

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20230010621

APPLICANT REQUESTS:

- In effect, a Special Selection Board (SSB) to review his file for promotion to major (MAJ)/O-4 in the active component (AC) for the fiscal year 2022 (FY22)
- In effect, correct his date of rank to reflect he was selected for promotion to MAJ in the FY22 Promotion Selection Board (PSB)
- Retroactive removal of any adverse summary from his FY22 MAJ PSB file, which is located with the Department of the Army (DA) Secretariat, U.S. Army Human Resources Command (HRC)
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Two emails from the U.S. Army Human Resources Command (HRC)

FACTS:

1. The applicant states, in effect, his FY22 MAJ PSB, contained an erroneous and incomplete document. He was not able to remove this document before the promotion board convened in March of 2022, and since the board does not screen for accurateness, the inclusion of the adverse summary resulted in the applicant's non-selection for promotion to MAJ. The evidence submitted to the board were also used for a later in the successful removal of the adverse summary. He would like to highlight that he did in fact submit to a breathalyzer test and had multiple witnesses who attested to his condition throughout the event that led to the test. He was later charged, despite the breathalyzer test results, so his unit chose to delay in pursuing administrative action. Later the law that was used to charge him was deemed unconstitutional by the Georgia Supreme Court in 2019. On October of 2022 the applicant did retain counsel and was subsequently successful in removing the derogatory information for the FY23 MAJ PSB, and from his Army Military Human Resource Record (AMHRR).

2. The applicant provides two emails he received by HRC, which are available in their entirety for the Board's review. These emails show in pertinent part that the adverse

summary was removed from the applicant's Interactive Personnel Electronic Records Management System (IPERMS) and will not be viewed by the FY23 MAJ PSB.

3. A review of the applicant's service record shows:

a. The applicant has prior honorable enlisted service with the U.S. Army Reserve and the Army National Guard from 31 May 2005 through 12 December 2012. During this period, the applicant served in Afghanistan from 4 April 2006 through 24 March 2007 and from 29 July 2009 through 27 May 2010.

b. DA Form 71 (Oath of Office), dated 13 December 2012, reflects he was appointed as a Reserve Commissioned Officer, in the rank/grade of second lieutenant (2LT)/O-2.

c. Officer Record Brief (ORB) shows the applicant was promoted to the rank/grade of captain (CPT)/O-3 on 1 January 2017.

d. Order Number 0009372252.00 dated 31 August 2024 reflects the applicant was promoted to the rank of MAJ on 1 September 2024.

4. The applicant's service record does not reflect any misconduct or disciplinary actions.

5. The applicant is still serving on active duty, in the rank of MAJ.

6. In an email from the Chief, Exemplary Conduct Screening Team, Officer Promotions, Directorate of Military Personnel Management (DMPM), shows the applicant's adverse summary was removed from his iPERMS record. However, it cannot be removed from the original FY22 AC MAJ PSB that is archived at HRC in the DA Secretariat. If ABCMR directs that the applicant receive an SSB under the FY22 AC MAJ PSB criteria without the adverse summary, then the DA Secretariat will build the SSB board file from his original board file and then delete any information that is directed by the Army Board for Correction of Military Records (ABCMR).

7. In an email from the Chief, Officer Promotions-Special Actions, HRC provided the applicant's FY22 PSB, which reflects he was not selected, and also reflects the adverse summary. This email further explains that since there is an adverse summary in the applicant's FY22 PSB, the Army Review Boards Agency (ARBA) would need to grant relief. If relief is warranted to remove it, then they need to further direct the SSB under the FY22 PSB and the criteria for date of rank (DOR).

8. Army Regulation 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

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 available documentation showing the adverse information remained in the applicant’s promotion record when reviewed for promotion and the guidance outlined in the two Officer Promotion Branch emails, the Board concluded there was sufficient evidence of an injustice warranting referring the applicant’s military record to an SSB WITHOUT the removed adverse action for the FY22 MAJ promotion board.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by referring the applicant's military record WITHOUT the removed adverse information to an SSB for the FY22 MAJ promotion board. If selected, backdate the applicant's MAJ date of rank to his peers selected on the FY22 promotion list.

//SIGNED//

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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 15-185 Army Board for Correction of Military Records (ABCMR), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative 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.

