

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230011115

APPLICANT REQUESTS:

- In effect, removal of his name from the titling block of a U.S. Army Criminal Investigation Division (CID) Law Enforcement Report (LER)
- Removal of the associated Summary of Credible Adverse Information from his promotion selection board (PSB) file
- In effect, consideration by a Special Selection Board (SSB) for promotion to Colonel (COL)

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

- DD Form 149 (Application for Correction of Military Record)
- Enclosure 1 – Summary of Credible Adverse Information
- Enclosure 2 – DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) and redacted U.S. Army Criminal Investigation Division (CID) Law Enforcement Report (LER)
- Enclosure 3 – General Officer Memorandum of Reprimand (GOMOR)
- Enclosure 4 – GOMOR Filing Determination Memorandum
- Enclosure 5 – DA Form 67-10-2 (Field Grade Plate (O-4 – O-5; CW3 (Chief Warrant Officer Three)-CW5) Officer Evaluation Report (OER))
- Enclosure 6 – Memorandum of Support by Major General (MG) A__ R. H__
- Enclosure 7 – Memorandum of Support by MG K__ C. L__
- Enclosure 8 – Memorandum of Support by MG M__ H. B__

FACTS:

1. The applicant states the PSB that was considering him for promotion to COL did not select him, and he believes it was because the board saw a "Summary of Credible Adverse Information"; this document should never have been a part of his board file. The applicant provides additional information and arguments in a self-authored memorandum to the Board:

a. Procedural History. In June 2022, the "Summary of Credible Adverse Information" was added to his board file for the Fiscal Year 2023 (FY23) Active Component (AC) COL PSB. The summary's disposition erroneously stated his chain of command had failed to take action on the results of a CID LER; the applicant maintains this inaccurate document likely resulted in his non-selection.

b. Facts.

(1) On 17 November 2020, (while assigned as the commander of a recruiting battalion), the applicant submitted a urine specimen that returned a positive result for Oxycodone and Oxymorphone. On 4 January 2022, (when the applicant was a student at the National Defense University (NDU), Fort McNair, District of Columbia), CID received a report of the positive urinalysis and conducted an investigation. On 25 January 2022, CID issued its final LER, showing the applicant titled for "Wrongful Use of Opiates – Detected by Urinalysis."

(2) On 7 April 2022, the Commanding General (CG), U.S. Army Military District of Washington (MDW) issued the applicant a GOMOR. On 22 June 2022, the applicant learned the imposing official had directed the GOMOR's local filing.

(3) The applicant declares, of his 34 years of Army service, he spent more than 15 years in the Special Operations community. He has completed over 100 airborne operations and multiple combat tours as part of the 5th Special Forces Group (Airborne) and the 4th Brigade, 10th Mountain Division.

(a) Due to the rigors of his service, the applicant incurred arthritis in his lower back and suffers from chronic back pain. The supporting medical group's pain management doctor referred the applicant to Doctor (Dr.) F__, and Dr. F__ injected nerve pain blockers into the applicant's spine every 3 to 4 months; additionally, the doctor prescribed hydrocodone pills with Motrin to ease the applicant's pain. The applicant typically took only one hydrocodone pill and one Motrin daily.

(b) The applicant maintains the only rational explanation he can think of for coming up positive is that he mistakenly took an expired Oxycodone pill, which doctors had previously prescribed for him following a 2018 surgery. The applicant acknowledges he did not properly dispose of his oxycodone pills after his prescription expired, and, as such, he failed to uphold the higher standards of the Army. However, in his 34 years of Army service, he never had issues with misusing medications.

