

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230004499

APPLICANT REQUESTS:

- a. removal of the DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)) covering the period 28 May 2020 through 4 July 2021 from his Army Military Human Resource Record (AMHRR);
- b. removal of the OER covering the period 5 July 2021 through 4 July 2022 from his AMHRR; and
- c. replacement of these reports in his AMHRR with statements of nonrated time.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- U.S. Army Human Resources Command (HRC) Memorandum (Special Selection Board (SSB) Notification – Reconsideration), 27 April 2021, with acknowledge receipt
- OER covering the period 28 May 2020 through 4 July 2021
- OER covering the period 5 July 2021 through 4 July 2022
- HRC Memorandum (SSB Results Fiscal Year (FY) 2020), 3 March 2023
- Department of the Army Orders 0004174407, 9 March 2023
- Memorandum for HRC Evaluation Appeals Branch (Evaluation Report Appeal (Applicant) 28 May 2020 through 4 July 2021 and (Applicant) 5 July 2021 through 4 July 2021), 23 March 2023
- Email Correspondence, 10 April 2023

FACTS:

1. The applicant states the administrative data in his two OERs in question became invalid as of the date he received his backdated promotion to lieutenant colonel (LTC) as the result of an SSB. These reports show his rank as major (MAJ) and compare his performance against other MAJs as peers, thereby causing an injustice. He notes the reports cannot simply be modified to reflect his accurate grade and rank, as the rater

and senior raters evaluated him as if he were an MAJ in assessing his performance and potential. He requests removal of the two OERs from his records and replacement with statements of nonrated time. He believes leaving the reports in his records constitute an injustice as the information is incorrect, unfairly distinguishes him from his peers, and could cause confusion when viewed by future boards.

2. After having prior enlisted service in the Regular Army, he was appointed as a Reserve commissioned officer in the rank/grade of second lieutenant and executed an oath of office effective 7 June 2001. He was promoted to the rank/grade MAJ/O-4 effective 1 January 2011.

3. ABCMR Docket Number AR20190015434, 30 October 2020, recommended correction of his records by removing his OER covering the period 1 March 2016 through 4 August 2016 and replacing it with a statement of nonrated time, and referring his records to an SSB for promotion consideration to LTC.

4. His AMHRR contains an HRC memorandum for record (Nonrated Statement), 23 April 2021, filed in the performance folder stating an evaluation report was not rendered for the period 1 March 2016 through 4 August 2016 as it was declared nonrated by Headquarters, Department of the Army – ABCMR.

5. The HRC memorandum (Special Selection Board (SSB) Notification – Reconsideration), 27 April 2021, with acknowledge receipt, notified him that he would be reconsidered for promotion by an SSB under the criteria and instructions established for the FY17 through FY21, LTC, Operations Support, regularly constituted Promotion Selection Board. He had 7 days from the date of notification to acknowledge receipt (see attachment for further details).

6. He received an extended-annual OER covering the period 28 May 2020 through 4 July 2021 (12 rated months), addressing his duty performance as the Deputy Team Chief, Defense Threat Reduction Agency, Fort Belvoir, VA. The OER shows in:

a. Part I (Administrative (Rated Officer)), block c (Rank), the entry "MAJ," and in block d (Date of Rank), the entry "20110101 [1 January 2011]2"; and

b. Part II (Authentication (Rated officer's signature verifies officer has seen completed OER Parts I-VI and the administrative data is correct)), block e1 (Rated Officer Signature), he digitally signed the OER on 20 July 2021.

c. The Rater rated his overall performance as "Proficient" with a comment "Top 10% of Army Field Grade Officers (FGOs) I worked with." The Senior Rater rated his potential as "Highly Qualified" with a comment "is in the top 20% of FAOs I have worked with in the last 15 years."

