

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230006223

APPLICANT REQUESTS THE BOARD:

- direct confirmation of Branch Transfer by the U.S. Army Human Resources Command (HRC) on 16 November 2021 and eligibility for fiscal year (FY) 22 USAR LTC Army Promotion List (APL) promotion board
- direct Special Selection Board for the FY22 USAR LTC as a Primary Zone officer

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
- Email correspondence between the applicant and HRC
- Office of the Chief of Army Reserve memorandum addressed to HRC
- DA Form 1059 (Service School Academic Evaluation Report)
- Office of the Deputy Chief of Staff, G-1 memorandum
- Extract of AR 140-10 (Assignments, Attachments, Details, and Transfers)

FACTS:

1. The applicant states, via memorandum addressed to the Board, in effect,
 - a. HRC approved a Branch Transfer from Medical Service (MS) to Adjutant General (AG) Corps via memorandum dated 7 October 2021 and signed 16 November 2021.
 - b. On 12 January 2022, HRC MS Talent Manager wrote to the AG Talent Manager: "AMEDD AGR (Active Guard Reserve) officer [Applicant], has an approved VTIP (Voluntary Transfer Incentive Program) from MS to AG for utilization as a Functional Area (FA) 59 (see attached memo). He sent a request a few weeks ago to the accessions branch and the VTIP team with his DA Form 61 (Application for Appointment) to complete the reappointment process; however, now with the recently approved Department of the Army, G1 Exception to Policy (ETP), he no longer requires reappointment. As the applicant is already in an 01A slot, as the losing Talent Manager, he is clear on his end to have his branch and AOC (Area of Concentration) updated in

Reserve Database Maintenance System (RDMS) and APART. Does he make the updates as the losing Talent Manager or is this done on his end?"

c. On 17 January 2022, Major (MAJ) J.B.V., Chief, Force Sustainment Branch, Officer Management Division, Reserve Personnel Management Directorate responded acknowledging the branch transfer as approved stating, "The new AG talent manager, MAJ W. (in cc), will switch you over to AG this week."

d. Based on this new branch status HRC confirmed eligibility for Below the Zone Promotion consideration on the Fiscal Year 2022, U.S. Army Reserve Lieutenant Colonel Army Promotion List (FY22, USAR LTC APL)board via email on 17 and 18 January 2022 and processed his file for late addition to the DA Secretariate.

e. On 19 January 2022, the day the promotion board convened, he was verbally informed by HRC that the DA Secretariate did not include his file for the board as the 'system still showed he was a Medical Service Corps officer.'

f. Despite acknowledgment of Branch Transfer approval and processing his file to the DA Secretariate for promotion board inclusion as an AG officer, HRC Talent Managers failed to update requisite systems to reflect the branch transfer. HRC then directed that he must be 'fully qualified' for systems to be updated to reflect AG Branch.

2. The applicant provides:

a. U.S. Army Human Resources Command memorandum, dated 7 October 2021, Subject: Voluntary Transfer Incentive Program (VTIP), reflects his Functional Designation/Branch Transfer request for Adjutant General Branch (42A) had been approved. Further stating, annotations concerning this action will be made to his official records.

b. Email correspondence between the applicant and Human Resources Command (HRC) as follows:

(1) On 17 January 2022, the applicant corresponded with his Talent Manager regarding his recently approved VTIP request. Addressing concerns such as what needs to be done to make his Branch Transfer official, updating the HRC systems, and the fact that his date of rank (DOR) making him eligible Below the Zone (BZ) to LTC for the APL Board.

(2) On 18 January 2022, the applicant corresponded with the HRC Chief, Force Sustainment Branch, Officer Management Division, regarding his request for consideration for promotion under the criteria and instruction for the upcoming FY22 Reserve Component (RC), LTC APL.

c. Office of the Chief of Army Reserve memorandum addressed to Commander, U.S. Army Human Resources Command, dated 18 January 2022, Subject: Request promotion consideration within 30 day of convene date, authored by the applicant, requesting consideration for promotion under the criteria and instructions for the upcoming FY22 RC, LTC, APL. He acknowledged and was aware that the board was due to convene within 30 days of his request on or about 19 January 2022. Further acknowledging that he may not have access to review and or certify the "My Board file" and its documents prior to this date. Nonetheless, he elected to rely on the documents within his Army Military Human Resource Records to stand alone as to its completeness and certification.