(4) The applicant notes he served in combat during Operations Desert Storm, Iraqi Freedom, and Enduring Freedom. The applicant adds the following:

- He was the honor graduate for his Ranger class, and the Distinguished Military Graduate in officer candidate school (OCS)
- He commanded twice at company level
- The Army selected him for promotion to major below the zone
- After serving as a battalion commander, the Army sent him to the Eisenhower School within the NDU; following graduation from Senior Service College, the Army chose him to be the Senior Intelligence Officer for the Special Operations Command
- As a Lieutenant Colonel (LTC), every one of his senior raters has rated him as "Most Qualified"; in addition, he is also fully "Joint-Qualified"

c. Correction Being Requested. "I would like the adverse summary to be removed from my promotion board file and request my board file be re-evaluated. The evidence provided shows the form was incorrect and included false information. The inclusion of the incorrect information was unjust and likely prevented my selection for promotion." The error of including the erroneously completed summary has caused his non-selection for COL and has limited his ability to continue his service and compete for brigade command. Further, his family has suffered significant stress, "as we had considered serving and trying to command again."

d. The applicant states, "I have served for 34 years and would love the opportunity to keep serving the Army. I have shown while serving as the (Special Operations Joint Command) J2 that I have the potential to serve in positions of higher authority for the Army. I would like to be given the opportunity to lead Soldiers again at the next level and serve the nation. A favorable decision by the ABCMR would mean everything to me, I've given over three decades of service to the nation and would like nothing more to continue that service."

e. The applicant cites paragraph 3-5b (Filing of Nonpunitive Administrative Memoranda of Reprimand, Admonition, or Censure – Filing in Army Military Human Resource Records (AMHRR)) and argues, "The issuing General Officer (for the GOMOR) did not follow (the regulation's) procedure because he did not have the intent to have these 'allied' documents in my AMHRR. In the spirit of fundamental fairness, all ancillary, secondary and tertiary documents remotely related to the original facts and circumstances surrounding the GOMOR should be removed."

2. The applicant provides the following:

a. Summary of Credible Adverse Information, which states that CID reported substantiated findings, which showed the applicant had wrongfully used opiates; also, on 20 January 2022, a Judge Advocate opined that probable cause existed to believe the applicant had committed the alleged offense. Under "Disposition," the document states, "The DA Form 4833 does not indicate any action was taken. Additionally, there

is no evidence of any actions taken at command level present in the information provided by screening agencies."

b. DA Form 4833, completed on 15 August 2022, stating the applicant's command had issued the applicant a locally filed GOMOR based on CID's LER.

c. CID LER, dated 25 January 2022, showing the applicant's titling for "Wrongful Use of Opiates – Detected by Urinalysis (UCMJ (Uniform Code of Military Justice) – Article 112a (Wrongful Use, Possession, etc., of Controlled Substances)." The report describes how CID initially received information about the alleged offense, and that, in an interview conducted by a Medical Review Officer (MRO), the applicant said he was unsure how he had tested positive for opiates. The applicant provided photos of his medications, and the MRO opined those medications would not have caused the positive result.

d. GOMOR, dated 7 April 2022, issued by the CG, MDW and addressed to the applicant. The GOMOR reprimanded the applicant for his wrongful use of a controlled substance. When confronted with the positive urinalysis results, the applicant had claimed to have no knowledge as to how the controlled substances were found; a review of the applicant's medications revealed he had last been prescribed Oxycodone in 2018. On 1 June 2022, the GOMOR imposing official directed the GOMOR's temporary placement in the applicant's local unit file for a period of 12 months, or until the applicant's reassignment to another general court-martial jurisdiction (whichever was sooner).

e. DA Form 67-10-2, covering the rating period 20210604 through 20220919 (of which 3 months were rated). The rated duty position was J2, Director of Intelligence, and the reason for the report was "Promotion"; MG K__ C. L__, CG, (a Special Operations Joint Command), was both the applicant's rater and senior rater. MG K__ C. L__ lauded the applicant as an exceptional leader who exemplified Army values and personified the Profession of Arms and Warrior Ethos. He rated the applicant as "Most Qualified" and stated he was "#1 of 35 Army LTCs..." and had "clear GO potential."

f. Three memoranda of support:

(1) MG K__ C. L__ wrote that, during the FY23 COL PSB, an untrue Summary of Adverse Information document had been included in the applicant's board file; the summary did not account for the administrative action taken by the applicant's command. MG K__ C. L__ affirmed he fully endorsed the removal of the inaccurate document from the applicant's AMHRR and board file because it was the likely reason for the applicant's non-selection. MG K__ C. L__ contended it was in the Army's best interest to provide the applicant a fair promotion board with accurate information; the

applicant was an exceptional officer who would undoubtedly be selected if the PSB had the opportunity to review a true and accurate board file.

