published by HRC on 21 September 2010, announced amendment of Orders Number 053-005, dated 22 February 2010, to show the applicant's DOR for LTC as 19 July 2005.

h. On 1 July 2019, he requested to be released from active-duty and assignment on 30 June 2020 and placed on the Retired List on 1 July 2020, or as soon thereafter as practicable, as he had completed over 20 years of active federal service on the requested retirement date. On 30 July and 15 August 2019, his chain of command recommended approval of his request.

i. On 22 August 2019, Headquarters, U.S. Army North (Fifth Army), Fort Sam Houston, TX, published Orders Number 234-1125, that announced the applicant's retirement, effective 30 June 2020, and placement on the Retired List, in the rank of LTC, effective 1 July 2020. The Orders show "Retired grade/Date of rank: LTC/19 July 2005."

4. On 13 February 2020, the ABCMR determined the following, in relation to his request for promotion to O-6:

a. After reviewing the application and all supporting documents, the Board found that relief was not warranted. There was no evidence the applicant complied with AR 135-155 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers) to submit a request to HRC for reconsideration of his 2008 USAR COL promotion board. The ABCMR did not have authority to promote an officer to a higher grade; that could only be done through the recommendation of an SSB and the approval of The President of the United States.

b. While he had presented his qualification documentation, he presented no evidence that there was any material error in his record considered by the 2008 USAR COL Promotion Board warranting reconsideration by an SSB

5. On 16 April 2020, Headquarters, U.S. Army North (Fifth Army), Fort Sam Houston, TX, published Orders Number 107-1108 that announced the applicant's reassignment for separation processing, with a reporting date of 30 June 2020.

6. On 30 June 2020, he was honorably retired from active duty in the rank of LTC. His narrative reason for separation was listed as "early retirement from service" and his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the following:

- 1 June 2003, as his effective date of pay grade
- 10 years, 7 months, and 7 days of net active service this period
- 9 years, 4 months, and 29 days of total prior active service
- 21 years, 1 month, and 16 days of total prior inactive service

7. The applicant's DD Form 214 shows he retired on 30 June 2020 and he was placed on the retired list on 1 July 2020. He completed 10 years, 7 months and 7 days of active service during the period covered by this DD Form 214 and he had 9 years, 4 months, and 29 days of prior active service. His retirement DD Form 214 also shows in:

- Blocks 4a (Grade, Rate or Rank) LTC and 4b (Pay Grade) O-5
- Block 12i (Effective Date of pay Grade) 2003-06-01

8. On 21 January 2022, the ABCMR denied the applicant's request for reconsideration of his previous request for promotion to COL in USAR, with entitlement to back pay. The Board determined the applicant's and his counsel's contentions, the military record, and regulatory guidance were carefully considered. Based upon a preponderance of the evidence, the Board agreed there was insufficient evidence to amend the previous Board's decision, as the regulatory standard for referring records to a SSB was not met.

9. The applicant provides:

a. Memorandum – Subject: Request for Promotion Reconsideration by a SSB [Applicant], dated 21 August 2019, wherein he states, in part, he was not selected for COL during the USAR 2007 and 2008 Selection Boards. It is his contention that either his file was not submitted to the boards or was in some way fatally corrupted. This is despite the fact that he certified the board files online. He only recently became aware of the SSB program. The entire memorandum is available in the supporting documents for the Board's review.

b. Memorandum – Subject: SSB notification - Reconsideration, dated 30 December 2019, which shows HRC notified the applicant that he would be reconsidered for promotion by an SSB under the criteria and instructions established for the fiscal year (FY) 2007 and 2008, COL, Army Promotion List (APL), Army Reserve (AR) Non-Active Guard/Reserve (AGR), regularly constituted promotion selection board.

c. Email communication(s) from HRC with attachments, dated 30 December 2019, acknowledging receipt of the applicant's email with attachments, and notifying him that they would contact him as soon as possible when they had new information related to his promotion case.

d. Memorandum from Secretary of the Army – Subject: SSB (Report Number RS2002-14, FY 08 COL, Army National Guard (ARNG) of the United States, AR AGR, and AR Non-AGR, APL Competitive Categories, Promotion Selection Boards) - Action Memorandum, dated 11 February 2020, which shows the applicant was considered and recommended for promotion to the grade of COL/O-6 (AR Non-AGR).

e. Secretary of the Army Action Memorandum – Subject: Army Promotions-Reserve Component (RC) SSB RS2002-14, dated 16 April 2020, which shows the Secretary of the Army recommended approval of the results of an SSB that considered and recommended the applicant for promotion to the grade of COL.

