

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20230009231

APPLICANT REQUESTS:

- Revoke Retirement Order 117335105, 15 May 2023
- Revoke Amended Order 0004506364, 15 May 2023
- Revoke Release from Active Duty Order (REFRAD) 079-001, 20 March 2023
- Reinstatement to the Reserve Active Status List (RASL)
- Extend his Mandatory Removal Date (MRD) from 28 to 30 years
- Reinstate him into the U.S. Army Reserve (USAR) Active Guard Reserve (AGR) Program
- Publish Promotion Order Promoting him to the rank of colonel (COL)

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

- DD Form 149 (Application for Correction of Military Record)
- Secretary of the Army Memorandum for President and Board Members, subject: Memorandum of Instruction for the Fiscal Year (FY) 2023 COL, Army National Guard of the United States (ARNGUS), Army Reserve Active Guard Reserve, and Army Reserve Non-Active Guard Reserve, Army Promotion List Competitive Categories, Promotion Selection Boards – ACTION MEMORANDUM, 7 November 2022
- U.S. Army Human Resources Command (HRC) Memorandum, subject: Promotion List for FY23 Reserve Component COL, Army Promotion List, ARNGUS, Army Reserve Active Guard Reserve, and Army Reserve Non-Active Guard Reserve, Competitive Categories, Promotion Selection Board, 25 April 2023
- FY 2023 COL Promotion Selection Board Results, 4 May 2023
- Excerpt from Title 10 U.S. Code (USC) 14507

FACTS:

1. The applicant states:

a. The FY23 Reserve Component (RC) COL Army Promotion List (APL) Promotion Selection Board (PSB) convened on 30 November 2022 and recessed on

16 December 2022. He was considered in the zone (Primary Zone - PZ) for this board in accordance with Military Personnel Message Number 22-308.

b. He was selected for placement on the recommended (standing) promotion list effective 20 April 2023 by Office of the Under Secretary of Defense for Personnel & Readiness FY 2023 RC COL APL board report action notes in HRC memorandum Subject: Promotion List for FY 2023 RC COL APL Army National Guard of the USAR AGR, and Army Reserve Non AGR Competitive Categories, PSB paragraph 2(a). This should have resulted in an extension of his MRD from 28 to 30 years in accordance with Title 10 USC 14507. Unfortunately, this did not occur.

c. He was released from active duty on 29 April 2023 and removed from the RASL on 1 May 2023 with orders transferring him to the Retired Reserve effective 15 May 2023. This injustice has severely impacted his family and him mentally and financially. He holds the primary financial responsibilities of his household and the delay in board approval and release date caused his removal from the AGR program placing he and his family in financial hardship. Further, it prevents him from reaching sanctuary eligibility to complete 20 years of active federal service for retirement purposes creating future financial strain and loss.

d. In accordance with Title 10 USC 14507(a), his MRD should have been extended to match the 30 years authorized for a COL, based on selection for promotion.

2. The applicant provides:

a. The memorandum of instruction for the PSB board members.

b. The memorandum with the approved promotion list for promotion to COL in FY 2023.

c. FY 2023 COL Promotion Selection Board Results, 4 May 2023, which shows the applicant's name with sequence number 18.

d. An excerpt of Title 10 USC 14507 (Removal from the RASL for years of service: reserve lieutenant colonels (LTC) and COL of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy), which states, in pertinent part,

(1) LTC - unless continued on the RASL each reserve officer of the Army who holds the grade of LTC and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the RASL) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 28 years of commissioned service.

(2) COL- unless continued on the RASL each reserve officer of the Army who holds the grade of COL and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the RASL) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 30 years of commissioned service.

3. The applicant's service record contains the following documents:

a. DD Forms 214 (Certificate of Release or Discharge from Active Duty), which shows he served in the U.S. Navy from 16 January 1987 to 16 February 1989, a period of 2 years, 1 month, and 1 day and from 17 February 1989 to 9 September 1990, a period of 1 year, 6 months, and 28 days.

b. NGB Form 337 (Oaths of Office) shows he took the oath of office in the Guam ARNG on 17 April 2006.

c. NGB Form 22 (Report of Separation and Record of Service) shows he was honorably transferred from the ARNG to the U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve) on 13 June 2007. He completed 1 year, 1 month, and 27 days of net service.

d. DD Forms 214 (Certificate of Release or Discharge from Active Duty) show he was ordered to active duty, as a member of the USAR, on:

(1) 28 November 2010 and was honorably released on 2 January 2012. He completed 1 year, 1 month, and 5 days of active service with 3 years, 6 months, and 29 days of prior active service and 16 years, 1 month, and 13 days of prior inactive service. He had service in Iraq from 28 December 2010 through 5 November. He was released for completion of required active service.

