

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230003794

APPLICANT REQUESTS: in effect, correction of her lieutenant colonel (LTC)/O-5 date of rank (DOR) to an appropriate date in 2019.

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

- DD Form 149 (Application for Correction of Military Record)
- U.S. Army Human Resources Command (HRC) Memorandum - Subject: Special Selection Board (SSB) Results (SSB RS2212-07) Fiscal Year 2019 (FY19), 9 February 2023
- Email, March 2023

FACTS:

1. The applicant states:

a. She was erroneously not selected for promotion to LTC during the FY19, LTC, Army Promotion List (APL), Army Reserve (AR) Non-Active Guard/Reserve (AGR), Promotion Selection Board (PSB). She submitted a packet for an SSB to be convened, and the SSB considered and selected her for promotion to LTC under the criteria and instructions established for the regularly constituted FY19, LTC, APL, AR Non-AGR, PSB. She received a memorandum dated 9 February 2023 with this determination. She was informed by HRC to submit a request to the Army Review Board Agency (ARBA) for relief.

b. The SSB concluded, based on the evidence she provided, that at no fault of her own, the FY19 selection board was missing documentation on her Intermediate Level Education (ILE) completion. She can provide the SSB memorandum and portable document format of the email from HRC instructing her to submit an ARBA request. While the initial driving error occurred in 2019, the fact that HRC is unable to make the correction and provide her a new DOR as the SSB determined she should have been promoted in 2019 is now the issue. HRC informed her in an email on 15 March 2023.

2. A review of the applicant's military record shows the following:

a. Having prior U.S. Army Reserve (USAR) enlisted service and U.S. Air Force Reserve and Army National Guard commissioned officer service, she was appointed as a major in the USAR and executed an oath of office on 28 December 2016.

b. Orders Number B-08-005308, published by HRC on 11 August 2020, announced her promotion to the rank/grade of LTC/O-5, effective on with a DOR of 7 August 2020.

c. On 24 February 2022, the Army Board for Correction of Military Records (ABCMR) granted relief of the applicant's request for promotion reconsideration by a SSB, under the FY19 criteria, to LTC, in the USAR. The Board stated, based upon the available documentation showing the applicant completed ILE and submitted it to HRC in time for the FY19 LTC promotion board and her record was not updated, at no fault of the applicant, the Board concluded there was sufficient evidence to refer the applicant's record back to HRC to hold an SSB under the applicable FY19 criteria.

d. On 31 August 2022, HRC notified the applicant and ARBA that the applicant's promotion board file would be reconsidered for promotion by an SSB under the criteria of the FY19, LTC, APL, AR Non-AGR, PSB. By law, regulation and policy, her board file would appear in accordance with the established military personnel message, by-laws, instructions, and the directives of the ABCMR.

e. On 22 April 2023, HRC issued her a Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter).

f. On 16 May 2023, the Department of the Army published Orders Number 0004745228.00, which assigned the applicant to the USAR Retired Reserve in the retired rank/grade of LTC/O-5, effective 15 November 2023.

3. In support of her case, the applicant provides the following:

a. HRC Memorandum - Subject: SSB (SSB RS2212-07) FY19, dated 9 February 2023, which notified the applicant that:

(1) She was considered and selected for promotion by a SSB to LTC, under the criteria and instructions established for the regularly constituted FY19, LTC, APL, AR Non-AGR, PSB. Applicable promotion orders adjusting her DOR will be produced separately by the Department of the Army's (Officer Promotions, Reserve Component (RC)) Special Orders Team, (DASO).

(2) Her personnel administrative office must provide a copy of its Unit Manning Report along with a complete Army HRC Form 56R to the (Reserve Component (RC)) Officer Promotions DASO team at [REDACTED]

[REDACTED] Not applicable for Officers whose promotion eligibility date

(PED) has passed or those in an Individual Ready Reserve status on the Reserve Active Status List (RASL)). Failure to do so within a timely manner will result in an additional delay to process your orders. Production of promotion orders may take between 20 and 30 business days upon receipt of the above and verification that all promotion criteria have been met.

b. Email during the month of March 2023, wherein the Army Reserve Aviation Command G-1 and HRC Officer Promotions Branch, RC were discussing the applicant's DOR, exception to policy, and if it was restricted by policy, law, or regulation that the applicant would have had to be slotted in an LTC/O-5 position in order to receive an earlier promotion date based on her attached SSB notification. The emails also show:

(1) The Army Reserve Command G-1 asked to pursue an exception for the applicant's case since it was no fault of her own that she was unable to be retroactively slotted to meet the criteria of an earlier Promotion Eligibility Date for an FY19 PSB when being notified in February of 2023.

