

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2025

DOCKET NUMBER: AR20230008503

APPLICANT REQUESTS:

- reconsideration for promotion to the rank/grade of lieutenant colonel (LTC)/O-5 by a Special Selection Board (SSB)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- DA Form 1059 (Service School Academic Evaluation Report), 26 June 2014
- Orders Number KA-317-0001, 13 November 2014
- DA Form 1059, 10 July 2015
- U.S. Army Command and General Staff College transcript, 8 July 2015
- Memorandum – Subject: Fiscal Year (FY) 21, LTC, Army, Board Promotion Consideration, 20 November 2020
- Self-authored letter
- Memorandum – Subject: Response to Advisory Opinion from the Criminal Investigation Division (CID), 20 December 2022
- Memorandum – Subject: Statement of Original Source of Funds, 20 December 2022
- Miscellaneous documents pertaining to CID case
- Memorandum – Subject: FY20 LTC, Army, MFE, SSB, 20 July 2020
- Memorandum – Subject: Request for SSB Promotion Reconsideration, 20 July 2020
- Memorandum – Subject: FY23 LTC, Army, MFE, SSB, 1 May 2023
- Memorandum – Subject: Request for SSB Promotion Reconsideration, 1 May 2023
- Email communication
- DA Form 67-10-2 (Field Grade Plate – Officer Evaluation Report (OER))
- Memorandum – Subject: Nonrated Statement, 3 October 2017

FACTS:

1. The applicant states in pertinent part that he was treated unfairly by members of his leadership which hindered his career progression. He contests that he was not afforded the opportunity to compete fairly with his peers and therefore was not promoted to LTC. Had these actions not occurred, he believes that he would have been promoted to LTC based upon his performance and potential. He notes that this injustice occurred as a direct result of a Military Procurement Fraud Unit (MPFU) investigation that concerned his personal finances. The investigation was very damaging for several reasons including the fact that it was extended intentionally to harm his career. He argues that the case file included inaccurate entries which he believes negatively influenced and led senior leaders to take numerous adverse administrative actions against him. Once he was made aware of these entries, he articulated and submitted documentation to affirm that they were false and inaccurate, yet the investigation continued. He provides a synopsis of events dating back to January 2015 when the CID investigation involving his personal finances was initiated. He was notified in April 2015, that the investigation was concluded, but the MPFU investigation would continue at the Army CID level. He viewed this decision, as well as several other actions taken, as illegitimate, unjustifiable, and very harmful to his career. In May 2015, an incomplete copy of the investigation was provided to his battalion commander, which he believes was done maliciously with the intention of being utilized to negatively influence his already stellar evaluation. The battalion commander ultimately changed his evaluation in violation of Army Regulation 623-3 (Evaluation Reporting System) noting that his through date was adjusted to 5 January 2015, approximately four and a half months after his assigned duty position was changed.

a. In July 2015, he was advised that the investigation was complete, and he was permitted to proceed on a Permanent Change of Station (PCS) order. Prior to departing, his orders were delayed prompting his commander to wrongfully initiate another evaluation, which would be referred. He was unaware of this action until the day before he proceeded to his new duty assignment prompting his request to speak with the battalion commander. During this conversation, the battalion commander advised him that the OER would be referred because he illegally structured personal funds to be sent to his father in June/July 2012. The commander further advised that the OER would be processed accordingly if he was unable to provide evidence in contention with this finding. Despite later providing suitable evidence, his OER was sent to Headquarters Department of the Army (HQDA) in a "referred" status. He views this action as vengeful and in clear violation of Army Regulation 623-3. Following a successful appeal of this OER, the evaluation was removed from his records and replaced with a nonrated statement.

