

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 November 2024

DOCKET NUMBER: AR20230006421

APPLICANT REQUESTS: in effect, referral to a special selection board (SSB) for promotion to colonel (COL) in the New Mexico Army National Guard (NMARNG).

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

- DD Form 149 (Application for Correction of Military Record)
- Army Regulation (AR) 600-8-29 (Officer Promotions)

FACTS:

1. The applicant states, in effect, prior to his discharge and transfer to The Retired Reserve, he was a lieutenant colonel (LTC) in NMARNG; his separation was based on having reached his mandatory retirement date (MRD) after a second non-selection for COL.

a. A peer (LTC P__ C__), commissioned the same year as the applicant, was allowed to extend beyond his MRD on the proviso that he would not be considered for future COL promotion selection boards (PSB). A PSB subsequently recommended him for promotion to COL, and this occurred even though LTC P__ C__ had already been considered for promotion "more than 3 times (if not more), despite (a) potential GOMAR (sic), and despite memorandum that advised that he would not be considered for promotion after his first two reviews."

b. The applicant asks the Board to allow him the same number of considerations for promotion to COL as his peer; he adds that he also was not considered for "SELCON" (selective continuation in active status) prior to reaching his MRD.

c. In support of his request, he provides the Board with a copy of the current AR 600-8-29; (AR 600-8-29 prescribes policies and procedures for the promotion of Army commissioned and warrant officers on the active duty list (ADL) and applies to ADL officers in the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve commissioned and warrant officers).

2. The applicant's service record shows the following:

a. On 4 June 1993, the applicant executed his oath of office as a commissioned officer in the NMARNG. He served continuously through a variety of assignments, and, on 27 February 2012, the NMARNG advised him had completed sufficient service to qualify for retired pay at age 60.

b. Effective 20 May 2014, the National Guard Bureau (NGB) Federally recognized the applicant's promotion to LTC.

c. Effective 1 June 2021, the NMARNG transferred him to The Retired Reserve. His NGB Form 23A (ARNG Current Annual Statement) shows he completed 29 years, 8 months, and 28 days of NMARNG service. The NGB Form 23A also indicates that, as of 16 July 2020 and until his transfer to The Retired Reserve, the applicant was in a "B-1, ARNG Unit Member" status (meaning he was on the Reserve Active Status List (RASL), not the ADL).

3. On 30 January 2024, the NGB provided an advisory opinion and recommended disapproving the applicant's request.

a. "[Applicant] claims that another Soldier who commissioned the same year he did and was also a two-time non-select for promotion to the rank of COL, during the FY (fiscal year) 20, and FY21 HQDA (Headquarters, Department of the Army) selection board had been given the opportunity to continue to compete for promotion, and therefore he should also be given the same opportunity."

(1) "A review of the [applicant's] claim was conducted by the NMARNG and concluded that [applicant] was a two-time non-select for promotion to rank of COL and therefore was transferred to The Retired Reserve, on 1 June 2021."

(2) "National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), section II (Promotion to Fill Unit Vacancies), para 8-7 (c) (Eligibility for Promotion), states that any officer in the rank of 1LT (first lieutenant) through LTC who was non-selected by a mandatory selection board convened under AR 135-155 (Promotion of Commissioned Officers and Warrant Officers) will not be considered for promotion, unless selected by a subsequent DA mandatory board."

(3) "AR 600-8-29, paragraph 6-9a (Effect of Two-Time Non-Selection for Promotion) states that a warrant officer or commissioned officer twice non-selected for promotion by a HQDA selection board, and not approved (to be selectively continued in an active status), will continue to be processed for separation."

(4) "(NGR) 600-100, section II, para 8-7f, states that officers who have reached sanctuary and are retained to qualify for a regular or non-regular retirement are eligible

for promotion consideration and Federal recognition to the higher grade while retained beyond their MRD."

b. "After further review and discussions with the NMARNG, and the ARNG Federal Recognition section, the relevant facts are that [applicant] was discharged and transferred to The Retired Reserve after being non-selected for promotion to the rank of COL a second time, per AR 600-8-29 (sic). [Applicant] references that another Soldier in his same situation was given the opportunity for promotion, which is not true, because that Soldier had reached sanctuary status and therefore, he fell under a different set of rules per (NGR) 600-100."

4. On 25 April 2024, the Army Review Boards Agency (ARBA) provided a copy of NGB's advisory opinion for review and an opportunity to submit matters in rebuttal; the applicant did not respond.

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. The applicant contends that another Soldier who commissioned the same year he did and was also a two-time non-select for promotion to COL, during FY20 and FY21 HQDA selection board had been given the opportunity to continue to compete for promotion, and therefore he should also be given the same opportunity. However, based on the NGB review, the applicant's reference to the other Soldier is not relevant because the referenced Soldier had reached sanctuary status and therefore, fell under a different set of rules because officers who have reached sanctuary and are retained to qualify for a regular or non-regular retirement are eligible for promotion consideration and Federal recognition to the higher grade while retained beyond their MRD. Additionally, each case is considered on its own merits.

b. The evidence shows the applicant was a two-time non-select for promotion to rank of COL and therefore was transferred to The Retired Reserve, on 1 June 2021. By regulation (NGR 600-100), any officer in the rank of 1LT through LTC who was non-selected by a mandatory selection board convened under AR 135-155 will not be considered for promotion, unless selected by a subsequent DA mandatory board. Also, by regulation (AR 600-8-29), a commissioned officer twice non-selected for promotion by a HQDA selection board, and not approved (to be selectively continued in an active status), will continue to be processed for separation. The Board was not convinced by the applicant's argument and agreed with the advisory official's determination that the applicant was discharged and transferred to the Retired Reserve after being non-

selected for promotion to the rank of COL a second time. Since he has not proven a material error, the Board determined he does not qualify for an SSB.