(2) 2 April 2012 and was honorably released on 29 July 2017. He completed 3 months and 28 days of active service with 5 years, 10 months, and 1 day of prior active service and 15 years, 2 months, and 15 days of prior inactive service. He was released for completion of required active service.

(3) 17 August 2012 and was honorably released on 16 August 2013. He completed 1 year of active service with 6 years, 1 month and 29 days of prior active service and 15 years, 3 months, and 2 days of prior inactive service. He was released for completion of required active service.

e. Orders B-06-703602, published by HRC, 23 June 2017 promoted him to LTC effective 1 July 2017.

f. Memorandum, Notification of Eligibility for retired pay at non-regular retirement (20-Year Letter), 23 January 2023, informed him he had completed the required years of qualifying Reserve service and is eligible for retired pay, upon application, at age 60.

g. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was ordered to active duty, as a member of the USAR, on 3 September 2013 and he was honorably transferred to USAR Control Group (Reinforcement) on 29 April 2023. He completed 9 years, 7 months, and 27 days of active duty service with 7 years, 1 month, and 29 days of prior active service and 20 years, 2 months, and 9 days of prior inactive service. He had service in Iraq from 28 December 2010 through 5 November 2011. He received separation pay in the amount of \$124,910.70. He was released for maximum service or time in grade.

h. Orders 0004728581, published by Department of the Army, 15 May 2023, shows he was transferred to the USAR Retired Reserve effective 1 May 2023.

i. Orders 0004506364.01, published by Department of the Army, 15 May 2023, amended order 0004506364 (not available in his service record) to show a permanent change of reassignment assigning him to USAR Control Group (Reinforcement) effective 29 April 2023.

4. On 22 December 2023, the Accession Branch, Deputy Branch Chief, HRC, provided an advisory opinion, which states, in pertinent part:

a. On 9 April 1986, the applicant had his initial enlistment in the U.S. Navy Reserve. On 16 January 1987, he enlisted in the U.S. Navy active duty. On 10 September 1990, he contracted with the U.S. Navy Reserve Officer Training Corps at San Diego State University. On 25 May 1994, he received his original appointment in the U.S. Navy Reserve Company. On 9 March 2005, he received a U.S. Navy Personnel Command (PERSCOM) one time nonselection/continuation in active service. On 15 September 2005, he was a two-time non-selection in the U.S. Navy and received a notification of discharge with an anticipated separation date of 1 March 2006. On 3 October 2005, he submitted his unqualified letter of resignation from the Navy, which was received by U.S. Navy PERSCOM on 17 October 2005. From 1 November 2006 through 16 April 2006, he appeared to have a break in service. On 17 April 2006, he took the oath of office to the Guam ARNG as a Reserve of the Army Captain. On 13 June 2007 he transferred from the ARNG to the USAR. On 3 September 2013, he was accessed into the AGR program. He was unable to achieve 20 years of active federal service at the time of his AGR accession. On 1 June 2022, an MRD was established based upon him having 28 years of commissioned officer service. He was in the rank of LTC. On 14 November 2022, his MRD was corrected based on accounting for a 167 day break in service. From 30 November 2022 through 16 December 2022, the FY 2023 COL PSB convened. On 23 January 2023, he received his notification of

eligibility for retired pay at non-regular retirement, 20 year letter. On 20 April 2023, the U.S. Army Under Secretary of Defense approved the COL promotion list for FY 2023. On 25 April 2023, The Adjutant General (TAG) approved the promotion list for FY 2023 RC COL APL (AGR).

b. The memorandum dated 25 April 2023 represented the final action, prior to distribution of the promotion board results. The applicant was clearly established on the promotion list and no other signatures were required for promotion of selectees to COL after this memorandum. On 29 April 2023, the applicant received a DD Form 214 releasing him from the AGR program/REFRAD. On 1 May 2023, he was transferred to gray area retiree status/USAR non-regular retirement for mandatory removal. On 2 May 2023, there was a controlled release of the prepositions promotion list to Army senior leaders. On 4 May 2023, the promotion list was released to the public. The applicant was on the list with a sequence number of 18. His likely promotion date to COL was 1 August 2023 had he remained eligible and in active service. His mandatory removal date, based upon an MRD at 30 years commissioned officer service from his original appointment date of 25 May 1994 was 1 June 2024. His MRD in the rank of LTC based upon 30 years of commissioned service accounting for the 167 day break in service would be 14 November 2024.

c. During the research phase of this case, HRC Accessions Branch determined two errors in his Army Military Human Resources Record (AMHRR).

(1) AMHRR Error 1: His original appointment date to a commissioned officer of the U.S. Navy Reserve was not present in his AMHRR. HRC has received the complete U.S. Navy Official Military Personnel File and submitted it to HRC Records Branch for inclusion in his AMHRR.