b. He was later informed that the investigation was not actually closed out. Further, his security clearance was suspended thereby preventing him from serving in his

assigned position (Battalion Operations Officer) within the battalion. He was then advised that because of his clearance status, he was not permitted to enter the building; he was required to check in once per day, during the morning formation. Approximately a month later, his immediate leadership attempted to remedy the issue by requesting an interim clearance. However, the battalion commander denied this request and did not support the applicant's attempts to find another viable position wherein he could productively contribute. Instead, the commander intended to submit documentation to the Central Adjudication Facility with a recommendation that his security clearance be permanently revoked.

c. The investigation was officially closed in February 2016; however, he was not informed until later on that year. He contests that the commander caused further delay in the reinstatement of his security clearance, which lasted until June 2017, when it was reinstated, elevated to "top secret" and he was subsequently assigned back into the Battalion Operations Officer position. He discusses evaluations received, while serving in that position, and years after. His contention with these documents is further provided in their entirety within the supporting documents, to include the applicable evaluations, for the Board's review.

d. In conclusion, he contends that he was not provided a fair and equal opportunity to compete for promotion to LTC. His ability to perform as a MAJ was significantly hindered for an extensive period of time because of a poorly conducted MPFU investigation. When provided with the opportunity, he notes that he performed exceptionally well, which is further reflected in his DA Forms 1059 and OERs received that were not impacted by the investigation.

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

a. After serving as an enlisted Soldier in the Regular Army, on 9 October 2003 the applicant was appointed as a commissioned officer (Transportation) at the rank/grade of second lieutenant and ordered to active duty.

b. He served in a variety of staff or command positions, including Germany, Korea, and three tours in Iraq. He was promoted to captain in January 2007.

c. A Law Enforcement Report at Fort Carson, Colorado shows on 13 June 2009, the Military Police Station was notified by the El Paso County Criminal Justice Center, Colorado, that the applicant was arrested for the offense of domestic violence. An investigation revealed that on 12 September 2009, the applicant and [Name] were involved in a verbal altercation which became physical when the applicant shoved her, causing her to fall against a dresser and blocked her exit from the bedroom. Further investigation revealed that the applicant took her phone after she received a text message and departed the bedroom. When she attempted to retrieve the cell phone,

the applicant grabbed her by the arm forced it behind the back and then pushed her down on to the couch and applied pressure to her back using his forearm. He was arrested and transported to the City Jail where he was held on a \$4,000 bond. He posted bond the next day and was released to Fort Carson Police where he was further processed and released to his unit. He was titled for violence against a female victim, theft, false imprisonment/unlawful detention, and harassment/physical contact.

d. On 22 August 2013, U. S. Army Human Resource Command (AHRC) issued Orders Number 234-028 announcing the applicant's promotion to major (MAJ)/O-4, effective 1 September 2013.

e. On 26 June 2014, the applicant completed the Intermediate Level Education (ILE) Common Core Course and on 10 July 2015, the applicant completed the U.S. Army Command and General Staff Officers (ILE Advanced Operations) Course.

f. On 11 August 2015, the U.S. Army Garrison Rheinland-Pfalz issued Orders Number 223-103 ordering the applicant to proceed on PCS to Fort Hood, Texas, with a proceed date occurring no later than 15 September 2015.

g. A Law Enforcement Report, dated 11 February 2016, shows an investigation determined [Individual] and applicant committed the offense of Structuring to Evade Federal Reporting Requirements when they mailed 84 money orders to totaling \$83,769.00, all under the \$3,000.00 per day/per customer limit that would require a PS Form 8105A, Funds Transaction Report (FTR) and the \$10,000.00 per day/per person. The investigation further determined MAJ and [Individual] wired \$33,814.15 in four separate transactions in a three week time periods. Three of the four transactions were for \$9,770.00 which were \$230.00 under the \$10,000.00 per day/per person limit that would require a Currency Transaction Report (CTR). Additional investigation determined that on 22 December 2012, applicant attempted to deposit in excess of \$10,000.00 in proceeds from the sale of his car into his personal bank account; however, applicant informed the bank teller he wanted to avoid completing a CTR and ultimately deposited \$10,000.00. The Assistant U.S. Attorney, Middle District of Florida, declined prosecution against the applicant because the Department of Justice Tax Division's prosecution threshold was not met. He was titled and received a General Officer Memorandum of Record for his role in structuring to avoid reporting requirements. He received an oral admonishment and reprimand.