(2) MG A__ R. H__, CG, U.S. Army Intelligence Center of Excellence and Fort Huachuca, expressed his utmost support for the applicant, "as his locally issued GOMOR, should not have been included in his recent promotion board file when he was considered for promotion to Colonel." MG A__ R. H__ asserted the applicant had the right balance of intellect, experience, maturity, and personality to further advance in the Military Intelligence Corps; he based this view on his personal knowledge of the applicant, obtained during their joint service over that last 12 years. The applicant served with MG H__ in a variety of capacities and displayed an outstanding dedication to both Soldiers and the mission. Additionally, the applicant was a proven combat leader, a force multiplier, and a strategic thinker who provided leaders at the most senior levels with vital support for decision making. MG H__ strongly felt the applicant had been unjustly disadvantaged on his recent COL PSB.

(3) MG M__ H. B__ affirmed her strong support for the applicant and stated, "During the FY23 COL PSB, an inaccurate Summary of Adverse Information document was included in [applicant's] board file. The summary did not account for the administrative action taken by his command. I fully endorse removing the inaccurate Summary of Adverse Information document from [applicant's] board file." MG B__ noted she had served with the applicant over the past 12 years, and that service had included a combat deployment to Afghanistan. She argued the applicant was an outstanding leader and professional who embodied the Army's values. In addition, MG B__ acknowledged she was aware of the incident that had resulted in punishment, and she was confident that applicant had grown and learned from his experience. "I believe it is in the Army's best interest to provide [applicant] with a reasonable opportunity for promotion selection to COL."

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

a. On 20 December 2001, after completing over 13 years of enlisted service and successfully graduating from OCS, the applicant executed his oath of office as a Regular Army commissioned officer, branched military intelligence. The applicant continued serving in a variety of assignments, and he went on five deployments (three to Iraq and twice to Afghanistan).

b. Effective 1 May 2018, the Army promoted the applicant to LTC; in April 2019, the applicant assumed command of a recruiting battalion. On or about 17 November 2020, the applicant provided a urine specimen. In or around June 2021, the applicant changed command and transferred to NDU for Senior Service College. On an unknown date, the applicant's urinalysis specimen showed positive results for oxycodone and

oxymorphone; in April 2022, following a CID investigation, the applicant received a GOMOR, and, in June 2022, the imposing official directed the GOMOR's local filing.

c. On 8 June 2022, the applicant successfully completed Senior Service College, and orders reassigned him to be the J2 for a Special Operations Command.

d. On 17 June 2022, the U.S. Army Human Resources Command (HRC) released Military Personnel (MILPER) message 22-232 FY23 AC, COL, Operations (OPS), Operations Support (OS), Force Sustainment (FS), and Information Dominance (ID), PSB Zones of Consideration).

(1) The message announced the zones of consideration:

- Above Zone: 31 July 2018 and earlier
- In Zone: 1 August 2018 through 31 Jul 2019
- Early Consideration: 1 August 2019 through 31 July 2020

(2) In paragraph 3 (Adverse Information), the message stated the following:

(a) "As directed by the Office of the Secretary of Defense (OSD) and (Title 10 USC (United States Code) (Armed Forces), section 615 (Information Furnished to Selection Boards) or 14107 (Promotion and Retention of Officers on the Reserve Active-Status List – Selection Boards – Information Furnished by the Secretary Concerned to Promotion Boards), all eligible officers considered by this Board will undergo an adverse information screening and any identified adverse information will be shown to the board. This screening will include any substantiated adverse finding or conclusion from an officially documented investigation, inquiry, or any other credible information of an adverse nature. Screening agencies for this information will include the Department of the Army Inspector General (DAIG), Criminal Investigation Command (CID), and the Office of The Judge Advocate General (OTJAG)."

