

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230006414

APPLICANT REQUESTS: removal of the following documents from his Army Military Human Resource Record (AMHRR):

- the Secretary of the Army memorandum (Promotion Review Board (PRB) RP1807-06, Fiscal Year 2017 Major (MAJ), Army Reserve Non-Active Guard, Army Promotion List Competitive Category, Promotion Selection Board), 3 December 2018
- the Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation
- all Department of the Army Inspector General (DAIG) derogatory information

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).

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He has derogatory information in his permanent file that generated a PRB for his promotion to MAJ. He believes the derogatory information was levied against him in error. The subject investigation and Inspector General (IG) substantiations against him when he was the subject of an investigation as a first lieutenant in 2010 were incorrect and not handled within the appropriate regulations or processes. The commanding general (CG) who oversaw the investigation signed the investigation as complete with no action taken, yet the IG substantiated the findings without CG concurrence. Further, the allegations against him were specific to operation of Army aircraft. The Army aviation community has a special process to deal with these types of investigations, known as a Flying Evaluation Board.

b. He believes this derogatory information is in error, both from a process standpoint and a regulatory correctness standpoint. He believes that if he needed to be investigated for his actions in an Army aircraft, a Flying Evaluation Board was appropriate. He further believes that the derogatory substantiation with CG concurrence should be reevaluated. The PRB for his below-the-zone promotion to MAJ has significantly slowed down his career. He continues to receive above-center-of-mass evaluations, but will continue to be plagued by administrative delay in the promotion cycle.

c. Lastly, in his new role with the Defense Intelligence Agency, he is ineligible for Reserve foreign officer training because he has been the subject of a PRB.

3. Following prior enlisted service, he was commissioned as a Reserve officer of the Army in the rank of second lieutenant on 19 May 2007. He completed the Initial Entry Rotary Wing/AH-64 Course. He was promoted to first lieutenant in August 2009.

4. He entered active duty in the Active Guard Reserve Program on 28 September 2009. He served in Iraq from October 2010 to August 2011. He was also promoted to captain in September 2011.

5. In October 2014, he completed the Military Intelligence (MI) Officer Transition Course and the MI Captains Career Course.

6. He was honorably released from active duty on 4 December 2016.

7. An entry in the U.S. Army Human Resources Command Integrated Web System shows the applicant was selected by the Fiscal Year 2017 Major Army Promotion List (APL) Competitive Category for promotion to major (MAJ). He had been assigned to a MAJ, APL, position effective 2 November 2017. The

8. The applicant's AMHRR does not contain, and he did not provide an Army Regulation 15-6 report of investigation. Additionally, the specific derogatory information that triggered a review of the applicant's a PRB is unknown and is not contained in the applicant's AMHRR. [A Promotion Review Board (PRB) is convened to reconsider the promotion status of promotable officers identified or recommended for removal from a promotion list due to misconduct or sub-standard performance].

9. The applicant's AMHRR contains the Secretary of the Army memorandum (PRB RP1807-06), Fiscal Year 2017 Major (MAJ), Army Reserve Non-Active Guard Reserve Promotion, Army Promotion List Competitive Category, Promotion Selection Board, 3 December 2018, stating the Secretary of the Army retained his promotion eligibility to MAJ pursuant to Army Regulation 135-155, paragraph 4-11, effective immediately.

10. U.S. Army Human Resources Command Orders B-02-900848, 12 November 2019, promoted him to the rank/grade MAJ/O-4 with an effective date of 2 November 2017.

11. A review of the DAIG database shows the applicant submitted three IG complaints for the following reasons:

a. DAIG Case Number XZ140258, 5 September 2014, regarding civilian job classification, recruitment, hiring practices, placement, and pay and allowances. The IG office accepted the case. No further action was required and the case was closed;

b. DAIG Case Number XMZ140347, 9 September 2014, regarding civilian job classification, recruitment, hiring practices, placement, and pay and allowances. The IG office provided a written response to the applicant on 17 December 2014 and closed the case; and

c. DAIG Case Number NZ200444, 17 August 2020, requesting assistance with receipt of a reenlistment bonus. His reenlistment bonus issue was resolved and the case was closed.