h. During February 2016, the applicant received a referred OER covering the rating period 28 May 2015 through 9 September 2015. His rater and senior rater both commented about his integrity and that "his personal actions have affected his individual trustworthiness."

i. On 21 September 2017, in response to the applicant's appeal of an OER, the Officer Special Review Board determined the evidence submitted was sufficient to warrant the requested relief. As a result, the Board directed the following:

- The OER covering the period 28 May 2015 through 9 September 2015, will be removed from the appellant's AMHRR.
- Insert a memorandum in the appellant's AMHRR annotating the period 28 May 2015 through 9 September 2015 as non-rated time.
- Promotion reconsideration is warranted as a result of this action if eligible and not previously selected.
- The OSRB further directed that all associated appeal documentation, and/or investigations and inquiries relating to the appealed evaluation report be removed from the appellant's AMHRR.

j. On 21 March 2018, Headquarters, III Corps and Fort Hood issued Orders Number L080-040 ordering the applicant to proceed on PCS to Korea with a reporting date between 1 and 15 July 2018. Furthermore, on or about 23 July 2020, the applicant was reassigned to Bucknell University, PA, as the Assistant Professor of Military Science.

k. On 20 July 2020, the applicant sent a letter to AHRC requesting reconsideration of promotion under the same criteria and instructions of the Fiscal Year 2020, Lieutenant Colonel (LTC), Army, MFE, Promotion Selection Board. He indicated that although he understood what the term material error means, he has enclosed supporting documentation and a timeline of events which supports the diligent efforts he took to correct the error of his promotion board file prior to the established date of the promotion board. He requested a SSB Promotion reconsideration and contended that: (1) He would have been selected for promotion to LTC had he been provided equal opportunity to perform as a Major; (2) security clearance suspension; and (3) his leadership's decision to prevent him from performing in any official capacity throughout most of the investigative period caused him to be non-competitive, thus, placing him at a significant disadvantage from his peers of the same rank whom did not have to undergo such a traumatic event. The Army Promotion Board's decision to not select him for promotion was not based on his military performance or potential as he has performed exceptionally well during the very limited period of time for which he was afforded the opportunity to perform. His non-selection for promotion was due to the irreversible impact of an unmerited investigation and the unjustified actions taken by several Army leaders for too many years.

l. On 18 November 2022, the U.S. Army Installation Management Command issued Orders Number 322-0162 reassigning the applicant to Carlisle Barracks, effective 9 June 2023, pending separation processing on 31 August 2023.

m. On 1 May 2023, the applicant sent a letter to AHRC requesting reconsideration for promotion to LTC by an SSB, under the Fiscal Year 2023 Active Component Promotion Board.

n. On 22 June 2023, AHRC responded to the applicant and stated that based on a review of his request and the information provided it appears that he would have to go through the Army Board for Corrections of Military Records (ABCMR). He is claiming that his Non-Select for promotion is based on information on his OER's and an Adverse Summary that was placed in his records. He would have to ask that the OERs be modified or removed and replaced with a Non-Rated Statement. AHRC does not have the authority to modify or remove an OER from an officer's records nor do they have the authority to remove the adverse summary. If upon a successful appeal, he may be eligible for an SSB.

o. On 31 August 2023, the applicant was retired from military service after being non-selected for promotion to LTC on two occasions. His DD Form 214 show he retired in the rank/grade of Major after completing over 23 years of total active service.

