

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20230003871

APPLICANT REQUESTS:

- Promotion to major (MAJ) in the Army National Guard
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Attachment A - Department of the Army Suitability Evaluation Board (DASEB)
- Attachment B - Federal Recognition for first lieutenant (1LT)
- Attachment C - Federal Recognition for captain (CPT)
- Attachment D - Title 10 Active Duty for Operational Support (ADOS) Fiscal Year (FY) 20
- Attachment E - Title 10 Active Guard/Reserve (AGR) Orders
- Attachment F - Reserve Component Department of the Army (DA) Selection Results
- Attachment G - Special Selection Review Board (SSRB) Notification
- Attachment H - Flag Initiation
- Attachment I - Rebuttal Letter
- Attachment J - Title 10 ADOS Orders
- Attachment K - SSRB Void Memorandum
- Attachment L - SSRB Flag Removal
- Attachment M - Single Form Notification
- Attachment N - SSRB Flag Removal
- Attachment O - Title 10 ADOS Orders
- Attachment P - Email Notification of SSRB Result
- Attachment Q - U.S. Army Human Resources Command (AHRC) Inspector General (IG) Response
- Attachment R - Timeline of Events

FACTS:

1. The applicant states:

a. She was determined to be non-select for promotion to MAJ after initially being selected. She was pulled from the MAJ Reserve Medical Service Corps promotion board because of General Officer Memorandum of Reprimand (GOMOR) in her restricted file.

b. She previously submitted an application to the DASEB, where it was determined that she was able to have her GOMOR removed from her file and placed in her restricted file. Additionally, she was provided a memorandum stating that she was erroneously pulled for an SSRB and that she was going to a single-form nomination process for promotion. There she was determined to be non-selected. She was selected, pulled for an action that was erroneous, then non-selected. It does not make sense.

c. She received a memorandum from Officer Promotions at AHRC stating she was being removed from the SSRB on 10 December 2021. She has been promoted twice since receiving the GOMOR. She completed the DASEB process to have her GOMOR moved to her restricted file. Does this not mean she is cleared for promotion? How could she be promoted to 1LT and to CPT and then be held for promotion to MAJ?

d. Since she was sent to the SSRB, her name was pulled from the FY 22 MAJ promotion board. What does this mean for future promotion potential? How can she request a copy of her board file that was used to determine a non-select?

e. She does not understand how she was DA selected, pulled because she had a GOMOR, told via memorandum that her GOMOR from 10 years ago was not going to be an issue, go to a single name nomination and was then non-select because of her file. She is curious if her flag was removed.

2. The applicant provides the following documents:

a. Special Orders Number 331, published by National Guard Bureau (NGB), 18 September 2012, gave her federal recognition as a 1LT effective 14 April 2012.

b. Special Orders Number 117, published by NGB, 10 June 2015, gave her federal recognition as a CPT effective 1 June 2015.

c. FY 21 Reserve Component (RC) MAJ Army Medical Department (AMEDD) Promotion Selection Board Results release date 28 October 2021 shows she was selected for promotion to MAJ.

d. Memorandum from AHRC, 28 October 2021 states the FY 21 RC MAJ AMEDD Medical Service Corps, Army National Guard (ARNG) Promotion Selection Board (PSB), which convened on 5 April 2021, recommended her for promotion to MAJ.

However, her name was withheld from the promotion scroll pending a review of her GOMOR, 29 August 2021, identified in the post-board screening. The information was not considered by the PSB that recommended her for promotion. Therefore, she was being directed to an SSRB. The GOMOR would be presented to the SSRB for consideration along with her board file, as it was presented to the original PSB.

e. A Report to Suspend Favorable Personnel Actions (Flag), shows she was flagged on 4 October 2021 for delay of promotion or removal from a selection list.

f. Self-authored memorandum for president of the SSRB, 1 November 2021, states:

(1) She humbly requested the board approve her promotion to MAJ. Nine years previous when she stole the anti-viral, during her deployment, she did so out of fear and embarrassment. She was a new officer that had just gotten to the medical company that staffed and operated the aid stations where she could have received the prescription to treat her cold sores. She was embarrassed that she got them and was afraid of the gossip and whispers that might have gone on behind her back if she had gone through the aid station. It was a poor decision, and one made out of fear. Since the incident, she worked tirelessly to become a better person, mentor, and officer. She continuously strived to overcome the setback and situation that she placed herself in. She took full responsibility for her mistake, and only hoped the board would see the actions taken were done out of fear, immaturity, and panic.