(b) "As defined in Department of Defense Instruction (DODI) 1320.04 (Military Officer Actions Requiring Presidential, Secretary of Defense, or Under Secretary of Defense for Personnel and Readiness Approval or Senate Confirmation), adverse information is any substantiated adverse finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be credible, the information must be resolved and supported by a preponderance of the evidence. To be adverse, the information must be derogatory, unfavorable, or of a nature that reflects clearly unacceptable conduct, integrity, or judgment on the part of the individual."

(c) "Adverse information will be presented to the board as follows:"

- Derogatory Information, defined as any adverse information in the officer's performance or restricted section of the AMHRR
- Information not in the AMHRR, defined as any adverse information attributable to the officer but not located in the performance or restricted section of the AMHRR

(d) "Response to adverse information. An officer may comment on the adverse information in his or her My Board File by providing a letter to the President of the board. This letter should only address adverse information. Officers wishing to provide a response should clearly identify the letter per instructions found in paragraph 5a(1) of this message. This letter to the President of the board is separate and distinct from the letter to the President of the board found in paragraph 5a(2) of this message. This letter will be placed with the officer's adverse information within the officer's board file."

(e) "Officers should contact their servicing Legal Assistance Office or Trial Defense Services for assistance if they believe an adverse summary in their file is not required to be considered by this board. These offices can assist officers regarding adverse summaries and route any legal concerns to HQDA (OTJAG-Administrative Law Division)."

(3) Paragraph 5 addressed letters to the president of the board and stated:

(a) All officers in the zones of consideration may, if desired, submit correspondence to the President of the Board. Individual correspondence should include those matters deemed important in the consideration of an officer's record, including any response to adverse or derogatory information discussed in paragraph 3."

(b) "Any memorandum considered by a board will become a matter of record for that board and will be retained in the board files. Memorandum to the board (including enclosures) will not be filed in an officer's AMHRR."

e. On or about 30 June 2022, the applicant arrived for duty at the Special Operations Command.

f. On 3 February 2023, the Army released the list of officers selected for promotion to COL, based on the FY23 AC, COL, OPS, OS, FS, and ID PSB results; the applicant's name was not on the list.

4. With the enactment of the FY 1980 National Defense Authorization Act (NDAA), Congress included provisions in Title 10, which specified what information PSBs were to receive about officers under consideration for promotion.

a. The FY 2006 NDAA added a requirement for PSBs to receive "any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry"; the law applied to officers under consideration for promotion to grades above COL (i.e., general officers). The law further directed the adverse information be made available to the affected officer, and that he/she be afforded a reasonable opportunity to submit comments to the board.

b. The FY 2020 NDAA expanded the disclosure of adverse information requirement to officers being considered for grades above captain (referring to O-4s and above).

c. In compliance with the above-cited changes in law, DOD amended two of its regulations pertaining to officer promotions: DODI 1320.04 and 1320.14 (DOD Commissioned Officer Promotion Program Procedures). In response, the Army also amended AR 600-8-29 (Officer Promotions) and implemented the Army Adverse Information Program (AAIP). The AAIP provided a means for PSBs and Command Select List boards to receive credible information of an adverse nature, including any substantiated adverse findings or conclusions from an officially documented investigation or inquiry. The Office of the Judge Advocate General (OTJAG) is the proponent for AAIP and is the approval authority for any exceptions to policy.

(1) The AAIP provides centralized access to adverse information on commissioned officers, O-1 and above, as documented in administrative investigations (i.e., inquiries or informal investigations, preliminary inquiries, administrative investigations, or boards of officers conducted pursuant to AR 15-6 (Procedures for Administrative Investigations and Boards of Officers)).

(2) Prior to the convening of a PSB or CSL board, the OTJAG Administrative Law Division, in coordination with Deputy Chief of Staff (DCS), G-1 Exemplary Conduct Team, screens for AAIP entries on those officers being considered for promotion; (the Exemplary Conduct Team additionally works with other screening agencies, such as military criminal investigation organizations and IG offices).

(3) If an officer is identified with having an AAIP entry, the G-1 team will prepare a credible summary of service information, and OTJAG reviews the final version of the summary prior to forwarding it to HRC who, in turn, provide a copy to the affected officer for comment. The adverse summary, and any comments submitted by the officer, are then sent to the PSB for consideration.

d. OTJAG has advised the Army Review Boards Agency that, to ensure a Credible Summary of Adverse Information is not placed in an officer's promotion board file, the underlying source (CID LER, AR 15-6 investigation, or IG report) must first be removed.

