

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2024

DOCKET NUMBER: AR20230006420

APPLICANT REQUESTS:

- adjustment of his Date of Rank (DOR) to reflect a date if 2016 or at least 5 June 2021
- extension of Mandatory Retirement Date (MRD) to reflect 6 June 2026
- a personnel appearance before the Board (video/telephone)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20180014894, 16 November 2020
- Memorandum – Subject: Delay of Promotion and Referral to a Promotion Review Board (PRB), 13 September 2021
- Congressional Nomination information
- Secretary of the Army (SECARMY) letter, 20 December 2022
- Orders Number 4589632, 28 April 2023

FACTS:

1. The applicant states in pertinent part that on 13 September 2021, he received notification that he was selected for promotion to the rank/grade of colonel (COL)/O-6 by a Special Selection Board (SSB) following the results of ABCMR Docket Number AR20180014894. He notes that his promotion was delayed and referred to a PRB due to derogatory information (General Officer Memorandum of Reprimand (GOMOR)) discovered within the Criminal Investigation Division (CID) records that should have been removed based upon this Board's direction in ABCMR Docket Number AR20180014894. He contests that due to the delay of his promotion (3 years), he is currently precluded from completing 36 months' Time-in-Grade (TIG) as a COL prior to reaching his MRD (6 June 2024). Since then, the GOMOR has been removed from his CID records.

2. A review of the applicant's available service records reflects the following:

- a. On 15 December 1989, the applicant was appointed a Reserve commission at the rank/grade of second lieutenant (2LT)/O-1.
- b. On 6 Jun 1990, the National Guard Bureau (NGB) issued Special Orders Number 109 AR announcing Federal recognition of the applicant's initial appointment in the [REDACTED] Army National Guard (ARNG) as a Military Police officer, effective 25 April 1990.
- c. On 22 January 1993, the NGB issued Special Orders Number 9 AR announcing Federal recognition of the applicant's promotion to the rank/grade first lieutenant (1LT)/O-2, effective 14 December 1992.
- d. On 13 January 1997, the NGB issued Special Orders Number 9 AR announcing Federal recognition of the applicant's promotion to the rank/grade of captain (CPT)/O-3, effective 13 January 1997.
- e. On 3 May 2001, the NGB issued Special Orders Number 119 AR announcing Federal recognition of the applicant's transfer into the U.S. Army Reserve (USAR) and withdrawal of his Federal recognition within the [REDACTED] ARNG, effective 5 February 2001.
- f. On 27 August 2003, the applicant was promoted to the rank/grade of major (MAJ)/O-4, effective 17 July 2003.
- g. On 28 April 2005, the applicant was issued his Notification of Eligibility for Retired Pay at Age 60 (20-Year letter).
- h. On 11 February 2011, the U.S. Army Human Resources Command (AHRC) issued Orders Number B-02-100829 announcing the applicant's promotion to the rank/grade of lieutenant colonel (LTC)/O-5, effective 3 January 2011.
- i. On 22 July 2016, the applicant completed the U.S. Army War College.
- j. On 20 December 2022, the SECARMY announced that effective immediately, the applicant would be retained on the Fiscal Year 2016 COL, Army Reserve – Non-Active Guard/Reserve (AGR) Army Promotion List (APL), Promotion Selection Board (PSB) promotion list pursuant to Title 10 United States Code (USC), Section 14502a(f)(1) in result of the PRB RP2111-11, SSB.
- k. On 28 April 2023, AHRC issued Orders Number 4589632 announcing the applicant's promotion to the rank/grade of COL/O-6, effective 1 September 2022 (DOR).
- l. On 26 October 2023, AHRC issued Orders Number 6400468 voluntarily transferring the applicant to the USAR Retired Reserve, effective 1 January 2024.

3. The applicant provides the following a:

a. Self-authored letter, reflective of an expansion of the applicant's argument presented before this Board. The applicant adds that on 20 December 2022, the SECARMY elected to retain him on the FY2016 promotion list. The U.S. Senate confirmed his selection for promotion to COL on 13 February 2023, approximately 18-months following the SECARMY's decision. This delay of promotion precludes him from completing 36 months TIG based on his 6 June 2024 MRD. The applicant provides a chronological timeline of his alleged injustices following the release of his 2018 ABCMR case. This letter is further provided in its entirety within the supporting documents for the Board's review.

b. ABCMR Docket Number AR20180014894, dated 16 November 2020, reflective of the direction provided by the ABCMR regarding the applicant's granted relief. The board directed that the necessary administrative action be taken, to include a Special Selection Board (SSB), to effect correction of the applicant's records.

c. Memorandum – Subject: Delay of Promotion and Referral to a PRB, dated 13 September 2021, reflective of the announcement of the Deputy, Chief of Staff, G-1 approval of the post selection screening process for promotions, command selectees, and those selected for project/product managers. All CID, DAIG and the restricted portion of the Army Military Human Resource Record (AMHRR) files were screened to isolate any case in which the applicant is/was the subject of substantive derogatory information. The applicant was notified that a CID Report of Investigation (ROI) which mentions a letter of reprimand was identified in the post selection process. His records were referred to a PRB. The applicant was afforded 30 days to submit a rebuttal. He was advised that once the PRB makes a recommendation, it will be forwarded to the SECARMY for final disposition. The entire process may take from 12-18 months from receipt of his intent to the final decision. A Suspension of Favorable Personnel Actions (SFPA) flag would be put in place throughout this process.

d. Congressional Nomination information reflective of the applicant's nomination for promotion being confirmed by the Senate on 30 March 2023.