3. The applicant's OERs reflect the following ratings:

FROM	TO	RATER	SENIOR RATER
1 September 2013	7 August 2014	Proficient	Highly Qualified
7 July 2014	27 May 2015	Proficient	Highly Qualified
28 May 2015	9 September 2015	Not/Rated Statement	
10 September 2015	30 November 2016	Proficient	Highly Qualified
1 December 2016	30 November 2017	Proficient	Highly Qualified
1 December 2017	12 June 2018	Proficient	Highly Qualified
13 June 2018	10 May 2019	Excels	Most Qualified
11 May 2019	12 January 2020	Excels	Most Qualified
13 January 2020	30 June 2020	Excels	Highly Qualified
1 July 2020	11 June 2021	Proficient	Highly Qualified
12 June 2021	21 May 2022	Excels	Highly Qualified

3. The applicant provides:

a. Orders Number KA-317-0001 dated 13 November 2014, reflective of the applicant being ordered to proceed on Temporary Change of Station on 7 January 2015, to Afghanistan in support of Operation Enduring Freedom.

- b. U.S. Army Command and General Staff College transcript dated 8 July 2015, reflective of the applicant's courses of study from 25 April 2014 – 8 July 2015 and the grades obtained within each.
- c. Memorandum – Subject: FY21, LTC, Army, Board Promotion Consideration, dated 20 November 2020, reflective of the applicant's submitted letter to the FY21 LTC promotion consideration board. The applicant specifically addresses the investigation (September 2012 – June 2017), suspension of his security clearance, and OERs received previously. This letter is further provided within the supporting documents for the Board's review in their entirety.
- d. Self-authored letter reflective of the applicant's submitted comments pertaining to Law Enforcement and CID reports provided.
- e. Memorandum – Subject: Response to Advisory Opinion from the CID dated 20 December 2022, reflective of the applicant's rebuttal to the CID investigation findings. The applicant addresses the personal funds deposited within his account, a vehicular accident, and a domestic incident. This letter is further provided within the supporting documents for the Boards review in its entirety.
- f. Memorandum – Subject: Statement of Original Source of Funds dated 20 December 2022, wherein the applicant addresses the source of personal funds received following the sale of his father's home. This letter is further provided within the supporting documents for the Boards review in its entirety.
- g. Miscellaneous documents pertaining to the CID case concerning funds received and or transferred in relation to the sale of the applicant's father's home. Several of the documents are constructed in a foreign language and or are undecipherable. These documents are further provided within the supporting documents for the Board's review in their entirety.
- h. Memorandum – Subject: FY20 LTC, Army, MFE, SSB dated 20 July 2020, reflective of the applicant's submitted request for reconsideration for promotion to LTC by an SSB due to possible administrative deficiencies within his Official Military Personnel File and Board file.
- i. Memorandum – Subject: Request for SSB Promotion Reconsideration dated 20 July 2020, reflective of the applicant's submitted request for promotion consideration to LTC by a SSB due to material information missing from his board file. The applicant again addresses the CID investigation and OERs received prior to this board. This letter is further provided within the supporting documents for the Boards review in its entirety.

j. Memorandum – Subject: FY23 LTC, Army, MFE, SSB dated 1 May 2023, reflective of the applicant's submitted request for promotion consideration to LTC by a SSB due to material information missing from his board file.

k. Memorandum – Subject: Request for SSB Promotion Reconsideration dated 1 May 2023, reflective of the applicant's submitted request for promotion consideration to LTC by a SSB due to material information missing from his board file. The applicant again addresses the CID investigation and OERs received prior to this board. This letter is further provided within the supporting documents for the Boards review in its entirety.

l. Email reflective of the applicant being advised by AHRC Promotions that based upon review of his records as it pertains to an SSB and his claims that his non-selection for promotion to LTC was predicated by OERs and other adverse information within his records, his requested relief would need to be sent to the ABCMR for consideration and granted relief prior to an SSB being conducted.

m. DA Forms 67-10-2 reflective of the annual assessments of the applicant's professional performance as assessed by members of his immediate leadership between 1 September 2013 – 21 May 2022. The applicant was consistently rated as either Highly or Most Qualified throughout this period. These documents are further provided within the supporting documents for the Board's review in their entirety.

n. Memorandum – Subject: Nonrated Statement dated 3 October 2017, reflective of the period between 28 May 2015 – 9 September 2015 being declared as nonrated time.