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 applicant requested his name be removed from the titling block of a U.S. Army CID LER. The Board carefully considered the applicant's request, the evidence provided by the applicant, his service records, and all applicable regulatory and statutory guidance, and the applicant's contention that the only rational explanation he can think of for coming up positive is that he mistakenly took an expired Oxycodone pill, which doctors had previously prescribed for him following a 2018 surgery. The applicant acknowledges he did not properly dispose of his oxycodone pills after his prescription expired.

a. The Board determined probable cause did exist to believe the applicant committed the offense of "Wrongful use of Opiates" when he was titled.

(1) This determination is based upon the Board's belief that it is reasonable for the to trust the uranalysis test results conducted for or by the Army are accurate, in that the testing would accurately reveal the presence of illegal substances in a urine sample, such as Oxycodone and Oxymorphone.

(2) The Board trusts that the applicant's urine would not have tested positive for Oxycodone and Oxymorphone unless he ingested the substances.

b. The Board also determined that probable cause now/still exists to believe the applicant committed the offense of "Wrongful use of Opiates."

(1) The Board notes the evidence considered by CID and the applicant's acknowledgement that he did not properly dispose of the oxycodone pills he was prescribed after a surgery in 2018 after the prescription expired, and the fact that his urine specimen tested positive in 2020.

(2) The evidence considered at the time, as well as the evidence and argument the applicant now provides show sufficient evidence now/still exists to believe applicant committed the offense of "Wrongful use of Opiates."

3. The Board considered but found insufficient evidence to justify the removal of the associated Summary of Credible Adverse Information from his promotion selection board (PSB) file.

a. The MILPER message announcing the Board provided eligible officers with instruction regarding how adverse information would be reflected in the Board file, it also provided instructions regarding how to respond to adverse information and instructed on who to contact for help and provided guidance on corresponding with the Board President. The applicant had a chance to address this memo through the channels provided in the MILPER message.

b. He contends the primary error is that the contested document shows his commander failed to administer any punishment/there is no record of punishment. However, he could have clarified that he did receive a GOMOR, but as that was filed locally, there was nothing for the memo to comment on regarding administrative punishment as the GOMOR and allied documents were locally filed by this time. The primary reason for the inclusion of the information was the CID investigation. There is no administrative error or material unfairness in this instance.

4. The Board considered the applicants request for consideration by a Special Selection Board (SSB) for promotion to Colonel (COL). The Board did not note administrative errors or material unfairness in the applicant's record that would justify his referral to 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. With the enactment of the FY 1980 National Defense Authorization Act (NDAA), Congress specified what information PSBs were to receive about officers being considered for promotion.

a. The FY 2006 NDAA added a requirement for PSBs to receive "any credible information of an adverse nature, including any substantiated adverse finding or conclusion from an officially documented investigation or inquiry"; the law applied to officers under consideration for promotion to grades above COL. The law further directed that the adverse information be made available to the affected officer and that he/she be afforded a reasonable opportunity to submit comments to the board.

b. The FY 2020 NDAA expanded the grades of officers for which PSBs would be provided adverse information and stated the law would now apply to Regular officers being considered for promotion into grades above captain.

c. In compliance with the above-cited changes in law, DOD amended two of its regulations pertinent to officer promotions: DODI 1320.04 and 1320.14 (DOD Commissioned Officer Promotion Program Procedures). In response, the Army also amended AR 600-8-29 (Officer Promotions) and implemented the Army Adverse Information Program (AAIP). The AAIP provided a means for PSBs and Command Select List boards to receive credible information of an adverse nature, including any substantiated adverse findings or conclusions from an officially documented investigation or inquiry. The Office of the Judge Advocate General (OTJAG) is the proponent for AAIP and is the approval authority for any exception to policy.