7. He received an annual OER covering the period 5 July 2021 through 4 July 2022 (12 rated months), addressing his duty performance as the Deputy Team Chief, Defense Threat Reduction Agency, Fort Belvoir, VA. The OER shows in:

a. Part I (Administrative (Rated Officer)), block c (Rank), the entry "MAJ," and in block d (Date of Rank), the entry "20110101 [1 January 2011]"; and

b. Part II (Authentication (Rated officer's signature verifies officer has seen completed OER Parts I-VI and the administrative data is correct)), block e1 (Rated Officer Signature), he digitally signed the OER on 17 August 2022.

c. The Rater rated his overall performance as "Proficient" with a comment "is one of the best Army FGO's I've worked with." The Senior Rater rated his potential as Highly Qualified" with a comment "is a top performing officer with the intellect and passion to thrive in any political or technical assignment."

8. A review of his AMHRR shows both OERs are filed in the performance folder. His records are void of documentation and he did not provide any evidence showing a Commander's Inquiry was requested or conducted.

9. The HRC memorandum (SSB Results FY20), 3 March 2023, informed him that he was considered and selected for promotion to LTC by a Department of the Army SSB under the FY20, LTC, Operations Support criteria.

10. Department of the Army Orders 0004174407.00, 9 March 2023, promoted him to LTC effective 1 September 2020.

11. His memorandum for HRC Evaluation Appeals Branch (Evaluation Report Appeal (Applicant), 28 May 2020 through 4 July 2021 and (Applicant) 5 July 2021 through 4 July 2021), 23 March 2023, appealed his two OERs based on administrative errors.

a. He stated the rank and grade are incorrect as they listed him as an MAJ. He received a backdated promotion to LTC on 9 March 2023 with an effective date of 1 September 2020 as the result of an SSB. His rater and senior rater evaluated him as an MAJ and he should have been compared against other LTCs.

b. He requested removal of the two OERs from his records and replacement with statements of unrated time. He believes leaving the incorrect OERs in his file constitutes an injustice as the information is incorrect, unfairly distinguishes him from his peers, and could cause confusion when viewed by future boards.

12. The email correspondence from an HRC Evaluation Appeals and Corrections Team technician, 10 April 2023, reviewed his request regarding his two OER appeals. His request was returned without action for the following reasons:

a. In accordance with Department of the Army Pamphlet 623-3 (Evaluation Reporting System), Table 2-13, Part I, block c (Rank), action required: Enter the rated officer's 3-letter rank abbreviation, not pay grade (for example, "COL" for colonel), as of the "THRU" date of the DA Form 67-10-3 (Strategic Grade Plate (O-6) Officer Evaluation Report).

(1) If the rated officer has been selected for promotion and is serving in a position authorized for the next higher rank, the officer will be rated in the promotable rank and a "P" will be placed after his or her current rank (for example, "LTCP").

(2) If the rated officer is not assigned to a position authorized for the higher rank, no "P" will be entered after the rank.

(3) If the rated officer has been frocked to the next higher rank and is serving in a position authorized for the rank to which he or she is frocked, enter the frocked rank.

(4) If the rated officer has been frocked to a higher rank but is not yet serving in a position authorized for the higher rank, enter the lower rank.

(5) For Army National Guard officers, promotions and promotable status dates are determined by State Adjutant Generals. These dates are not based on release dates of promotion selection lists (see Army Regulation 623-3 (Evaluation Reporting System)).

b. On the day the contested evaluation report was rendered his rank was MAJ and he was not considered or wearing the rank of LTC when the assessments were rendered by his rating chain during rating period covered for the contested evaluation reports.

c. In addition, it is those evaluation reports that were used to determine his promotion. The Evaluation Appeals and Corrections Branch is unable to remove the contested evaluation reports unless there was a disposition and requirement based on an Army Special Review Board or ABCMR determination.