(2) Since she received the GOMOR, she was promoted to 1LT showing proficiency and competence as a 70B (Health Services Administration). In 2015, she was promoted to CPT, where she continued to strive for excellence as a 70F (Health Service Human Resources) and a 70H (Health Services Plans, Operations, Intelligence, Security, and Training). She was working on the Joint Staff as a 70H where she managed multiple programs to include Trauma Training and the United States European Command NGB Global Health Engagements portfolio. She continued to seek positions of increased responsibility, and prove her ability to lead Soldiers and develop programs that support the organization.

(3) Additionally, in 2019 she was investigated, interviewed, and approved for a top secret security clearance, further proving her ability to be trusted with sensitive information at the highest levels. In 2021, she completed common core intermediate level education as a CPT, showing her commitment to the organization and her professional career. She was working on her Master's Certificate in Global Health through Uniformed Services University of the Health Sciences to continue to educate herself and other 70Hs in the National Guard that work with the State Partnership Program and Global Health.

(4) She knew she had so much more to give to the organization, and hoped the board saw her potential as a future leader. She had learned so much from receiving the GOMOR and had never forgotten the lessons she needed to learn in 2012. She could not take back what she did, but she promised that she had grown and would continue to grow as an officer.

g. Memorandum SSRB Void, 10 December 2021, voided the SSRB referral of any pending SSRBs previously referred for officers identified with adverse information that they were previously cleared for promotion nomination in a prior promotion consideration that included the same adverse information. AHRC Officer Promotion Special Actions Branch would identify officers pending SSRB execution whose adverse information had been previously cleared, and those would be converted to single name nomination actions.

h. Report to Suspend Favorable Personnel Actions (Flag) removed her flag for removal from selection list due to adverse action on 4 October 2010.

i. An email from AHRC, 5 April 2022, states on 30 November 2021, the Secretary of the Army implemented updated Army policy which resulted in her SSRB being void. Her name was submitted on a Single Name Nomination promotion appointment scroll. The processing of the promotion appointment scroll could take 4 to 6 months before it routed through the Pentagon and was staffed. Once the approved scroll was returned to AHRC, they would coordinate with NGB for the release of her promotion order. If she had not received an email from AHRC by October 2022 she was to reply to AHRC.

j. Email from the Chief, Personnel Branch, Ohio ARNG, 26 September 2022, states they could remove the flag. On the same day, the Special Actions Branch Chief, NGB, stated the flag removal was done in April due to the results of the SSRB.

k. Email from AHRC, 2 November 2022, stated her records were referred to a SSRB for a recommendation on her promotable status. She was notified on 5 April 2022 that she was a single name nomination, however, after careful consideration of all matters the Secretary of the Army supported her removal from the promotion list and the Under Secretary of Defense (Personnel and Readiness) approved the board report recommending her removal from the promotion list. The direction of her removal from the promotion list constituted a non-selection.

l. An email from the IG AHRC, 10 January 2023, states the Secretary of the Army supported her removal from the promotion list. If she believed an error or injustice had occurred she could submit an application to the Board.

3. The applicant's service record contains the following documents:

a. Oath of Office - Military personnel shows she took the oath of office as a Reserve Commissioned Officer on 14 October 2010. On the same day she completed an Oaths of Office taking the oath of office in the ARNG.

b. Orders 324-916, published by State of Ohio Adjutant General's Department, 20 November 2014 promoted her to the rank of CPT effective 18 November 2014.

c. Letter from DASEB, 10 October 2018, shows they granted relief in her case and the decision was not retroactive; therefore did not constitute grounds for promotion reconsideration if previously non-selected. A letter to the ARNG Readiness Center states the DASEB voted to approve transfer of her GOMOR and all related documents from the performance portion to the restricted portion of her Army Military Human Resource Record.

d. Memorandum Removal from Promotion List, 3 August 2023, states her name was removed from the promotion list and her removal constituted her first non-selection for promotion. The entire document is available for the Board's review.