4. On 3 November 2023, the AHRC, Chief, Personnel Services Division, provided an advisory opinion noting that the applicant's DOR was established in accordance with the position assignment date on his Promotion Qualification and Verification Statement. AHRC cannot adjust his MRD or DOR without direction from this Board. Concerning the established MRD, COLs are authorized to serve until the first day of the month in which the officer completes 30 years of commissioned service in accordance with Title 10 United States Code, section 14701. The applicant's original date of commission was 15 December 1989; however, he had a break in service from 3 January 2005 to 9 June 2009. His MRD is now 1 June 2024.

5. On 8 November 2023, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments. As of 6 March 2024, the applicant has not responded.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and United States Army Human Resources Command- Personnel Services Division advisory opinion, the Board found the applicant's original date of commission was 15 December 1989, however, evidence shows the applicant had a break in service from 3 January 2005 – 9 June 2009. Based on the HRC opine the applicant's mandatory retirement date (MRD) should be shown as 1 June 2024, the Board found insufficient evidence to amend his MRD.

2. However, the Board agreed there is sufficient evidence to support granting the applicant request to have his date of rank adjusted based on errors causing promotion delays that resulted in a delay in securing an O-6 billet. Furthermore, the Board noted based on no fault of the applicant, correction to his DOR is warranted. Therefore, the Board granted partial relief to show is promotion DOR to COL/O-6 as 5 June 2021.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to amend the applicant's date of rank (DOR) to COL/O-6 to show an effective date of 5 June 2021.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to extension of Mandatory Retirement Date (MRD) to reflect 6 June 2026.

X 

CHAIRPERSON



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 (AR) 135-155 (Army National Guard and U.S. Army Reserve Promotion of Commissioned Officers and Warrant Officers Other Than General Officers) Section III (Promotion Reconsideration Boards) provides Officers and warrant officers who have either failed of selection for promotion, or who were erroneously not considered for promotion through administrative error may be reconsidered for promotion by either a promotion advisory board or a special selection board, as appropriate. These boards are convened to correct/prevent an injustice to an officer or former officer who was eligible for promotion but whose records –

- through error, were not submitted to a mandatory promotion selection board for consideration
- contained a material error when reviewed by the mandatory selection board

a. Paragraph 4-18 (Date of Rank and Effective Date of Promotion after an Involuntary Delay) provides that except as provided in paragraph 4-18c below, 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 date of rank and effective date of promotion.

b. Paragraph 4-18c provides that HRC St. Louis, CDR, HRC, Chief, Office of Promotions (RC), is authorized to adjust the date of rank and effective date of promotion for an officer whose promotion has been delayed. This is only if the basis for the officer's delay of promotion is as found in paragraphs (1) through (5) below, and a determination is made that the basis for delay no longer exists. Under paragraph a above, if the basis for an officer's delay of promotion is not as established below, the determination regarding adjustment may only be made by the Secretary of the Army.

1) Noncompliance with the height/weight standards.

2) Failure to pass the most recent Army Physical Fitness Test (APFT) or failure to take and pass the APFT within the period required.

3) Disciplinary action under Article 15 of the Uniform Code of Military Justice.

4) Any adverse administrative action (for example, memoranda of reprimand). The date of rank and effective date will be the day after the date a filing of determination is made.

5) The officer's enrollment in and successful completion of the Army Drug and Alcohol Prevention Control Program.

For commissioned officers (other than commissioned warrant officers), the DOR and effective date of promotion following an involuntary delay may be earlier than the date of the promotion memorandum. However, it cannot be earlier than the approval date of the board that selected the officer.

2. Title 10, USC, section 14509 (Separation at Age 62: Reserve Officers in Grades Below Brigadier General or Rear Admiral) provides that each Reserve officer of the Army who is in an active status or on an inactive-status list and who reaches the maximum age specified in section 14509 (Age 62), 14510 (Age 62) Brigadier General, 14511 (Age 64) Major General, or 14512 (Age 66) certain general officers of this title for the officer's grade or position shall (unless the officer is sooner separated or the officer's separation is deferred or the officer is continued in an active status under another provision of law) not later than the last day of the month in which the officer reaches that maximum age:

(1) Be transferred to the Retired Reserve if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) Be discharged from the officer's reserve appointment if the officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

3. Department of Defense Instruction 1320.08 (Continuation of Commissioned Officers on Active Duty and on the Reserve Active-Status List) provides that the SECARMY may defer mandatory retirement of officers in the grades of O-5 and O-6 who are subject to retirement pursuant to Section 633 or 634 of Title 10, USC, if those officers were selected for continuation on the ADL by a continuation selection board convened pursuant to Section 611(b) of Title 10.

4. Title 10, USC, section 14701 (Selection of officers for continuation on the Reserve Active Status List) states:

a. A reserve officer who holds the grade of lieutenant colonel or commander and who is subject to separation under section 14514 (Discharge or retirement for years of service or after selection for early removal) of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 33 years of commissioned service.

b. A reserve officer who holds the grade of colonel in the Army, Air Force, or Marine Corps or the grade of captain in the Navy and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 35 years of commissioned service.

5. 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."

c. What constitutes "unusual circumstances" will, generally, be for the Board to determine based on the available evidence, which often includes an advisory opinion.

6. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, 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 applicant's 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//