d. Office of the Deputy Chief of Staff, G-1 memorandum addressed to the Commanding Generals of the U.S. Army Training and Doctrine Command (TRADOC) and U.S. Army HRC, undated, Subject: Exception to Army Regulation 140-10, (Assignments, Attachments, Details, and Transfers) which states, "As an exception to AR 140-10, paragraph 3-1, Reserve Component (RC) Specialty Branch Officers will be authorized to voluntarily branch transfer to a basic branch without loss of service credit, or change in grade. RC Specialty Branch Officers who voluntarily branch transfer will not be required to reappoint unless there is a change in grade. This exception to policy is effective immediately and expires one year from the date of this memorandum unless superseded or rescinded.

e. DA Form 1059, Service School Academic Evaluation Report, covering the period of 2 May 2022 through 13 May 2022, reflects the applicant completed the Human Resource Management Qualification Course at the Adjutant General School, Fort Jackson, South Carolina.

f. Extract of AR 140-10, which highlights paragraphs 3-3a and 3-3e, which states, "there must be reasonable assurance that the officer is or can become branch qualified within 1 year; Officers who do not become branch qualified within 3 years will be transferred to a position they are branch qualified for or reassigned to the appropriate control group unless approved for 1 year extension."

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

a. He took the Oath of Office on 8 May 2004 as a second lieutenant (2LT), Reserve Commissioned Officer, Military Police Corps. The applicant's date of rank to 2LT was later adjusted to 5 November 2005, as a result of his appointment as a Medical Services Corps (MSC) officer on 16 March 2007 with 1 year, 4 months, and 11 days of constructive credit.

b. National Guard Bureau Special Orders Number 272 AR, dated 24 October 2006, reflects the applicant was transferred to the U.S. Army Reserve, with an effective date of 15 September 2006.

c. U.S. Army Human Resources Command memorandum, dated 16 March 2007, Subject: Appointment as a Reserve Commissioned Officer of the Army Under Title 10, USC 12201 and 12203, reflects the Secretary of the Army appointed the applicant a Reserve commissioned officer of the Army, effective on his acceptance, in the grade and with the social security number shown in the address above. The appointment is for an indefinite term.

d. The applicant's subsequent promotions are as follows:

- to first lieutenant (1LT), effective 4 November 2007
- to captain (CPT), effective 1 May 2011
- to major (MAJ), effective 1 February 2018
- to lieutenant colonel (LTC), effective 1 June 2023

e. As of the date of this writing, the applicant serves with the U.S. Army Element, U.S. Africa Command, Stuttgart, Germany.

4. U.S. Army Human Resources Command advisory opinion, dated 1 November 2023, states:

a. Based on a review of the information provided, our records and the systems available to our office, we find that the applicant's request does not have merit.

b. We will only comment on the actions taken or controlled by ESPD Officer Promotions as it relates to his case, those outside such as VTIP (direct) accessions, appointments, and branch transfers are not within our purview.

c. It's understood for the reason of the applicant's disappointment (MAJ at the time); however, it appears that HRC Officer Promotions made every attempt in its efforts to have him included for consideration during the FY22 LTC APL PSB (Below Zone (BZ), even up until the 11th hour clearly shown within the documents he submitted and his following comments "my DOR would make me eligible for BZ to LTC for the APL which the board file that closes today and the board meets in a week? Is it too late to get into this board? My records and files are G2G if we can make this happen. I know slim chance, but there's always hope", thus proving there was no malice or haste by ESPD Officer Promotions. Additional speculation may be at hand for cause in such a delay to push said documents outside of Officer Promotions, possibly due to the exception being undated, even though it notes within from the date of this document.

d. As recognized by the applicant, there are no Special Selection Board (SSB) consideration for omissions or material errors for BZ, however if there are favorable outcomes to the DOR corrections he has mentioned, there may be a chance that he would qualify for an SSB.