f. Senate confirmation documents dated 30 July 2020, which shows the Senate confirmed, and consented to the applicant's appointment to the grade of COL in the Reserve of the Army under the provisions of Title 10, United States Codes (USC), section 12203.

g. MFR – Subject: [Applicant] Promotion Status, dated 28 September 2022, wherein, the Deputy G-5, U.S. Army North, Fort Sam Houston, TX, states, the applicant and his chain of command were not informed of his selection to COL following his 11 February 2020 SSB. The Deputy G-5 was the applicant's supervisor at that time at U.S. Army North and had daily contact with him. Neither the Army North G-1 or G-5 were informed of the applicant's promotion by the Army Promotion Branch as customary and expected.

h. MFR – Subject: Notification of Selection for COL by the SSB for [Applicant], dated 23 September 2022, wherein, the Headquarters, 19th Expeditionary Sustainment Command, Assistant Chief of Staff G-1, states, prior to her departure from U.S. Army North (ARNORTH), she was assisting the applicant with his request for results on an SSB. The applicant had a retirement date of 30 June 2020, and she sent him an email notifying him of the results of the SSB on 1 October 2020. At that time, she sent the email to the applicant's personal email as he no longer had access to military email. The email indicated that the SSB had approved his request for promotion to COL, however, since he was retired and no longer on the Reserve Active Status List (RASL) he was not eligible for promotion and would have to petition the ABCMR. She is not aware of notification to ARNORTH G-1 for the results of the SSB notifying the applicant that he was selected for promotion to COL in February 2020.

i. A statement from COL (Retired) G_ N_ dated 29 October 2022, stating he became aware the applicant was not selected by the 2007 and 2008 AR COLs Promotion Boards at that time while in the zone. This was a surprise to all in the chain of command given the applicant's qualifications and stellar performance. This included 4/5 Senior Rater top blocks on the applicant's evaluations and his successful battalion level command in Afghanistan.

10. On 15 March 2024, in the processing of this case, HRC, Chief, Officer Promotions-Special Actions, provided an advisory opinion and stated:

a. Based on a review of our records and the information provided as part of the Army Review Board Agency (ARBA) Request for Advisory Opinion, that the applicant be granted the relief sought by the applicant and without the conduct of an additional SSB.

b. The applicant was recommended for promotion based on an SSB for reconsideration under the FY08 COL, APL, Non-AGR on 30 December 2019, and the Secretary of the Army approved the board report on 16 April 2020. Although he elected to retire from service on 30 June 2020, the nomination based on the SSB approval continued to route through the appropriate departments within the Office of the Secretary of Defense (OSD), White House, and Senate. The nomination was confirmed by the Senate on 30 July 2020.

c. It is of the authors opinion that the applicant's recommendation under the above-mentioned board is consistent with statute as outlined in section 14502 (e) (3), in that he falls in the category of 'former officer', and that the Secretary of the Army, under section 1552, may correct the record. The author further opines that this circumstance does not fall under the purview of section 14317 (a), as the effect of transition to a retired status is applicable to a mandatory board, in which the officer" ... shall be treated as if the officer had not been considered and recommended for promotion by the selection board ... " As such, it is reasonable to assert that the Senate confirmation and promotion based on the FY08 recommendation would have occurred prior to the retirement date.

11. On 21 March 2024, counsel was provided with a copy of the advisory opinion for comment or rebuttal. On 25 March 2024, counsel responded on behalf of the applicant and stated "while we have no comment in response to HRC's advisory opinion, we did find it helpful to review the statutes cited by the Chief of Officer Promotions – Special Branches, and have attached them for the Board's references as they consider the applicant's petition and HRC's response."

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant was promoted to LTC on 19 July 2005. He voluntarily retired on 30 June 2020. Prior to his retirement, specifically on 19 August 2019, he communicated with HRC and requested promotion re-consideration by a special selection board (SSB), contending that he was not selected for Colonel/O-6 during the USAR 2007 & 2008 selection boards, and that despite certifying his board file online, either his promotion file was not submitted to the promotion boards or was in some way was fatally corrupted. He only recently became aware of the SSB process. HRC acknowledged receipt and responded on 30 December 2019 informing him that his record will be considered by an SSB for promotion, non-promotion, or show cause for retention.

