

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230011364

APPLICANT REQUESTS: reconsideration of his previous request for:

- amending of his active date of rank (ADOR) to the rank of major (MAJ)
- removal of his DA Forms 67-10-2 (Field Grade Plate Officer Evaluation Report (OER)) from his Army Military Human Resource Record (AMHRR) for the periods:
 - 2 June 2018 through 1 June 2019
 - 2 June 2019 through 1 June 2020

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

- Memorandum, subject: Rebuttal to Army Board for Correction of Military Records (ABCMR) Record of Proceedings for [Applicant], 15 September 2023
- Two DA Forms 67-10-2, 2 June 2018 through 1 June 2019 and 2 June 2019 through 1 June 2020
- DA Form 1059-2 (Senior Service and Command and General Staff College (CGSC) Academic Evaluation Report), 28 June 2019

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20230008437 on 29 August 2023.

2. The applicant states:

a. He humbly requests a reconsideration to the recent ABCMR decision that denied his initial application to correct errors or injustice within his record. This memorandum provides justification to adjust his ADOR to the rank of MAJ via the Call to Active Duty (CAD) process and suggests serious errors to remove or omit specific evaluations that would significantly increase his chances to be promoted to lieutenant colonel (LTC).

b. The Department of Defense Instruction (DoDI) 1310.01 (Rank and Seniority of Commissioned Officers) states, when an officer transitions between the active duty list (ADL) and Reserve active status list (RASL) a Service Secretary may adjust the date of rank to better reflect an officer's experience or to adjust an imbalance. An ADOR adjustment would permit fairness and a level playing field among other Regular Army officers competing for LTC in the same category. His current MAJ ADOR missed the next promotion cycle by only two and a half months.

c. His annual OER covering the period of 2 June 2018 through 1 June 2019 shows the same rater comments as the next annual OER covering the period 2 June 2019 through 1 June 2020. This indicates an incorrect, inaccurate, and unjust material error that if either corrected or removed from his records would significantly improve his chances for promotion to LTC.

d. His annual OER covering the period of 2 June 2019 through 1 June 2020 shows a significant material error that did not indicate a non-rated code for attendance at a 102-day CGSC course on temporary duty (TDY) orders at a different location. An academic evaluation report was received for course completion. In accordance with Army Regulation (AR) 623-3 (Evaluation Reporting System), paragraph 3-42, (2), "If the rated Soldier has gone on TDY to attend a school and the 'Annual' report is due, the TDY report may be prepared and processed before the Soldier departs to reestablish an annual cycle or an 'Extended Annual' report may be prepared upon return to the same duties with the same rating officials." An extended annual OER would have accounted for 12 months of actual rated time, which would have also allowed a more just and fair report.

3. The applicant's service record shows:

a. He commissioned as a Reserve commissioned officer on 5 May 2006.

b. Orders B-07-602985, published by U.S. Army Human Resources Command, 14 July 2016, promoted him to MAJ effective 13 June 2016 with a date of rank of 13 June 2016.

c. DA Form 67-10-2 OER, 2 June 2018 through 1 June 2019 shows it was an annual report and he was rated for 12 months. His rater rated him as excels and stated:

(1) "[The applicant] is a selfless and dedicated professional who displayed the ability to learn quickly, think creatively, and solve problems at the theater-strategic level in a complex joint environment. He is a dependable team player who has skillfully navigated the intricacies of diverse Sub-Unified Special Operations Command responsibilities and delivered timely options and sound counsel to his direct supervisors."

(2) "[The applicant] is #1 out of 1 MAJs I rate. He is intelligent, dependable, and takes initiative to identify and solve the most pressing problems. His contributions resulted in sourcing of critical SOCCENT force requirements, development and validation of JOC Personnel Recovery immediate action drills and implementation of the SOCCENT Commander's POTFF initiative."