(2) AMHRR Error 2: His MRD for maximum years of commissioned officer service (28 years) was not adjusted upon reappointment in the Guam ARNG to account for a break in commissioned service. His 1 June 2022 original MRD was based upon his original U.S. Navy Reserve appointment on 25 May 1994. His likely MRD, based upon a break in service of 167 was 14 November 2022. His actual MRD date is 1 May 2023 due to Troop Program Unit (TPU) Sanctuary. The failure to adjust hid MRD at the time of reappointment provided no real impact due to the administrative extension of his MRD to 1 May 2023 in order to enable TPU sanctuary and thereby ensure he had 20 years of service for non-regular retirement.

d. If full relief is provided, his MRD should be corrected to 14 November 2024, which is the new COL MRD based upon the revised MRS - rather than the simple 30 year calculation from the original appointment.

e. During the research phase of this case, HRC Accession Branch determined one error involving the PSB process for the promotion eligibility of the applicant at the time the FY 2023 COL PSB convened. In accordance with Army Regulation 600-8-29 (Officer Promotions) paragraph 2-7c, "officers must meet the following minimum time in grade (TIG) requirements to be considered for promotion." Which is further clarified in paragraph 2-7c(5), "COL and brigadier general. Officer must serve one year TIG to be considered for promotion.

f. At the time the board met, the applicant's MRD was established as being 1 May 2023, which was an extension beyond his 28 years of commissioned service for purposes of enabling a non-regular retirement. He did not have the ability to serve one year TIG, at the time of the COL PSB convened on 30 November 2022. Nevertheless, he has been selected for promotion. According to paragraph 2-7c(5), "if selected they may be promoted without regard to any additional TIG requirements."

g. The essence of this matter is based upon the involuntary removal of the applicant from the RASL for years of service. In accordance with Title 10 USC 14507: A reserve officer who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 28 years of commissioned service.

h. His MRD was appropriately extended for purposes of achieving non-regular retirement beyond 28 years of commissioned service. The provision of the statute clearly states that involuntary separation applies to those who are not on a promotion list. He was clearly on the promotion list with the last authorizing signature from the Army Adjutant General being applied on 25 April 2023. He was clearly on the Secretary of the Army approved promotion list with Secretary Wormuth's signature being applied on 7 November 2022.

i. The administrative/policy begs the question, when can the involuntary/MRD for COL be adjusted from 28 years of commissioned service to 30 years of commissioned service based upon statutory/Department of Defense Instruction/Regulatory constraints? The answer - based upon review of the statute - indicates that the servicemember simply be on a list of officers recommended for promotion for the MRD adjustment. However, the AHRC process by which MRD adjustments are made provides for the public release of the promotion board results as the first step. This AHRC process serves a valid effort to protect the integrity of the promotion board prior to full/public release. Nevertheless, the statute does not seem to indicate anything related to the public release date and instead refers simply to officers on a promotion list.

j. Further acknowledge that responsibility for MRD adjustments - based upon selection for COL - has, in the past, been the responsibility of various entities assigned to AHRC.

(1) First Past Practice: MRD Adjustment for COL selectees was made by AHRC Officer Personnel Management Directorate Learning and Development Directorate Retirements and Separation Branch.

(2) Second Past Practice: After stand-up of AHRC Reserve Personnel Management Directorate (RPMD), then MRD adjustments for COL selectees was made by Operations and Readiness Division, Personnel Actions Branch, now called Essential Personnel Services, under Personnel Services Division.

(3) Since Integrated Personnel and Pay System-Army (IPPS-A) - MRD adjustment for COL selectees is initiated in IPPS-A with a Personnel Action Request submitted by USAR Office of the Chief of Army Reserve, Senior Leader Development Office with action later approved by AHRC RPMD.

k. Knowledge/authority to enable MRD adjustment for the applicant was not well established, at the time of his removal from the RASL.

l. In the opinion of the advisory official, MRD adjustment can be made on/after date of the final approval step i.e. signed TAG memorandum and clearly established fact that the servicemember is on a list of officers recommended for promotion. MRD adjustment should have been applied prior to the involuntary separation of the applicant and removal from the RASL. AHRC should review the internal policy/process for MRD adjustment for those selected to promotion to COL to ensure future involuntary separations, for those selected for promotion to COL are made with careful consideration to statute and regulation. Per Headquarters, Department of the Army, G1 Department of Manpower and Personnel Management, Personnel Policy Integrator, there does not appear to be any further statutory nor regulatory constraint to when the MRD adjustments for COL selectees can be made. The Directorate of Military Personnel Management request an opine from the Office of the Judge Advocate General (OTJAG) to resolve this recurring issue.