4. On 25 October 2024, the Chief, Officer Promotions-Special Actions, AHRC, provided an advisory opinion, which states in pertinent part:

a. Based on a review of AHRC's records, the applicant was considered in the above the zone population, but not recommended for promotion by the FY23, LTC, ACC, PSB. At the time that his selection board convened, he had two adverse information summaries, which were directed for promotion consideration purposes by the Director, Military Personnel Management based on adverse or derogatory information identified, during the pre-board screen process.

b. After careful review of all matters presented, with the request for an advisory opinion, it is AHRC's opinion that an SSB is not warranted solely on the basis of the inclusion of the two adverse summaries, as both documents were valid, at the time of the convene date of the FY23 board, and both summaries reflected two separate and distinct incidents and investigations. If an officer believes that an adverse summary should not be considered by a promotion board, it is the officer's responsibility to coordinate with their legal assistance to raise these concerns to the Office of the Judge Advocate General for a legal review and determination. If an appeal is granted to

remove the OER, as outlined in his request, it is also AHRC's opinion that an SSB may then be warranted for reconsideration under the FY23 criteria based on material unfairness.

5. On 10 January 2025, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

6. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. The Board determined the applicant's record contained two adverse summaries at the time of the Fiscal Year 2023 promotion board convened. These summaries were the result of two distinct incidents, each investigated independently and adjudicated in accordance with Army regulations. Both adverse summaries were valid and properly filed in the applicant's record prior to the convening date of the FY23 promotion board. As such, they were appropriately considered by the board in its deliberations. The applicant has not provided sufficient evidence to refute the findings of either incident. The documentation submitted does not demonstrate error, injustice, or procedural irregularity in the investigations or the resulting summaries.

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.

X//Signed//

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) 600-8-29 (Officer Promotions) prescribes policies, operating rules, and steps governing promotion of Army commissioned and warrant officers on the Active-Duty List (ADL). Chapter 6 (SSB) provides that SSBs may be convened under Title 10, United States Code (USC), section 628 (SSB) to consider, or reconsider commissioned or warrant officers for promotion when Headquarters Department of the Army (HQDA) determines that one or more of the following circumstances exist:

a. Administrative error (Title 10, USC, section 628(a)(1)) (SSB required) - an officer was not considered from in or above the promotion zone by a regularly scheduled board because of administrative error.

b. Material unfairness (Title 10, USC, section 628(b)(1)) (HRC discretionary).

An officer will not be considered or reconsidered for promotion by an SSB when the following occurs:

a. The officer is pending removal from a promotion or recommended list and the removal action was not finalized by the SECARMY before the next selection board convened to consider officers of his or her grade.

b. An administrative error was immaterial, or the officer, in exercising reasonable diligence, could have discovered and corrected the error in the DA Form 4037 or AMHRR. The DA Form 4037 is a summary document of information generally available elsewhere in the officer's record. It is the officer's responsibility to review his or her DA Form 4037, AMHRR, and MBF before the board convenes and to notify the board, in writing, of possible administrative deficiencies.

c. Letters of appreciation, commendation, or other commendatory data for awards below the Silver Star are missing from the officer's AMHRR.

d. The PSB did not see a nonmandatory DA Form 4037 submitted to HRC after the suspense established in the promotion board zone of consideration MILPER message.

e. The PSB did not see a DA official photograph or saw an outdated DA official photograph.

f. The PSB did not consider correspondence to the board president that was delivered to the Commanding General, U.S. Army Human Resources Command after the cutoff date for such correspondence established in the respective promotion board zone of consideration MILPER message.

g. The consideration in question involved an officer below the promotion zone.

2. Army Regulation 15-185 (Army Board for Correction of Military Records (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 applicants 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//