4. On 26 August 2024, the Chief, Special Actions Branch, NGB provided an advisory opinion, which states:

a. The applicant requests promotion to MAJ due to an erroneous non-selection by an SSRB because of a GOMOR filed in her restricted folder. NGB recommended denial of her application.

b. She received a GOMOR while serving as a 2LT AMEDD officer on 29 August 2012. She filed a DASEB request to have the GOMOR removed. The board ruled for the GOMOR to be filed in her restricted file on 10 October 2018. She was selected for promotion to MAJ, during the FY 21 RC PSB on 6 April 2021. She was notified of delay of promotion and referral to an SSRB on 28 October 2021. The memorandum gives the GOMOR, 29 August 2012, reasoning for the direction to the SSRB, as it was information not considered by the PSB.

c. She received notification that she was being converted to a single name nomination on 5 April 2022 based on a Secretary of the Army guidance memorandum, 30 November 2021 stating, officers identified with adverse information that were previously cleared for promotion nomination in a prior promotion consideration that included the same adverse information would be converted to a single name nomination. On 2 November 2022 she was notified that the Secretary of Defense approved removal of her name from the promotion list, which constitutes a non-select, during her single name nomination process. She is requesting promotion based on the GOMOR being filed in the restricted file and selection from the FY21 MAJ PSB.

d. After review of her submission and Department of Defense Instruction 130.14, it was determined that removal from the FY 21 MAJ promotion list and referral to the SSRB was not erroneous. It was also noted that the GOMOR was considered, despite being filed in the restricted file. After she was converted to a single name nomination, she was a non-select.

e. It is the recommendation of NGB that her request be denied. She states her non-select by the SSRB was erroneous because of a GOMOR used for consideration in her restricted file. In accordance with DoDI 1320.14, adverse data, to include the restricted file, is to be considered during SSRBs. Proper procedures per regulation were followed. The non-selection was not erroneous, and she should not be promoted as per the decision of the Secretary of Defense issued during her single name nomination after being removed from the SSRB.

5. On 28 August 2024, the advisory opinion was provided to the applicant to allow her the opportunity to respond. She did not respond.

#### BOARD DISCUSSION:

1. The Board determined 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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant contends she should be promoted to MAJ due to an erroneous non selection by a Special Selection Review Board (SSRB) because of a GOMOR that is filed in her restricted folder. The evidence shows the applicant received a GOMOR in August 2012. She petitioned the DASEB remove the GOMOR. The DASEB did not remove it but determined the GOMOR should be transferred to restricted file on 10 October 2018.

a. An SSRB is a board convened after an officer has been selected for promotion to "review" that selection based on the discovery of "adverse information" pertaining to the officer selected for promotion. Specifically, if it is discovered that there are any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, that was not furnished to the promotion board during its consideration of the office for promotion, an SSRB will review the officer's selection and recommend whether the selection for promotion of the officer should be sustained.

b. The applicant was selected for promotion to MAJ during FY21 RC PSB on 6 April 2021. On 28 October 2021, she was informed of delay of promotion and referral to a

SSRB in accordance with 10 USC 14502a. The reason for the delay was that the August 2012 GOMOR was not considered by the promotion selection board. In November 2022, she was notified that the Secretary of Defense approved her removal from the promotion list which constitutes a non-select during the soldier's single name nomination process.

c. The Board reviewed and agreed with the NGB advisory official's finding that the removal from the FY21 MAJ Promotion List and referral to the SSRB was not erroneous. It was also not erroneous that the GOMOR was considered, despite being filed in the restricted file. Although the applicant contends that her non selection by SSRB was erroneous because of a GOMOR used for consideration in her restricted file, adverse data to include the restricted file, is to be considered during SSRBs. Therefore, the Board determined that the applicant's non selection was not erroneous, and the applicant's promotion to MAJ is not warranted.

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.

[Redacted]

[Redacted]

[Redacted]

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. 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.

2. Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers Other than General Officers) provides the policy and procedures used for selecting and promoting commissioned officers (other than commissioned warrant officers) of the Army National Guard of the United States (ARNGUS) and of commissioned and warrant officers (WO) of the U.S. Army Reserve (USAR). Table 2-1 (Time in Grade (TIG) Requirements Commissioned Officers, Other than Commissioned Warrant Officers) provides that the minimum TIG for promotion to MAJ is 4 years with a maximum TIG of 7 years. Officers are also required to have completed CCC prior to being promoted. The effective date of promotion and DOR will be the same as if the officer had been selected to the same grade by a promotion board for Reserve Active Status List (RASL) officers. However, the Secretary of the Army may set the DOR if he or she determines an inequity in the foregoing procedure exists.

a. Paragraph 2-13 (Army National Guard of the United States unit vacancy selection boards) provides that, (1) States may not submit a unit vacancy federal recognition recommendation for an officer whose mandatory selection board is scheduled to convene within 120 days for CPT through LTC (lieutenant colonel), or 180 days for COL. (2) An officer in the grade of 1LT through MAJ who failed of selection for promotion by a mandatory board will not be considered for a unit vacancy promotion unless selected on a subsequent Headquarters Department of the Army (HQDA) mandatory board. (3) National Guard Regulation (NGR) 600-100 and NGR 600-101 govern Federal recognition of State unit vacancy promotions of ARNGUS officer and WOs.

b. Section II provides that an officer's promotion is automatically delayed when the officer is under investigation that may result in disciplinary action of any kind or under proceedings that may result in administrative elimination or discharge. Automatic delays will be resolved within 6 months of the date the officer would have been promoted. The officers delayed promotion will not exceed 6 months unless the Secretary of the Army or his designee grants a further delay. In no case may the officer's promotion be delayed more than 18 months after the date on which the officer would otherwise have been appointed. if the determination is made more than 6 months after the effective date of



the promotion, the officer will be deemed to have been in a promotable status on the effective date of the promotion and treated as though the involuntary delay had not been imposed.

c. Paragraph 4-18 (Date of Rank and Effective Date of Promotion after Involuntary Delay) provides that only the Secretary of the Army is authorized to determine whether an officer was unqualified for promotion during any part of an involuntary delay of promotion. Accordingly, except as provided herein, only the Secretary of the Army may determine whether an adjustment must be made to an officer's DOR and effective date of promotion. HRC, Chief, Office of Promotions (RC), is authorized to adjust the DOR and effective date of promotion for an officer whose promotion has been delayed due to any adverse administrative action. The DOR and effective date will be the day after the date a filing of determination is made. However, it cannot be earlier than the approval date of the board that selected the officer. For warrant officers (including commissioned warrant officers), the DOR and effective date may not be earlier than the date of the promotion memorandum. That is unless the officer concerned obtains correction of his or her records from the ABCMR.

d. Chapter 6 (Special Selection Boards) provides that SSBs are governed by the same instructions provided to the boards that considered or should have considered an officer for promotion. Inquiries concerning these boards should be addressed to Commander, U.S. Army Human Resources Command, Fort Knox, KY.

e. Paragraph 6-2 (Purpose of boards) states, (1) SSBs are convened under Title 10, USC, section 14502 to consider or reconsider commissioned officers on the RASL for promotion when Headquarters Department of the Army determines that one or more of the following circumstances exist:

(1) Administrative error (10 USC 14502(a)) (SSB required). An officer was not considered from in or above the promotion zone by a regularly scheduled board because of an administrative error. This would include officers who missed a regularly scheduled board while on the TDRL and who have since been placed on the RASL.

(2) Material errors (10 USC 14502(b)) (HRC discretionary, see para 6-13a). (a) The action of the promotion board that considered the officer from in or above the promotion zone was contrary to law in a matter material to the decision of the board or involved material error of fact or administrative error. (b) The board that considered the officer from in or above the promotion zone did not have before it material information for its consideration.

(3) An SSB will not consider an officer whose nonselection or omission was for Below the Zone consideration.

3. National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions) prescribes policies and procedures governing the appointment, assignment, temporary Federal Recognition, Federal Recognition, reassignment, transfers between States, branch transfers, area of concentration designation, utilization, branch detail, and attachment of commissioned officers of the Army National Guard (ARNG). The regulation provides that 1LTs may be considered for promotion and Federal recognition to CPT at 2 years TIG (minimum) and 5 years TIG (maximum). CPTs may be considered for promotion and Federal recognition to MAJ at 4 years TIG (minimum). Table 8.1 shows the military education requirement for promotion to MAJ as completion of Captains Career Course (CCC) or any officer advanced course (i.e., Active Component or Reserve Component Officer Advanced Course).