His senior rater rated him as highly qualified stating "top 20% of joint O-4s I senior rate. Must promotion to O-5 and select for CSL battalion command! Must select for SSC and resident CCS. Clearly a future O-6."

d. DA Form 1059 shows he completed CGSC from 18 March 2019 through 28 June 2019.

e. DA Form 67-10-2 OER, 2 June 2019 through 1 June 2020 shows it was an annual report and he was rated for 12 months. He had no nonrated codes. His rater rated him as excels and his rater comments were the same as those for the OER with a through date of 1 June 2019. His senior rater rated him as highly qualified stating "[The applicant] is one of the top 3 O-4s I senior rate and in the top 5% of Join O-4s within the command. [The applicant] is consummate team builder with indomitable will. Already selected for Company Command, send to resident ILE ahead of peers and must promote to O-5. Exceptional potential."

f. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably transferred to U.S. Army Reserve Control Group (Retired) on 30 September 2023. He was in the rank of MAJ and his effective date of rank was 13 June 2016.

g. Orders 0006776532.00, 10 December 2023, shows he was transferred to the U.S. Army Retired List for mandatory retirement effective 1 December 2023.

4. On 29 August 2023, the Board denied his previous request in AR20230008437 stating:

a. After reviewing the application, all supporting documents, and the evidence found within his military records, the Board found that relief was not warranted. His contentions, his military records, and regulatory guidance were carefully considered.

b. As for adjustment of his ADOR, the evidence shows he was on active duty status from the time of his promotion with a date of rank of 13 June 2016 until 31 January 2019, 1 day before he was placed on the ADL on 1 February 2019. There was no break in service; therefore, he maintained his correct 13 June 2016 date of rank. Zones for promotion consideration or eligibility are determined by date or rank not by YGs. Furthermore, he was, in fact, considered for promotion under the criteria of the Fiscal

Year (FY) 21 (below zone), FY 22 (in zone), and FY 23 (above zone) LTC promotion boards but he was non-selected. The specific reasons for his non-selection are unknown. Additionally, the Board determined that by law and regulation, there is no provision to allow for a special selection board on compassionate reasons.

c. As for removal of the contested OERs covering the periods of 2 June 2018 through 1 June 2019 and 2 June 2019 through 1 June 2020, the Board determined the applicant's request has no merit. By regulation, an evaluation report submitted and accepted for inclusion in the rated Soldier's AMHRR is presumed to be administratively correct, prepared by proper rating officials, and represents the considered opinion and objective judgement of those rating officials at the time the reports were rendered. For an evaluation to be removed, he would have to prove serious errors or irregularities in them through substantiated evidence. Also, by regulation, an appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered. Neither of his contested OERs is a referred OER nor do they contain any derogatory comments.

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. Based upon the justification provided by the applicant, the Board found insufficient evidence of an error or injustice which would warrant an amendment to the applicant's active date of rank to major (MAJ)/O-4.
2. Pertaining to the applicant's request for removal of his OERs for the periods 2 June 2018 to 1 June 2019 and 2 June 2019 to 1 June 2020, the Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred prejudicial to the applicant and by a preponderance of evidence that the contents of the reports are substantially incorrect and support removal.

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 amendment of the ABCMR decision rendered in Docket Number AR20230008437 on 29 August 2023.

[REDACTED]

[REDACTED]

[REDACTED]

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. AR 600-8-29 (Officer Promotions), prescribes the officer promotion function of military human resources support operations.

a. Paragraph 4-1 (ADOR Responsibilities) states:

(1) The ADOR is used to determine the eligibility of officers on the ADL for promotion.

(2) The DCS, G-1, establishes the criteria used to determine the ADOR and PED. Designation of ADOR and PED not anticipated by a provision of this regulation will be determined on an individual basis by the DCS, G-1, or his or her designee.

(a) Except as indicated below, HRC will determine ADOR and PED as prescribed in this regulation. The following documents must be submitted for those officers whose ADOR and PED will be determined by HRC: DA Form 1506 (Statement of Service – For Computation of Length of Service for Pay Purposes); DD Form 214; National Guard Bureau Form 23B (Army National Guard Retirement Points History Statement); DA Form 5016 (Chronological Statement of Retirement Points) provided by HRC; DA Form 71 (Oath of Office – Military Personnel); promotion orders; Regular Army appointment orders; active duty orders; letter orders on transfers between Reserve Control Groups or units; and any State promotion letters. Upon placement on the ADL, officers must show due diligence and comply with the instructions in their orders to request an ADOR determination. The request must be submitted no later than 24 months after being placed on the ADL unless the officer can explain excessive delay based upon exigent circumstances.

