

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230008820

APPLICANT REQUESTS: promotion to colonel (COL) and placement on the disability retirement list in the rank of COL vice lieutenant colonel (LTC).

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

- DD Form 149 (Application for Correction of Military Record)
- Orders D341-04, 7 December 2022, Permanent Disability Retirement Order
- Fiscal Year 23 (FY23) Reserve Component (RC) COL Army Promotion List (APL) Promotion Selection Board Results, Release Date 4 May 2023
- Promotion List for FY23 RC COL APL, Army National Guard of the United States (ARNGUS), Army Reserve Active Guard Reserve (AR AGR), and Army Reserve Non-Active Guard Reserve (AR Non-AGR), Competitive Categories, Promotion Selection Board (PSB), dated 25 April 2023
- Memorandum of Instructions for the FY23 COL APL PSB, dated 7 November 2022
- FY23 RC COL APL PSB Demographics

FACTS:

1. The applicant states the FY23 RC COL APL Promotion Selection Board convened on 30 November 2022 and recessed on 16 December 2022 with a completed promotion list on which he was selected. He was released from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permitted his retirement for permanent physical disability on 5 February 2023. The FY23 COL promotion list was not released to the public until 4 May 2023.

2. Review of the applicant's service records shows:

a. Having had prior enlisted service, the applicant was appointed a Reserve commissioned officer of the ARNG and executed an oath of office on 17 April 2003.

b. He served in a variety of assignments, including active duty mobilization from October 2007 to October 2008 and he attained the rank of major (MAJ).

c. He was honorably discharged from the ARNG on 30 September 2012 and he was transferred to the U.S. Army Reserve (USAR).

d. He was promoted to LTC in the USAR on 27 June 2017.

e. He entered active duty from 8 August 2019 to 30 September 2020, performing duties of Senior Human Resource Officer, Adjutant General Corps.

f. On 6 December 2022, an informal physical evaluation board (PEB) found his medical conditions (low back pain, lumbar radiculopathy, left and right) unfitting and assigned a combined disability rating of 60% with his disposition as permanent disability retirement.

g. On 7 December 2022, the U.S. Army Physical Disability Agency published Orders D341-04 releasing him from assignment on 5 February 2023 and placing him on the permanent disability retired list in the rank of LTC, effective 6 February 2023 with a 60% disability rating.

3. He was considered for promotion to COL by the FY23 RC COL Army Promotion List that convened on 30 November 2022 and recessed on 20 April 2023 (after his disability retirement). His name is listed as having been selected for promotion.

4. On 1 November 2023, the U.S. Army Human Resources Command (HRC) provided an advisory opinion in the processing of this case. An HRC official stated that based on a review of the documents received, current records, laws, regulations, policies, and the systems available to HRC Officer Promotions, HRC finds that the applicant's request to promote him to COL does not have merit.

a. A review of the applicant's records affirms that he was medically retired on 5 February 2023 and was not a member on the Reserve Active Status List (RASL) at the time the board results were approved (20 April 2023) and officially released (4 May 2023). Therefore, he is ineligible.

b. Released promotion selection board results are subject to additional and constant administrative review and are not to be construed or assume that the structure of a list or the presence of a name on a list constitutes a firm forecast for promotion. If an officer on the reserve active-status list is discharged, dropped from the rolls, or transferred to a retired status after having been recommended for promotion to a higher grade but before being promoted, the officer's name shall be administratively removed from the list of officers recommended for promotion by a selection board, per U.S.C. Title 10. §14310 Removal of officers from a list of officers recommended for promotion.

5. The applicant was provided a copy of and responded to the advisory opinion. He stated:

a. As he stated in his original application, the FY23, RC, COL, APL, PSB convened on 30 November 2022 and recessed on 16 December 2022. At this time the promotion list was complete, and his name was on the list. Although the promotion list was not released to the public until 4 May 2023, the fact remains that he was selected and placed on the COL promotion list in December 2022. His name remained on the approved list when published 4 May 2023.

b. He was involuntary medically retired because of permanent physical disability on 5 February 2023. This was due to combat injuries as evidenced by his approval of Combat Related Special Compensation (CRSC) in addition to VA (Department of Veterans Affairs) disability compensation. Had he not been medically boarded and subsequently retired, he would still be serving. He finds no reason to doubt that he would have been accepted to a vacant COL position and been promoted. He believes his record of honorable service of over 34 years serves as evidence of this fact. Changing his rank to COL for retirement does not incur the U.S. Army any monetary cost as his retirement pay is based on highest 36 months of pay. For these reasons and facts, he requests you to consider and approve his request to change his rank to COL for retirement.

6. By law (10 USC §14310 Removal of officers from a list of officers recommended for promotion), Administrative Removal.— if an officer on the reserve active-status list is discharged or dropped from the rolls or transferred to a retired status after having been recommended for promotion to a higher grade under this chapter or having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer's name shall be administratively removed from the list of officers recommended for promotion by a selection board.

#### BOARD DISCUSSION:

1. 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.

2. The evidence of record shows the applicant was retired on 6 February 2023 in the rank/grade of LTC/O-5. The Board notes the applicant's consideration for promotion to the next higher grade (COL/O-6); however, reviewed and concurred with the U.S. Army Human Resources Command's advisory opinion noting his medical retirement on 6 February 2023 and the promotion results being approved on 20 April 2023 and released on 4 May 2023 after the applicant's retirement. The Board notes the

applicant's contention that his consideration occurred during his period of service; however, found no error or injustice in the applicant's grade at retirement.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

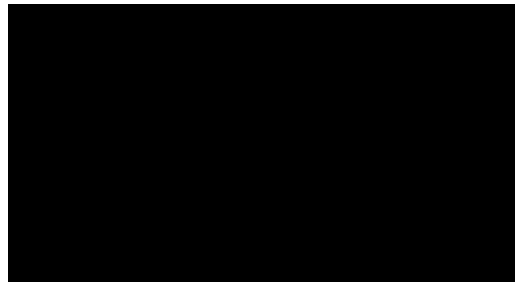
:            :            :            GRANT PARTIAL RELIEF

:            :            :            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.



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, §14310 Removal of officers from a list of officers recommended for promotion.

a. Removal by President.— The President may remove the name of any officer from a promotion list at any time before the date on which the officer is promoted.

b. Removal for Withholding of Senate Advice and Consent.— If the Senate does not give its advice and consent to the appointment to the next higher grade of an officer whose name is on a list of officers approved by the President for promotion (except in the case of promotions to a reserve grade to which appointments may be made by the President alone), the name of that officer shall be removed from the list.

c. Removal After 18 Months.

d. Administrative Removal.— Under regulations prescribed by the Secretary concerned, if an officer on the reserve active-status list is discharged or dropped from the rolls or transferred to a retired status after having been recommended for promotion to a higher grade under this chapter or having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer's name shall be administratively removed from the list of officers recommended for promotion by a selection board.

//NOTHING FOLLOWS//