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. National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), currently in effect, provides procedures for processing all applications for Federal recognition, waivers, and requirements for appointment. Chapter 8 (Promotion for Other than General Officers) prescribes policies and procedures for the promotion of officers under than rank of general

a. Paragraph 8-1 (Responsibilities). The promotion of officers in the Army National Guard (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 certain requirements.

(1) ARNG officers may be considered and found qualified for Federal recognition of their state promotion using two distinct processes: State Federal recognition Boards and Department of the Army (DA) Mandatory Boards. Under either process, the precedent for an actual promotion in the ARNG is State assignment and appointment to the next higher grade. Selection for promotion does not automatically constitute an approved promotion action.

(2) Apart from a State Federal Recognition Board, officers can become Federally recognized for a State promotion through a DA Mandatory Board. Mandatory promotion selection boards are convened by the Secretary of the Army. Those ARNG officers selected (i.e., "DA Select") are then appointed by the State in that higher grade to fill a vacancy within the ARNG.

b. Paragraph 8-3 (Promotion as a Reserve Commissioned Officer of the Army). 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 ARNG.

c. Paragraph 8-7 (Eligibility for Promotion).

(1) To be considered for federal recognition following State promotion to fill a unit vacancy, an ARNG commissioned officer must be in an active status; be medically fit; have completed the minimum time-in-grade, military education, and civilian education requirements; and passed an Army Physical Fitness Test.

(2) Any officer in the rank of first lieutenant (1LT) through lieutenant colonel (LTC) who was non-selected by a mandatory selection board convened under

AR 135-155 (Promotion of Commissioned Officers and Warrant Officers) will not be considered for promotion under this section unless selected by a subsequent DA mandatory board.

(3) Except for certain special branches (i.e., chaplain or medical), commissioned branch officers retained beyond mandatory retirement date (MRD) are not eligible for promotion.

(a) Other officers who are otherwise qualified for promotion to the next higher grade will not be promoted without prior approval of the Secretary of the Army or designee. Action to promote officers in this category must be taken within two years of their original MRD.

(b) Officers retained beyond MRD are retained in an active status on the Reserve Active Status List (RASL); officers on the RASL and who are in the primary zone of consideration for promotion must be considered for promotion by a Mandatory DA Promotion Selection Board.

(4) Officers who have reached sanctuary and are retained to qualify for a regular or non-regular retirement are eligible for promotion consideration and Federal recognition to the higher grade while retained beyond their MRD.

2. Army Regulation (AR) 600-8-29 (Officer Promotions), currently in effect, prescribes policies, operating rules, and steps governing promotion of Army commissioned and warrant officers on the active duty list (ADL) and applies to ADL officers in the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve commissioned and warrant officers.

3. AR 135-155, currently in effect, prescribes policies, operating rules, and steps governing promotion of Army commissioned officers on the RASL.

a. Paragraph 2-3 (Convening Selection Boards). A "mandatory promotion board" is one that has been convened under Title 10, U.S. Code to recommend officers on the RASL for a position vacancy, referred to as a "position vacancy board" (PVB).

b. Paragraph 2-7 (Promotion Eligibility). To be eligible for consideration for promotion to the next higher grade, an ARNG officer must have continuously performed service on either the RASL or the ADL (or a combination of both lists) during the entire previous 1-year period ending on the convening date of the promotion board and must be in one of the zones of consideration as determined by the Secretary of the Army in an announcement message.

c. Paragraph 2-8 (Consideration for Promotion to COL and Chief Warrant Officer 5). Selection boards will convene at the discretion of the Secretary of the Army to consider Reserve of the Army officers in all competitive categories for promotion to COL. These boards will consider and recommend only those who are in an active status. LTCs not selected for promotion will continue to be considered by subsequent selection boards until either selected or separated.

d. Paragraph 2-14 (Position Vacancy Promotion to the Grade of COL for LTC Previously Not Selected for Promotion by a Mandatory Promotion Board – General).

(1) An ARNG officer in the grade of LTC who has failed of selection to the next higher grade by a mandatory promotion board may not be extended Federal recognition in the higher grade unless the Secretary of the Army determines that the officer is the "only qualified officer available to fill the vacancy." The Secretary of the Army may not delegate this authority.

(2) A LTC who has failed of selection and who was selectively continued beyond his or her mandatory removal date, regardless of reason, is not eligible for position vacancy promotion.

e. Paragraph 3-22 (Action Resulting from Non-Selection). Unless continued on the RASL or retained, each LTC who is not on a list of officers recommended for promotion to COL will (if not removed earlier from the RASL) be removed from the RASL on the first day of the month after the month in which the officer completes 28 years of commissioned service. ARNG officers will be processed in accordance with NGR 635-100 (Termination of Appointment and Withdrawal of Federal Recognition).

f. Chapter 6 (Special Selection Boards (SSB)).

(1) SSBs are convened to consider or reconsider commissioned officers on the RASL for promotion when HQDA determines that one or more of the following circumstances exist:

- Administrative error
- Material errors

(2) A special Selective Continuation (SELCON) board may be convened for commissioned officers on the RASL SELCON officers who have twice failed of selection for promotion, provided the officers would or should have been considered by a SELCON board following their second failure of selection for promotion. This decision to grant a special SELCON board will be at the discretion of the Secretary of the Army or his designee.

4. NGR 635-100, currently in effect, prescribes policies, criteria, and procedures governing the separation of commissioned officers of the ARNG. Paragraph 5 (Criteria – Termination of State Appointment) states officers in the grade of LTC will be removed from an active status in the ARNG on a date this is 30 days after he/she has completed 28 total years of service.

//NOTHING FOLLOWS//