(b) Brigade S-1s and/or military personnel divisions will determine the ADOR for all second lieutenants and warrant officer 1s.

(c) The ADOR of officers not managed by HRC will be jointly determined by the Commanding General, HRC, and the Surgeon General; the Judge Advocate General; or the Chief of Chaplains, as appropriate.

b. Chapter 6 (Special Selection Boards) states special selection boards may be convened under Title 10, U.S. Code, section 628, to consider or reconsider commissioned or warrant officers for promotion when HQDA determines that one or more of the following circumstances exist:

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

would include officers who missed a regularly scheduled board while on the Temporary Disability Retired List and who have since been placed on the ADL.

(2) Material Unfairness.

(a) The action of the promotion board that considered the officer from in or above the promotion zone was contrary to law in a matter material to the division of the board or involved material error of fact or material administrative error.

(b) The board that considered the officer from in or above the promotion zone did not have material information before it for its consideration.

3. AR 623-3 (Evaluation Reporting System), prescribed the policies for completing evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System.

a. Paragraph 2-12 (The Rater) stated the rater will provide a copy of his or her support form, along with the senior rater's support form, to the rated Soldier at the beginning of the rating period. For officers in grades warrant officer 1 through COL, the DA Form 67-10A is mandatory for use throughout the rating period.

b. Paragraph 2-14 (The Senior Rater) stated senior raters and reviewing officials will ensure support forms are provided to all rated Soldiers they senior rate at the beginning of and throughout the respective rating periods.

c. Paragraph 3-4 (The Support Form Communication Process) stated the initial and follow-up counseling between the rater and the rated Soldier that is documented in the support forms assures a verified communication process throughout the rating period.

(1) The support form communication process is characterized by initial and follow-up face-to-face counseling between the rater and the rated Soldier throughout the rating period. The initial face-to-face counseling assists in developing the elements of the rated Soldier's duty description, responsibilities, and performance objectives. The follow-up counseling enhances mission-related planning, assessment, and performance development.

(2) Through the communication process, rated Soldiers are made aware of the specifics of their duties and may influence the decision on what is to be accomplished. Thus, the rated Soldier is better able to: direct and develop their subordinates plan for accomplishing the mission gain valuable information about the organization find better ways to accomplish the mission.

(3) Although the support or form is an official document covered by regulation, it will not become part of the official file used by selection boards or career managers. Failure to comply with any or all support form or counseling requirements will not constitute the sole grounds for appeal of an evaluation report. The senior rater will ensure that a completed support form is returned to the rated Soldier when the OER is forwarded to Headquarters, Department of the Army (HQDA).

d. Paragraph 3-36 (Modifications to Previously Submitted Evaluation Reports) addressed requests for modifications to both completed evaluation reports that are filed in a Soldier's AMHRR and evaluation reports that are being processed at HQDA prior to completion.

(1) An evaluation report accepted by HQDA and included in the official record of a rated Soldier is presumed to be administratively correct, to have been prepared by the properly designated rating officials who meet the minimum time and grade qualifications, and to represent the considered opinions and objective judgment of the rating officials at the time of preparation.

(2) Requests for modifications to evaluation reports already posted to a Soldier's AMHRR require use of the Evaluation Report Redress Program.

(3) Requests that a completed evaluation report filed in a Soldier's AMHRR file be altered, withdrawn, or replaced with another report will not be honored if the request is based on the following:

- statements from rating officials that they underestimated the rated Soldier
- statements from rating officials that they did not intend to assess the rated Soldier as they did
- requests that ratings be revised
- statements from rating officials claiming administrative oversight or typographical error in checking blocks on forms for professional competence, performance, or potential
- statements from rating officials claiming OERs were improperly sequenced to HQDA by the unit or organization
- a subsequent statement from a rating official that he or she rendered an inaccurate evaluation of a rated Soldier's performance or potential in order to preserve higher ratings for other officers (for example, those in a zone for consideration for promotion, command, or school selection)

(4) For evaluation reports that have been completed and filed in a Soldier's AMHRR, substantive appeals will be submitted within 3 years of an evaluation report "THRU" date. Administrative appeals will be considered regardless of the period of the

evaluation report; decisions will be made based on the regulation in effect at the time reports were rendered.