(1) The AAIP provides centralized access to adverse information on commissioned officers, O-1 and above, as documented in administrative investigations (i.e., inquiries or informal investigations, preliminary inquiries, administrative investigations, or boards of officers conducted pursuant to AR 15-6 (Procedures for Administrative Investigations and Boards of Officers)).

(2) Prior to the convening of a PSB or CSL board, the OTJAG Administrative Law Division, in coordination with Deputy Chief of Staff (DCS), G-1 Exemplary Conduct Team, screens for AAIP entries on those officers being considered for promotion; (the Exemplary Conduct Team additionally works with other screening agencies, such as military criminal investigation organizations and inspectors general offices).

(3) If an officer is identified with having an AAIP entry, the G-1 team will prepare a credible summary of service information, and OTJAG reviews the final summary prior to forwarding the summary to HRC who, in turn provide a copy to the affected officer for

comment. The adverse summary and any comments submitted by the officer are then sent to the PSB for its consideration.

2. DODI 5505.07, dated 8 August 2023 and currently in effect, section 3 prescribes current correction and expungement procedures for persons titled in a DoD Law Enforcement Activity (LEA) report or indexed in the DCII. Per paragraph 1.2a, the initial decision to title and index an individual remains based on a credible information standard.

a. Paragraph 3.1 (Basis for Correction or Expungement). A covered person who was titled in a DoD LEA report or indexed in DCII may submit a written request to the responsible DoD LEA head or designated expungement officials to review the inclusion of their information in the DoD LEA report, DCII, and other related records systems, databases, or repositories in accordance with Section 545 of Public Law 116-283.

b. Paragraph 3.2 (Considerations).

(1) When reviewing a covered person's titling and indexing review request, the expungement official will consider the investigation information and direct that the covered person's information be corrected, expunged, or otherwise removed from the DoD LEA report, DCII, and any other record maintained in connection with the DoD LEA report when:

(a) Probable cause did not or does not exist to believe that the offense for which the covered person was titled and indexed occurred, or insufficient evidence existed or exists to determine whether such offense occurred.

(b) Probable cause did not or does not exist to believe that the covered person committed the offense for which they were titled and indexed, or insufficient evidence existed or exists to determine whether they committed such offense.

(c) Such other circumstances as the DoD LEA head or expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in Paragraphs 3.2.a.(1) and (2).

(2) In accordance with Section 545 of Public Law 116-283, when determining whether such circumstances or basis applies to a covered person when correcting, expunging, or removing the information, the DoD LEA head or designated expungement official will also consider:

(a) The extent or lack of corroborating evidence against the covered person with respect to the offense.

(b) Whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense.

(c) The type, nature, and outcome of any adverse administrative, disciplinary, judicial, or other such action taken against the covered person for the offense.

3. DODI 5505.11 (Fingerprint Reporting Requirements), currently in effect, states probable cause exists where the facts and circumstances within the officer's knowledge, and of which he or she has reasonably trustworthy information, are sufficient in themselves to warrant a belief by a person of reasonable caution that a crime is being committed or has been committed.

4. Manual for Courts-Martial, currently in effect, provides the following with regard to Article 112a:

a. Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection "b" shall be punished as a court-martial may direct.

b. The substances referred to in subsection "a" are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act.

5. AR 600-8-29 (Officer Promotions), currently in effect, includes guidance on special selection boards (SSB) in chapter 6 (SSB).

a. SSBs may be convened under Title 10, USC, section 628 (SSB) to consider or reconsider commissioned or warrant officers for pro-motion when HQDA determines that one or more of the following circumstances exist: administrative error or material unfairness.

b. An SSB will consider the record of the officer as it should have been considered by the original board. The record will be compared with a sampling of those officers of the same competitive category, who were recommended and not recommended for promotion by the original selection board.

c. Officers selected for promotion by an SSB will, as soon as practicable, be appointed to that grade. When appointed to the next higher grade as the result of the recommendation of an SSB, the officer will have the same date of grade, the same effective date for the pay and allowances of that grade, and the same position on the ADL as the officer would have had if he or she had been recommended for promotion to that grade by the board which should have considered, or which did initially consider, him or her.

//NOTHING FOLLOWS//