m. In reference to the OTAG memorandum, 18 May 2023, the OTJAG opine defers to the administrative finality of an action complete. OTJAG provides four sections fraud, mistake of law, mathematical miscalculation, and substantial new act. In the opinion of the advisory official, the applicant was removed from the RASL when also on the promotion list for COL. He had a break in commissioned years of service not calculated in his AMHRR. The substantial new act was his filing of his application with the ABCMR.

n. In the opinion of the AHRC RPMD research team, it is established the applicant received a rightfully granted MRD extension to ensure 20 years of active service and enable a non-regular retirement, which extended his MRD beyond 1 June 2022. He achieved 20 years of creditable service on 23 June 2023. He was provided an adjusted MRD with an effective date of 1 May 2023. He was selected for promotion and was subsequently placed on an approved/signed promotion list prior to his established separation date or MRD. A 30 year MRD should have been applied prior to his removal from the RASL.

o. In the opinion of the AHRC RPMD research team it is recommended that his retirement order be revoked and he be reinstated without a break in service. His separation/REFRAD orders be revoked and he be reinstated into a USAR AGR status without a break in service. Revise his commissioned years of service calculation to account for the break in service of over 167 days. Amend his MRD for Col and 30 years of commissioned service to on/after 14 November 2024.

p. The advisory opinion included a request for retention beyond MRD, 18 May 2023; NGB Form 337 (Oaths of Office), 17 April 2006; U.S. Navy Officer Appointment and Oath, 1994; and U.S. Navy Separation Order, 2005, which are available for the Board's review.

5. On 5 January 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. On the same day he responded stating:

a. He is in receipt and has reviewed the advisory opinion from AHRC for his case. Based on his review, he agrees with the recommendations and opinion as noted in the memorandum, 22 December 2023.

b. He is hopeful for a favorable decision by the ABCMR in accordance with AHRC's finding and stands ready to respond to any additional inquiries or questions.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the identified errors found in the HRC advisory, the recommendations in the HRC advisory opinion to correct such errors, and the concurrence of those recommendations by the applicant, the Board concluded there was sufficient evidence warranting a change to the applicant's record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	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 Army records of the individual concerned be corrected by amending the applicant's DD Form 214 by

- Revoking the applicant's retirement order and enable reinstatement of the applicant to the RASL, without a break in service
- Revoking the applicant's separation/release from Active Duty (REFRAD) order and enable reinstatement of the applicant to the USAR AGR Status, without a break in service
- Revising commissioned years of service calculation to account for break-in service (+167 days)
- Amending the mandatory removal date for COL/O6 and 30 years of commissioned service to on/after 14 November 2024.

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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. Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers) provides that the SECARMY will convene selection boards to recommend officers for promotion to the next higher grade according to Title 10, USC, Chapter 1403. The boards will select commissioned officers on the RASL for promotion to CPT, MAJ, LTC, and COL. The SECARMY may convene selection boards to recommend officers to be SELCON on the Reserve Active Status List (RASL), in their respective competitive category, under Section 14701. SELCON officers, if otherwise eligible, will continue to be considered for promotion within their respective competitive category until separation. Officers whose established separation or retirement date falls within 90 days after the date on which the board is convened, are not eligible for consideration by a Promotion Selection Board (PSB). A LTC who has failed selection and who was selectively continued beyond his or her mandatory removal date, regardless of reason, is not eligible for position vacancy promotion.
2. Title 10, USC, section 14701, (Selection of Officers for Continuation on the RASL) provides that a reserve officer who holds the grade of LTC or commander and who is subject to separation under section 14514 of this title may not be continued on the RASL 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. Each officer who is continued on the RASL under this section, who is not subsequently promoted or continued on the active-status list, and whose name is not on a list of officers recommended for promotion to the next higher grade shall (unless sooner separated under another provision of law) be separated in accordance with section 14513 or 14514 of this title, as appropriate, upon the expiration of the period for which the officer was continued on the RASL.
3. Title 10, USC, section 14514 (Discharge or Retirement for Years of Service or After Selection for Early Removal) provides that each reserve officer of the Army who is in an active status and who is required to be removed from an active status or from a RASL, as the case may be, shall be transferred to the Retired Reserve if the officer is qualified.
4. Title 10 USC 14507 (Removal from the RASL for years of service: reserve lieutenant colonels (LTC) and COL of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy), which states, in pertinent part,
 - a. LTC - unless continued on the RASL each reserve officer of the Army who holds the grade of LTC and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the RASL) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 28 years of commissioned service.

b. COL- unless continued on the RASL each reserve officer of the Army who holds the grade of COL and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the RASL) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 30 years of commissioned service.

//NOTHING FOLLOWS//