(5) An exception is granted for evaluation reports when information that was unknown or unverified when the evaluation report was prepared is brought to light or verified and this information is so significant that it would have resulted in a different evaluation of the rated Soldier. The following actions will be accomplished in an effort to modify the evaluation report:

(a) if the information would have resulted in a higher evaluation, the rated Soldier may appeal the evaluation report and rating officials may provide input to support this point; or

(b) if the information would have resulted in a lower evaluation, rating officials may submit an addendum to be filed with the OER.

e. Chapter 4 (Evaluation Report Redress Program) stated the program is both preventive and corrective, in that it is based upon principles structured to prevent and provide a remedy for alleged injustices or regulatory violations, as well as to correct them once they have occurred.

(1) Paragraph 4-3 (Applicability) stated that upon receipt of a request for a Commander's or Commandant's Inquiry, the commander or commandant receiving the request will verify the status of the OER in question. If the evaluation has been submitted and received at HQDA for processing, but has not been filed in the Soldier's AMHRR, the commander or commandant will notify the Evaluations Appeals Office via email with a request to have the evaluation placed in a temporarily administrative holding status until completion of the inquiry.

(2) Paragraph 4-8a (Timeliness) stated because evaluation reports are used for personnel management decisions, it is important to the Army and the rated Soldier that an erroneous report be corrected as soon as possible. As time passes, people forget and documents and key personnel are less available; consequently, preparation of a successful appeal becomes more difficult.

(3) Paragraph 4-11 (Burden of Proof and Type of Evidence) stated the burden of proof rests with the applicant. Accordingly, to justify deletion or amendment of an evaluation report, the applicant will produce evidence that establishes clearly and convincingly that:

(a) the presumption of regularity referred to in paragraphs 3-36a and 4-7a will not be applied to the report under consideration; or

(b) action is warranted to correct a material error, inaccuracy, or injustice.

(4) Paragraph 4-11d stated for a claim of inaccuracy or injustice of a substantive type, evidence will include statements from third parties, rating officials, or other documents from official sources. Third parties are persons other than the rated officer or rating officials who have knowledge of the applicant's performance during the rating period. Such statements are afforded more weight if they are from persons who served in positions allowing them a good opportunity to observe firsthand the applicant's performance as well as interactions with rating officials. Statements from rating officials are also acceptable if they relate to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practicable, such statements will include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the evaluation report was rendered. The results of a Commander's or Commandant's Inquiry may provide support for an appeal request.

4. AR 600-8-104 (Army Military Human Resource Records Management), prescribed policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to the Official Military Personnel File, finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. Paragraph 3-6 provided that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

b. Appendix B (Documents Required for Filing in the Army Military Human Resource Record and/or Interactive Personnel Electronic Records Management System) contains the list of all documents approved by Department of the Army and required for filing in the AMHRR and/or interactive Personnel Electronic Records Management System and shows the DA Form 67-10-2 is filed in the performance folder.

5. DoDI 1310.01 (Rank and Seniority of Commissioned Officers) states:

a. The Secretary of the Military Department concerned may change an officer's date of rank to a later date to reflect such officer's qualifications and experience. This applies in the case of a Reserve officer ordered to active duty who:

(1) Is placed on the ADL and who has not been on continuous active duty since his or her original appointment as a Reserve commissioned officer; or

(2) Is transferred from an inactive status to an active status and placed on the ADL or RASL, effective the date on which he or she is placed on the ADL or RASL.

b. The authority to change the date of rank of a Reserve officer who is placed on the ADL to a later date does not apply in the case of an officer who:

(1) Has served continuously in the Selected Reserve of the Ready Reserve since the officer's last promotion or:

(2) Is placed on the ADL while on a promotion list.

//NOTHING FOLLOWS//