13. He is currently assigned to the Office of the Deputy Chief of Staff, G-3/5/7, in the rank of LTC as the Team Lead – Europe Foreign Area Officer at the Pentagon.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The applicant's contentions, his military records, and regulatory guidance were carefully considered. The applicant received two favorable OERs for the rating periods 28 May 2020 through 4 July 2021 (12 rated months) and 5 July 2021 through 4 July 2022 (12 rated months), reflecting his grade of Major. Both OERs are accurate and reflected the grade the applicant held on the dates both OERs were rendered. There is neither an error nor an injustice in his OERs. However, an HRC memorandum (SSB Results FY20), 3 March 2023, informed him that he was considered and selected for promotion to LTC by a special selection board under the FY20, LTC promotion board that selected him for promotion. He was issued a promotion order promoting him to LTC effective 1 September 2020. He believes this promotion rendered both OERs administratively inaccurate since his rating officials rated him as a Major, not as LTC. The Board did not find the applicant's argument persuasive for several reasons: First, on the day the contested OERs were rendered, his rank was Major, he was sitting in a major position, and he was not considered or wearing the rank of LTC when the assessments/ratings were rendered by his rating chain during the rating period covered for the contested evaluation reports; thus, there was no error at the time both OERs were submitted. Second, the two contested OERs were considered by the SSB that selected him for promotion to LTC. Finally, both OERs are favorable and rate him high among his peers. For those reasons, the Board was not persuaded by the applicant's claim of injustice and voted to deny relief.

REFERENCES:

1. Title 10, U.S. Code, section 628 (Special Selection Boards), paragraph (b)(1), states if the Secretary of the Military Department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene an SSB under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine:

a. the action of the promotion board that considered the person was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or

b. the board did not have before it material information for its consideration.

2. Army Regulation 623-3 (Evaluation Reporting System), prescribed the policies for completing evaluation reports that support the Evaluation Reporting System. It also provides guidance regarding redress programs, including commander's inquiries and appeals. The regulation provides that:

a. Evaluation reports are assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army Officer or Noncommissioned Officer Corps. Performance will be evaluated by observing action, demonstrated behavior, and results from the point of view of the values, leadership framework and responsibilities identified on the evaluation forms, counseling forms, and as explained in Department of the Army Pamphlet 623-3 (Evaluation Reporting System). Consideration will be given to the relative experience of the rated officer, the efforts made by the rated officer, and the results that could be reasonably expected given the time and resources available. Potential evaluations will be performance-based assessments of the rated officers of the same grade to perform in positions of greater responsibility and/or higher grades. Assessment of potential will apply to all officers, regardless of their opportunity to be selected for higher positions or grades.

b. The senior rater is the senior rating official in the military rating chain or as officially designated by the academic institution. Senior raters use their position and experience to evaluate the rated Soldier from a broad organizational perspective, military program of instruction, or civilian academic course standards. Senior raters will ensure support forms are provided to all rated Soldiers they senior rate at the beginning of and throughout the respective rating periods; use all reasonable means to become familiar with a rated Soldier's performance; assess the ability of the rated Soldier; ensure that rating officials counsel the rated Soldier individually and throughout the rating period on meeting their objectives and complying with the professional standards

of the Army; consider the information on the applicable support forms when evaluating the rated individual; evaluate the rated Soldier's potential relative to his or her contemporaries; and ensure that all reports, which the senior rater and subordinates write, are complete and provide a realistic evaluation in compliance with procedures established in Department of the Army Pamphlet 623-3.

c. Each report will be an independent evaluation of the rated Soldier for a specific rating period. It will not refer to prior or subsequent reports. It will not remark on performance or incidents occurring before or after the period covered.

d. When a commander of commandant discovers that an evaluation report rendered by a subordinate or a subordinate command may be illegal, unjust, or otherwise in violation of this regulation, he or she will conduct an inquiry into the matter. The Commander's or Commandant's Inquiry will be confined to matters related to the clarity of the evaluation report, the facts contained in the evaluation report, the compliance of the evaluation with policy and procedures established by Headquarters, Department of the Army, and the conduct of the rated Soldier and members of the rating chain. The official does not have the authority to direct that an evaluation report be changed; command influence may not be used to alter the honest evaluation of a rated Soldier by a rating official. The procedures used by the commander or commandant to process such an inquiry are described in chapter 4.

e. Paragraph 3-37 stated modification to previously submitted evaluation reports provides an exception to a completed evaluation report filed in a Soldier's AMHRR be altered, withdraw or replaced with another evaluation report will not be honored will only be granted when:

(1) Information that was unknown or unverified when the evaluation report was prepared is brought to light or verified.