a. The applicant's records were considered by an SSB under the FY2008 criteria, that convened on 6 February 2020 and recessed on 11 February 2020. The applicant was considered and recommended for promotion to LTC by that SSB. The Secretary of the Army approved the recommendation and by memorandum recommended that the Principal Deputy Under Secretary of Defense (Personnel and Readiness) approve the special selection boards' report and the Deputy Secretary of Defense forward to the President the name of the officer for appointment and nomination to the Senate for confirmation to the next higher grade. The Secretary of Defense approved his scroll on 30 July 2020 and the Senate confirmed on 30 July 2020, after the applicant had retired.

b. According to 10 USC section 14301, reserve officers are eligible for promotion if they are currently on the Reserve Active Status List (RASL), have continuous service on the RASL or Active Duty List (ADL) for at least one year, and are within or above his promotion zone or are below the promotion zone and are determined to be exceptionally well-qualified for promotion based on criteria set by the Service Secretaries.

c. According to 10 USC section 14502(e) (3), if the report of an SSB convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer not currently eligible for promotion or a former officer whose name was referred to it for consideration, the Secretary concerned may act under section 1552 of this title to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer.

d. Since the applicant was considered and selected by the FY2008 SSB, his effective date of promotion to COL should have been the date that promotion board was approved and/or the date the Senate confirmed the FY2008 selection board, which is 30 September 2008. The Board agreed with the HRC advisory official that although he elected to retire from service on 30 June 2020, his nomination based on the SSB approval continued to route through the appropriate departments within the Office of the Secretary of Defense (OSD), White House, and Senate. The nomination was confirmed by the Senate on 30 July 2020. As such, it is reasonable to assert that the Senate confirmation and promotion based on the FY08 recommendation would have occurred prior to the retirement date.

e. Because the applicant must be on the RASL (Reserve Active Status List) to be promoted, and based on the totality of the applicant's circumstances, and as a matter of fairness, the Board voted to grant relief in the form of adjusting the applicant's retirement date from 30 June 2020 to 31 July 2020, with entitlement to back pay and allowances, promoting him to Colonel under the 2008 criteria, and placing him on the retired list in the grade of Colonel.

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 amendment of the ABCMR's decision in Docket Number AR20190010245 on 13 February 2020 and Docket Number AR20210012018 on 21 January 2022. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- Amending the applicant's retirement orders to show the effective date of retirement as 31 July 2020 vice 30 June 2020, with entitlement to back pay and allowances;
- Promoting the applicant to Colonel/O6 effective the date the Fiscal Year 2008 Promotion Board was approved, also with back pay and allowances;
- Placing the applicant on the retired list effective 1 August 2020 (vice 1 July 2020) in the grade of Colonel, with entitlement to back retired pay at that grade
- Adjusting the applicant's DD Form 214 to reflect the grade of Colonel with an effective date of rank the date the Fiscal Year 2008 promotion board was approved

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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 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. The ABCMR is not an investigative agency.

2. Title 10, USC, section 12203 (Commissioned officers: appointment, how made; term), states:

a. Appointments of Reserve officers in commissioned grades of LTC and commander or below, except commissioned warrant officer, shall be made by the President alone. Appointments of Reserve officers in commissioned grades above LTC and commander shall be made by the President, by and with the advice and consent of the Senate, except as provided in section 624, 12213, or 12214 of this title.

b. Subject to the authority, direction, and control of the President, the Secretary of Defense may appoint as a Reserve commissioned officer any Regular officer transferred from the active-duty list of an armed force to the reserve active-status list of a reserve component under section 647 of this title, notwithstanding the requirements of subsection (a).

c. Appointments of Reserves in commissioned grades are for an indefinite term and are held during the pleasure of the President.

3. Title 10, USC, section 14301 states, reserve officers are eligible for promotion if they are currently on the Reserve Active Status List (RASL), have continuous service on the RASL or Active Duty List (ADL) for at least one year, and are within or above his promotion zone or are below the promotion zone and are determined to be exceptionally well-qualified for promotion based on criteria set by the Service Secretaries. Selection boards may not consider an officer whose name is on a promotion list as a result of an earlier selection board, an officer who is recommended for promotion by an earlier board if the report has not yet been approved, an officer who has been approved for Federal recognition by a Title 32 board if the nomination is pending, an officer who has been nominated for promotion under any other provision of law if the nomination is pending.

4. Title 10, USC, section 14303: Except for state adjutants general or Assistant adjutants general or positions or appointments based on a specific provision of law, the minimum time in grade (TIG) requirement for officers on the RASL are O6 through O7:

1 year. Service Secretaries may adjust minimum TIG as needed.