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 is requesting removal from his AMHRR the SA's PRB memorandum, the AR 15-6, and the DAIG derogatory information. His AMHRR does not contain an AR 15-6 or any DAIG records. His AMHRR does contain a memorandum (dated 3 December 2018) signed by the SA authorizing his retention on a promotion list, which led to his promotion to major with a retroactive date of 2 November 2017. This memorandum is properly filed in his AMHRR. In the absence of the AR 15-6 and given that the applicant does not provide enough information or background to determine what triggered a PRB, the Board found no error or injustice.

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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 20-1 (Inspector General Activities and Procedures), 3 July 2012, prescribed policy and procedures concerning the mission and duties of The IG. Paragraph 3-12 (Requests for Reconsideration of IG Findings, Opinions, Judgments, or Conclusions) stated only The IG may approve or disapprove requests to amend determinations in IG records. Requests for amendments concerning opinion,

judgement, or conclusion may be granted upon a showing of fraud, mistake of law, mathematical miscalculation, or newly discovered evidence.

3. Army Regulation 600-8-29 (Officer Promotions), 25 February 2005, prescribed the officer promotion functions of the military personnel system.

a. Paragraph 1-10 (Promotion Eligibility) stated captain, MAJ, and lieutenant colonel officers must serve at least 3 years of time in grade to be considered for promotion. This requirement may be waived by the Secretary of the Army only for consideration from below the zone.

b. Chapter 8 (Promotion Review Boards) stated a PRB is used to advise the Secretary of the Army in any case in which there is cause to believe that a commissioned officer on a promotion list is mentally, physically, morally, or professionally unqualified or unsuited to perform the duties of the grade for which he or she was selected for promotion.

c. Paragraph 8-2 (Basis for Referral) stated an officer may be referred to a PRB for the following reasons (this list is not exclusive):

- a referred officer evaluation report or academic evaluation report
- nonjudicial punishment under Article 15, Uniform Code of Military Justice
- any courts-martial conviction
- a memorandum of reprimand placed in the AMHRR
- adverse documentation filed in the AMHRR
- initiation of elimination action
- failure to make satisfactory progress in a weight control program
- other derogatory information received by Headquarters, Department of the Army, but not filed in the AMHRR

d. Paragraph 8-8c (Board Recommendation) stated the PRB's recommendation is only advisory to the Secretary of the Army. In cases involving promotion to the grade of colonel or below, the board's report will be forwarded to the Secretary of the Army, who, on behalf of the President, may remove from the promotion list the name of the officer in a grade above second lieutenant; retain the officer on the promotion list; return the report to the Deputy Chief of Staff, G-1; or direct other appropriate action.

4. Army Regulation 600-8-104 (Army Military Human Resource Records Management) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR.

a. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) states only documents pertaining to a Soldier's military career will be filed in

the AMHRR. Once properly filed in the AMHRR, the document will not be removed from the record unless directed by one of the following, to include the Boards of the Army Review Boards Agency, such as the ABCMR.

b. Table 3-1 (Official Military Personnel File Folders in the AMHRR) states the restricted folder contains documents that may normally be considered improper for viewing by selection boards or career managers.

c. Appendix B (Documents Required for Filing in the AMHRR and/or interactive Personnel Electronic Records Management System) states all documents approved by the Department of the Army and required for filing in the AMHRR and/or interactive Personnel Electronic Records Management System can be found at the U.S. Army Human Resources Command web site. The document "Retain PROM", titled "DA [Department of the Army] Promotion Review Board Results Retaining Soldier on Promotion List," is filed in the restricted folder of the Soldier's AMHRR.

//NOTHING FOLLOWS//