a. Paragraph 8-1 states, the promotion of officers in the ARNG is a function of the State. As in original appointments, a commissioned officer promoted by State authorities has a State status in the higher grade under which to function. However, to be extended Federal Recognition in the higher grade, the officer must have satisfied the requirements prescribed herein. National Guard officers may be considered and found qualified for Federal Recognition of their State promotion using two distinct processes: State Federal Recognition Boards and DA Mandatory Boards. Under either process, the precedent for an actual promotion in the Army National Guard is State assignment and appointment to the next higher grade. (1) State Federal Recognition Boards (FRB). Officers may be federally recognized through State FRB which are often referred to as "State vacancy promotion boards" or "unit vacancy boards" as part the Unit Vacancy Promotion (UVP) process under Title 32, USC, section 307.

b. Paragraph 8-2 (Promotion criteria) states, (1) Promotion criteria will be based on efficiency, time in grade, time in commissioned service, demonstrated command and staff ability, military education and civilian education, and potential for service in the next higher grade. (2) Except as provided in this chapter, promotion will be accomplished only when the officer is assigned to an appropriate Modified Table of Organization and Equipment (MTOE) or Table of Distribution and Allowance (TDA) higher graded position vacancy in the unit. Officers must be assigned to a valid MTOE or TDA position to be eligible for promotion.

c. Paragraph 8-3 (Promotion as a Reserve Commissioned Officer of the Army) provides that a commissioned officer who has been promoted by the State and extended Federal Recognition in the higher grade will be concurrently promoted to the higher grade in the Reserves of the Army with assignment to the ARNGUS. An officer's effective date and DOR as a Reserve of the Army will be determined by their duty status, type of selection board which selected the officer, and delay status (if applicable), and will be as defined below, unless otherwise provided by law. Chief NGB

will extend Federal Recognition in the higher grade to an ARNG commissioned officer using NGB Form 0122E series orders (NGB Special Federal Recognition Orders).

(1) The Effective Date determines the officer Federal pay and allowances in the next higher grade. The Effective Date is determined when CNGB in conjunction with the Secretary of Defense (SECDEF) approval or the Senate confirmation date (COLs only).

(2) The DOR is the date the Officer actually or constructively was appointed or promoted to a specific grade. The DOR is used in calculating time in grade toward promotion consideration in the next higher grade. It is the date used to determine the relative seniority for Officers holding the same grade.

d. Unit Vacancy Promotion (UVP). Effective Date and DOR are the same date and are established when the scroll is either approved by the SECDEF (LTCs and below) or the Senate confirmation date (COLs only).

e. Special Selection Board (SSB). The DOR and effective date of promotion of an ARNG commissioned officer who was selected by a Department of the Army SSB will be the same date(s) the officer would have had if the officer had been recommended for promotion to that grade by the selection board which should have considered or which did consider the officer; or the date the officer meets all applicable promotion criteria as outlined in this chapter (Title 10, USC, section 14502(e)(2)).

4. Title 10, USC, section 14308(f) (Effective Date of Promotion after Federal Recognition) states that 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 ARNG under section 307 or 310 of Title 32 shall be the date on which such Federal recognition in that grade is so extended. Further stated is that if the Secretary concerned determines that there was an undue delay in extending Federal recognition in the next higher grade in the ARNG to a Reserve commissioned officer of the Army, and the delay was not attributable to the action (or inaction) of such Officer, the effective date of the promotion concerned may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion.

5. Title 10, USC, section 14303. Eligibility for consideration for promotion: minimum years of service in grade states in subparagraphs—

a. Officers in Pay Grades O–1 and O–2.—An officer who is on the reserve active-status list of the Army and holds a permanent appointment in the grade of second lieutenant or first lieutenant as a reserve officer of the Army, may not be promoted to the next higher grade until the officer has completed two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant as a Reserve officer in the Army.

b. Officers in Pay Grades O–3 and Above.—Subject to subsection (d), an officer who is on the reserve active-status list of the Army and holds a permanent appointment in a grade above first lieutenant, may not be considered for selection for promotion to the next higher grade until the officer has completed three years, in the case of an officer of the Army holding a permanent appointment in the grade of captain, major, or LTC

6. 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 1310.01 ((Rank and Seniority of Commissioned Officers) (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." What constitutes "unusual circumstances" will, generally, be for the Board to determine based on the available evidence, which often includes an advisory opinion. 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.

7. Title 10, U.S. Code, section 613a (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 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.

8. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the SECARMY, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//