2. Wright Memorandum, dated 8 January 2015, states. The Under Secretary of Defense issued guidance on Limitations on the Authority of Military Department Correction Boards. This guidance affirms that Military Department Correction Boards do not have the authority to appoint military officers.

a. The President may appoint Regular officers above the grade of O-3 and Reserve officers above the grade of O-5 following Senate confirmation. Only the Secretary of Defense may appoint all officers in the grade of O3 and below because Congress, has vested such appointment authority in the President alone, and the President has assigned that function to the Secretary of Defense.

b. This decision affirms that Military Department Correction Boards do not have the authority to remedy perceived errors or injustices by correcting records to show that an officer has been appointed to a certain grade when the officer has not been appointed to that grade by the President or the Secretary of Defense. Boards may only make such a correction to reflect that a proper appointment has occurred. They may also adjust the date of rank (DOR) of an officer who has been properly appointed.

3. Department of Defense Instruction 1310.01 (Rank and Seniority of Commissioned Officers) states the Secretary of the Military Department concerned may adjust the DOR of an officer, except a general or flag officer, appointed to a higher grade under Title 10, USC, sections 624(a) or 14308(a) if the appointment of that officer to the higher grade is delayed by unusual circumstances. The Secretary of the Military Department concerned must determine that the unusual circumstance caused an unintended delay in processing or approval of the selection board report or promotion list in order for an officer's DOR to be adjusted.

4. Army Regulation 600-8-29 (Officer Promotions), in effect at the time, prescribes policies, operating rules, and steps governing promotion of Army commissioned and warrant officers on the active-duty list and the officer promotion function of military human resources support operations. It provides for career progression based upon recognition of an officer's potential to serve in positions of increased responsibility. Additionally, it precludes promoting officers who are not eligible or become disqualified, thus providing an equitable system for all officers.

a. Paragraph 2-7 (Promotion Eligibility) states to be considered for promotion by a selection board, an officer must be on the active-duty list (ADL) on the day the board convenes. Captains, majors, and lieutenant colonels must serve at least 3 years of time in grade to be considered for promotion. If selected, officers may be promoted without regard to any additional time in grade (TIG) requirements. This requirement may be waived by the Secretary of the Army, for consideration from below the zone.

b. Chapter 7 (Special Selection Boards (SSB)), states a special selection board may be convened to consider or reconsider commissioned officers for promotion when Headquarters, Department of the Army, determines that one or more of the following circumstances exists:

(1) Administrative error. An officer was not considered from in or above the promotion zone by a regularly scheduled board because of an administrative error.

(2) Material Unfairness. The action of the promotion board that considered the officer from in or above the promotion zone was contrary to law in a material to the division of the board or involved material error or fact or material administrative error; or the board that considered the officer from in or above the promotion zone did not have before it for its consideration material information.

c. Authority to approve cases for referral to an SSB is delegated to the CG, HRC, or his or her designee, or the Army Review Boards Agency (ARBA). The same SSB may not consider an officer for the same grade under two successive boards' criteria.

5. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's Army Military Human Resource Record (AMHRR). The intent of this regulation is to ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and the Soldiers are better served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

a. Paragraph 7-2 (Policies and Standards) states that once an official document has been properly filed in the Official Military Personnel File (OMPF), it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF.

b. Paragraph 3-2c states that unfavorable information that should be filed in official personnel files includes indications of substandard leadership ability, promotion potential, morals, and integrity. These traits must be identified early and shown in permanent official personnel records that are available to personnel managers and selection board members for use in making decisions that may result in selecting Soldiers for positions of public trust and responsibility, or vesting such persons with authority over others. Other unfavorable character traits of a permanent nature should be similarly recorded.

6. Army Regulation 600-8-104 (Army Military Human Resource Records), provides regulatory guidance on management authority for filing or removing documents in the Army Military Human Resource Record folders.

a. Only documents pertaining to a Soldier's military career will be filed in the AMHRR. No more than one copy of a document will be uploaded into the AMHRR, although a document may be viewed from different folders within iPERMS.

b. The OMPF is reflective of a Soldier's permanent record stored in iPERMS. There are various folders within the OMPF, which document a Soldier's military career. Not every Soldier's OMPF will have the same number and types of folders. The types and number of folders contained within the OMPF will differ based on career path and status.

c. Once properly filed in the AMHRR, the document will not be removed from the record unless directed by one of the following:

- Boards of the Army Review Boards Agency such as the Army Board for Correction of Military Records (ABCMR),
- Army Discharge Review Board, Department of the Army Suitability Evaluation Board,
- Army Special Review Board,
- DOD Physical Disability Review Board
- The U.S. Army Physical Disability Agency for physical evaluation board documents only
- The Chief, Appeals and Corrections Section of the Evaluations, Selections, and Promotions Division
- The ORC for administrative purposes; this includes, but is not limited to deleting or moving mistakenly filed documents from the performance or service folder to the restricted folder and vice versa
- Upon end of retention period for nonpermanent documents

//NOTHING FOLLOWS//