(2) HRC stated that, yes, in accordance with Army Regulation (AR) 135-155 (Promotion of Commissioned Officers and Warrant Officers), the assignment to a higher graded position the sole occupant is required in order to award a DOR prior to the maximum Time-in-Grade (TIG). There is no exception to policy to award a DOR prior to the maximum TIG without an assignment to a higher-grade position as a sole occupant. At this time the current DOR 7 August 2020 is the valid LTC DOR and cannot be amended without assignment to a valid RC position of higher grade as the sole occupant. If the officer feels an error or injustice has occurred, the officer can apply to ARBA for relief.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.
2. The Board noted that HRC was unable to assign the applicant an earlier DOR due to the regulatory restriction that requires the DOR to be no earlier than the date the officer is assigned to a higher grade position. While there is no error in HRC's determination, the Board found that rigidly applying the regulatory restriction in this case is unjust considering she had to be referred to an SSB due to an error over which she had little control. The Board concluded that, had she been selected when she was initially considered under the applicable 2019 criteria, she would have been assigned to a higher grade position sooner and would have had an earlier DOR for LTC (or in the alternative, if no higher grade position was available, she would have had the option of transferring to the Individual Ready Reserve to accept the promotion). Because there is

no reasonable way to retroactively restore a lost assignment opportunity, the Board determined the just solution is to assign the applicant a DOR for LTC equivalent to the approval date of the 2019 promotion board that originally considered her.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing her DOR for LTC is the approval date of the results of the FY19, LTC, APL, AR Non-AGR, PSB.

4/15/2024

X █

 CHAIRPERSON
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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 (ABCMR)) 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. AR 135-155 (Promotion of Commissioned Officers and Warrant Officers Other than General Officers), prescribes the policies and procedures for the promotion of USAR and Army National Guard officers. The regulation states in:

a. Table 2-1 – Promotion from MAJ to LTC requires completion of the 4 years minimum and 7 years maximum in the lower grade.

b. Paragraph 3-1 (Promotion of unit officers) states in pertinent part, in order to accept a promotion, unit officers, other than USAR AGR officers, must be assigned to a position of grade commensurate to the grade for which selected. The promotion effective date cannot be earlier than the promotion board approval date. Follow the procedures in this section in computing effective promotion dates for all other RC commissioned officers serving on the RASL and Warrant Officers. Antedating an effective date of promotion is prohibited, unless required by law. The Chief, Department of the Army Promotions will notify the Commanding General, U.S. Army Reserve Command; 7th Mission Support Command (MSC); or 9th MSC commander, of the promotion of non-AGR, unit officers, and specifically identify those officers promoted upon reaching maximum TIG who are not assigned to a higher graded position, so that the USARC, 7th MSC, and 9th MSC may make a determination as to whether the officer should be transferred from the unit to the IRR under the provisions of AR140-1, AR 140-10, and other relevant manning guidance.

c. Paragraph 3-19d (3) – Records of officers or former officers will be referred for special selection board action when the Office of Promotions (RC) determines an officer was eligible for promotion consideration; however, the officer's records were, through error, not submitted to a mandatory promotion selection board; a review of a mandatory selection board finds that an officer's records contained a material error; and/or the ABCMR requests such a referral.

d. Paragraph 3-19e (1) The commander, HRC, Office of Promotions (RC) may find that a "material error" caused the nonselection of an officer by a promotion board. That agency must first determine that there is a fair risk that one or more of the following circumstances was responsible— (1) The record erroneously reflected that an officer

was ineligible for selection for educational or other reasons. In fact, the officer was eligible for selection when the records were submitted to the original board for consideration.

e. Paragraph 6-10 (Effect of selection for promotion) states officers selected for promotion by an SSB or Promotion Advisory Board (PAB) will, as soon as practicable, be appointed to that grade in accordance with Title 10, U.S. Code (USC), section 14308 and chapter 3 of this regulation. An officer appointed to the next higher grade as the result of the recommendation of an SSB or PAB will have the same DOR, the same effective date for the pay and allowances of that grade, and the same seniority as the officer would have had if recommended for promotion to that grade by the board which should have considered, or which did consider, him or her. In the case of an officer who is not on the RASL when appointed to the next higher grade, placement on the RASL pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent SSB or PAB.

3. Department of Defense Instructions 1310.01 (Rank and Seniority of Commissioned Officers) states the Secretary of the Military Department concerned may adjust the DOR of an officer, except a general or flag officer, appointed to a higher grade under Title 10, USC, sections 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 DOR to be adjusted.

//NOTHING FOLLOWS//