5. In response to the advisory opinion, the applicant asks that the Board reject the recommendation that his request does not have merit based on the following:

a. The advisory opinion ignores key arguments made in his case, noting in paragraph two that several of the matters related to his case "are not within our purview." Mainly that in accordance with AR 140-10 branch qualification is not a requirement for branch transfer and therefore promotion consideration.

b. Officer Promotion admits that it made "every attempt in its efforts" to send his promotion file to the FY22 LTC APL PSB. It does not address why it took these actions. However, it can be inferred that they took these actions because HRC and Officer Promotions believed he was an AG Officer and eligible for the FY22 L TC APL PSB.

c. The advisory opinion alludes to speculation as to why he was not considered for the promotion board, but does not provide cause, policy, regulation, or law as supporting any ineligibility for promotion consideration. Nor do they address the allegation that the DA Secretariat declined his packet for board consideration as 'the system still showed he was a Medical Service Corps Officer. This is contrary to the memorandum from HRC dated 7 October 2021 approving the branch transfer and emails on 17 January 2022 from the Chief, Force Sustainment Branch, Officer Management Division, Reserve Personnel Management Directorate, acknowledging that I was an AG Officer and "The new AG Talent Manager, MAJ W____ (in Cc), will switch you over to AG this week." Both were prior to the board convene date of the FY22 LTC APL PSB on 19 January 2022.

d. The advisory opinion does not dispute that he was an AG Officer on the convene date of the board nor does it state that I was ineligible for the FY22 LTC APL PSB as an AG Officer. In fact, the opposite is true as they tacitly admit they believed that I was and took every effort to send my file to the promotion board. The opinion also admits that while there is no remedy for missed below the zone consideration, that if pending Special Selection Board (SSB) result in adjustment to Date of Rank, 'there may be a chance that he would qualify for an SSB'. This seems to acknowledge that HRC considered me an AG Officer on 19 January 2022 and eligible for the FY22 LTC APL PSB.

e. He asks that the ABCMR definitively resolve this matter and determine that he was in fact an AG Officer on 19 January 2022 and eligible for the FY22 LTC APL PSB

and subsequently direct special selection board consideration for such board upon the favorable result of pending FY16 MAJ SSB.

BOARD DISCUSSION:

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.

a. Confirmation of Branch Transfer: No action. The applicant received a memorandum from HRC, signed on 16 November 2021, approving his branch transfer. There is no further action required by this Board.

b. Promotion consideration by an SSB: Deny. The promotion secondary zone creates an accelerated promotion opportunity for Soldiers who excel and are ahead of their peers. The promotion primary zone establishes a point in time when Soldiers should be ready (trained, in good standing, and meets Army standards) to assume positions of increased responsibility. The applicant essentially contends that had his branch transfer completed correctly and timely, he would have been included for promotion consideration, in the secondary zone, by the FY 22 LTC APL. While the Board is not privy to the specific reasons for the delay in updating the applicant's record to reflect the branch transfer, there is no effective relief that the Board can grant him. Title 10, U.S. Code, section 628 states if the Secretary of the military department concerned determines that because of administrative error a person who should have been considered for selection for promotion from in or above the promotion zone by a promotion board was not so considered, the Secretary shall convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. There is no special selection board for officers in the secondary zone.

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.

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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. Army Regulation 140-10 (Assignments, Attachments, Details, and Transfers) prescribes policies, responsibilities, and procedures to assign, attach, detail, remove, or transfer U.S. Army Reserve (USAR) Soldiers. Paragraph 3-3a states, request for branch transfer/MOS reclassification may be made by or with the consent of the officer. There must be reasonable assurance that the officer is or can become branch qualified within 1 year, except that WO must be fully qualified, including required formal schooling, in the prospective MOS prior to reclassification. The request will include evidence of qualification for the branch/MOS to which transfer is requested.

2. Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers) prescribes the officer promotion function of the military human resource support operations for officers on the Reserve active status list (RASL) and U.S. Army Reserve (USAR) warrant officers (WOs). It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support Reserve Component (RC) officer promotions.

a. Paragraph 6-1 states, Special Selection Boards (SSBs) are governed by the same instructions provided to the boards that considered or should have considered an officer for promotion.

b. Paragraph 6-2 states, SSBs are convened under 10 USC 14502 to consider or reconsider commissioned officers on the RASL for promotion when HQDA 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.

//NOTHING FOLLOWS//