(2) This information is so significant that it would have resulted in a different evaluation of the rated Soldier; the following actions will be accomplished in an effort to modify the evaluation report:

(a) If the information would have resulted in a higher evaluation, the rated Soldier may appeal the evaluation report, and rating officials may provide input to support this point.

(b) If the information would have resulted in a lower evaluation, rating officials may submit an addendum to be filed with the evaluation report.

f. The burden of proof rests with the appellant.

(1) Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

(a) the presumption of regularity will not be applied to the report under consideration; and

(b) action is warranted to correct a material error, inaccuracy, or injustice.

(2) For a claim of inaccuracy or injustice of a substantive type, evidence will include statements from third parties, rating officials, or other documents from official sources. Third parties are persons other than the rated officer or rating officials who have knowledge of the appellant's performance during the rating period. Such statements are afforded more weight if they are from persons who served in positions allowing them a good opportunity to observe firsthand the appellant's performance as well as interactions with rating officials. Statements from rating officials are also acceptable if they relate to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practicable, such statements will include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the evaluation report was rendered. The results of a Commander's or Commandant's Inquiry may provide support for an appeal request.

g. Paragraph 4-7 stated an evaluation report accepted for inclusion in the rated Soldier's AMHRR is presumed to be administratively correct, have been prepared by the proper rating officials, and represent the considered opinion and objective judgment of the rating officials at the time of preparation. An appeal will be supported by substantiated evidence. An appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered.

4. Department of the Army Pamphlet 623-3 (Evaluation Reporting System), provides procedural guidance for completing and submitting to Headquarters, Department of the Army, evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System.

a. Section IV (DA Form 67-10-2), paragraph 2-9 (Part I, Administrative Data), states Part I of the DA Form 67-10-2 is for administrative data, including identification of the rated officer, unit data, the period covered, number of rated months, nonrated time codes, and the reason for submission of the DA Form 67-10-2 (see Table 2-24 for a list of codes and reasons for submitting OERs and Table 2-25 for the codes and reasons for nonrated periods). Table 2-7 details instructions for completing part I of the DA Form 67-10-2.

b. Table 2-7 (Administrative Data for DA Form 67-10-2) states in:

(1) Part I, block c (Rank), enter the rated officer's 3-letter rank abbreviation, not pay grade (for example, "MAJ" for major or "CW3" for chief warrant officer three) as of the "THRU" date of the DA Form 67-10-2.

(a) If the rated officer has been selected for promotion and is serving in a position authorized for the next higher rank, they will be rated in the promotable rank and a "P" will be placed after his or her current rank (for example, "CPTP" and "CW3P").

(b) If the rated officer is not assigned to a position authorized for the higher rank, no "P" will be entered after the rank.

(c) If the rated officer has been frocked to the next higher rank and is serving in a position authorized for the rank to which he or she is frocked, enter the frocked rank.

(d) If the rated officer has been frocked to a higher rank but is not yet serving in a position authorized for the higher rank, enter the lower rank.

(2) Part I, block d (Date of Rank), enter the date of rank (YYYYMMDD) for the rated officer's rank as of the "THRU" date of the DA Form 67-10-2. If the officer is promotable, but not yet promoted, the date of rank is for the current rank. If the rated officer has been frocked to a higher rank and is serving in an authorized position, enter the effective date of the frocking. If the rated officer has been frocked to a higher rank and is not yet serving in an authorized position requiring the higher rank, enter the date of rank of the lower rank.

3. Army Regulation 600-8-104 (Army Military Human Resource Records Management) governs the composition of the Official Military Personnel File (OMPF) and states the performance folder is used for filing performance, commendatory, and disciplinary data. Once placed in the OMPF, the document becomes a permanent part of that file. The document will not be removed from or moved to another part of the OMPF unless directed by certain agencies, to include this Board. Appendix B states the DA Form 67-10-2 is filed in the performance folder of the Soldier's OMPF.

//NOTHING FOLLOWS//