5. AR 135-155 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers), states in Table 2-1 for promotion from LTC to COL the Soldier must have a minimum of 3 years' TIG. Table 2-2 states for promotion from LTC to COL the Soldier must have completed "The Command and General Staff Officers Course." Officers who discover that material error existed in their file at the time they were non-selected for promotion may request reconsideration.

a. Reconsideration will normally not be granted when the error is minor or when the officer, by exercising reasonable care, could have detected and corrected the error (see paragraph 3-19f).

b. Officers being reconsidered are not allowed the opportunity to correspond with the SSB. The officer's file will be constructed as it should have appeared on the convening date of the promotion board that failed to select the officer for promotion or did not consider the officer because of administrative error.

c. To determine if there is an error in the promotion file, the officer may request, within 2 years of the board recess date, a copy of his or her file, as considered by the mandatory Reserve of the Army selection board, through HRC, Chief, Office of Promotions (RC).

d. If the report of a SSB, approved by the President, recommends for promotion to the next higher grade an officer not currently eligible for promotion, or a former officer whose name was referred to it, the Secretary of the Army may act through the ABCMR to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer (Title 10, USC, section 14502(e)(3)).

6. The ABCMR may not appoint an officer to a higher grade. That authority is reserved for the President and has not been delegated below the Secretary of Defense.

7. The ABCMR may correct an officer's date of rank/effective date of rank when a proper appointment has already occurred:

a. Title 10, USC, sections 624 and 741, provide for situations in which properly appointed officers are provided "backdated" dates of rank and effective dates to remedy errors or inequities affecting their promotion. The authority to remedy these errors or inequities is given to the Service Secretaries.

b. Department of Defense Instruction (DODI) 1310.01 (23 August 2013) provides that a Service Secretary may "adjust the date of rank of an officer appointed to a higher

grade if the appointment of that officer to the higher grade is delayed by unusual circumstances."

c. What constitutes "unusual circumstances" will, generally, be for the Board to determine based on the available evidence, which often includes an advisory opinion.

d. There may be cases (specifically correction of constructive credit that affects original appointment grade) where relief is not possible because an appointment to a higher grade has not yet occurred. In those cases, the Board should be advised of the limits of its authority. The Board may also be advised that the applicant can submit a request for reconsideration after he or she has been appointed to a higher grade.

8. AR 600-8-29 (Officer Promotions), in effect at that time, prescribes the officer promotion function of the military personnel system. Paragraph 7-4 (Notification) stated:

a. The Army Human Resources Command will send written notification to an officer slated to be considered by an SSB at least 30 days before the board convenes.

b. Officers considered or reconsidered by an SSB will be informed of the results, in writing, through their chain of command. Notice will be sent on approval of the board's recommendations by the appropriate authority.

9. AR 600-8-29 (Officer Promotions), currently in effect, prescribes the officer promotion function of military human resources (HR) support operations. Paragraph 6-4 (Notification) states:

a. HRC will send written notification to an officer slated for consideration by a SSB at least 30 days before the board convenes. Notification will be sent to the officer's official military email account.

b. Officers considered or reconsidered by an SSB are informed of the results, in writing, through their official military email account. Notice will be sent upon approval of the board report by the appropriate authority. HRC may elect to notify the officer of the board's recommendation after the transmittal of the report to the approval authority.

c. For SSBs that result in no appointment or nomination scroll, the SECARMY may release the results after the Under Secretary of Defense for Personnel and Readiness or other appropriate authority approves the board report. Public release of SSB results that produce an appointment or nomination scroll will be in accordance with procedures listed in paragraph 2-11e of this regulation.

10. Title 31, USC, section 3702, also known as the barring act, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller

General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U. S. Code, is relieving the government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

11. Title 10, USC, section 14502 (e)(3) states, if the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer not currently eligible for promotion or a former officer whose name was referred to it for consideration, the Secretary concerned may act under section 1552 of this title to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer.

12. Title 10, USC, section 14317(a) states, if a reserve officer on the reserve active-status list is transferred to an inactive status or to a retired status after having been recommended for promotion to a higher grade under this chapter or chapter 36 of this title, or after having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer

a. (1) shall be treated as if the officer had not been considered and recommended for promotion by the selection board or examined and been found qualified for Federal recognition; and

b. (2) May not be placed on a promotion list or promoted to the higher grade after returning to an active status, unless the officer is again recommended for promotion by a selection board convened under chapter 36 of this title or section 14101(a) or 14502 of this title or examined for Federal recognition under title 32.

//NOTHING FOLLOWS//