

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230015040

APPLICANT REQUESTS: in effect, correction of his Date of Rank (DOR) to 3 August 2016 vice 19 July 2022, to align with selection for Fiscal Year 2016 (FY16), Major (MAJ), Chaplain Corps (CH), Army National Guard of the United States (ARNGUS), Promotion Selection Board (PSB).

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

- DD Form 149 (Application for Correction of Military Record)
- Previous DD Form 149, 30 January 2017
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings (ROP) Docket Number AR20170002422, 11 October 2019
- U.S. Army Human Resources Command (HRC) Memorandum - Subject: Special Selection Board (SSB) Results (SSB RS2105-08) Fiscal Year 2016 (FY16), 24 May 2022
- Email communication, 23 July 2024

FACTS:

1. The applicant states:

a. His DOR to major (MAJ)/O-4 needs to be corrected in accordance with guidance from a previous ABCMR and Special Selection Board (SSB). His new DOR should be based upon FY16, MAJ, Chaplain Corps, Department of the Army (DA) Mandatory Selection Board.

b. In FY16, he was erroneously passed over for promotion in his second DA select board as a result of a material board error. He requested and was granted to have his records corrected. The docket number for his original proceedings was AR20170002422. The board awarded partial relief and required a SSB reconsider his promotion under the criteria for the FY16, MAJ, Chaplain Corps (CH), Department of the Army Mandatory Selection Board. He was selected for promotion via SSB (SSB RS2015-08) and results were posted 24 May 2022.

c. The SSB announcement clearly identifies his promotion as FY16. This request is to grant him full relief and correct his DOR to be consistent with selection for promotion FY16, MAJ, CH, Army National Guard of the United States (ARNGUS), promotion selection. This request is a secondary requirement to another ABCMR case that has already been approved. Record of Proceedings are contained in docket number AR20170002422. Full relief to correct DOR requires a second ABCMR decision.

2. A review of the applicant's service records show:

a. On 12 May 2000, the applicant was commissioned as a Reserve commissioned officer in the rank/grade of second lieutenant (2LT)/O-1.

b. He served on active duty from 12 May 2000 to 12 May 2004.

c. On 21 March 2014, he was notified his record was considered, but unfortunately, he was not recommended for promotion to the next higher grade (MAJ). This was his first non-selection.

d. He served on active duty from 11 January 2014 to 12 April 2014.

e. On 16 August 2016, by memorandum, he was notified his record was considered, but unfortunately, he was not recommended for promotion to the next higher grade (MAJ). This is his second non-selection to MAJ. His anticipated separation date would occur no later than 1 March 2017.

f. On 28 February 2017, National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows he was discharged from the Army National Guard (ARNG) in accordance with National Guard Regulation (NGR) 635-100 (Termination of Appointment and Withdrawal of Federal Recognition), paragraph 5a(10), for "failure of a first lieutenant, captain [CPT], or major to be selected for promotion to the next higher grade after second consideration under Army Regulation (AR) 135-155 (Promotion of Commissioned Officers and Warrant Officers other than General Officers). Item 5a (Rank) shows CPT.

g. On 1 March 2017, he enlisted in the Kansas ARNG.

h. On 11 October 2019, ABCMR ROP Docket Number AR20170002422 shows the Board voted to grant partial relief of the applicant's request for an SSB reconsideration for promotion to MAJ and to add his latest Officer Evaluation Report to his SSB file. In relevant part, the Board agreed that the erroneous presence in his record of a memorandum that referenced a civil conviction waiver constituted a basis for consideration by an SSB. As a result, the Board recommended that all Department of

the Army records of the individual concerned be corrected by submitting his record to a SSB for consideration under the criteria for the FY16, Major, Chaplain Corps, Department of the Army Mandatory Selection Board.

i. On 27 March 2020, the HRC, Supervisor, Officer Promotions Special Actions, notified the Army Review Boards Agency that the applicant would be reconsidered for promotion by an SSB unless otherwise proven ineligible, under the criteria of the FY16, MAJ, CH, ARNGUS, PSB. By law, regulation and policy, his board file would appear in accordance with the established Military Personnel Message(s), by-laws, instructions, and the directives by the ABCMR. In addition, any adjustment of rank, DOR, or associated back pay and allowances would only occur upon a favorable outcome that leads to promotion (unless otherwise proven ineligible).

j. On 24 May 2022, the HRC, Lead, Officer Promotions Special Actions, notified the applicant that he was considered and selected for promotion by a SSB to MAJ, under the criteria and instructions established for the regularly constituted FY16, MAJ, CH, ARNGUS, promotion selection board.

k. On 18 July 2022, NGB Form 22 shows he was discharged from the ARNG, in the rank of SGT, to accept appointment as a commissioned officer.

l. On 19 July 2022 –

- DA Form 71 (Oath of Office - Military Personnel) shows he was appointed as a Reserve commissioned officer in the rank/grade of captain (CPT)/O-3 and executed his oath of office
- NGB Form 337 (Oaths of Office) shows he was appointed as captain in the Kansas Army National Guard (KSARNG) and executed his oath of office

m. On 5 August 2022, the KSARNG published Order Number 0001970426.00, which retired the applicant and appointed him to the rank of CPT, effective 19 July 2022.

n. On 30 June 2023, the KSARNG published Order Number 0005239990.00, which promoted the applicant to the rank/grade of MAJ/O-4, effective 19 July 2022, and with a rank and grade entry date of 19 July 2022.

o. On 15 August 2023, the NGB published Special Orders Number 268 AR, which announced Federal Recognition for the applicant's promotion to MAJ, effective on with a DOR of 19 July 2022.

p. On 25 July 2024, Order Number 0001970426.01 amended Order Number 0001970426.00 to show the rank of MAJ vice CPT.

3. On 22 July 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion for this case and recommended granting partial approval. In pertinent part, the advisory official stated:

a. It is the recommendation of this office that the applicant's request be partially approved. The applicant was separated in accordance with (IAW) NGR 635-100, paragraph 5a. Although the applicant was selected per the SSB he had already been separated through due process and did not possess the requirements to be promoted to MAJ at that time. He continued as an enlisted M-Day Soldier following his separation on 28 February 2017. He was recommissioned as a CPT through administrative error. He should be promoted to MAJ with a DOR of 19 July 2022. The Federal Recognition (FEDREC) Branch further agrees his DOR should not be in FY16 as he did not meet the requirements of being slotted as a MAJ and continued as an enlisted M-Day Soldier.

b. This advisory opinion was coordinated with The National Guard Bureau's Federal Recognition Branch and the Kansas Army National Guard.

4. In support of his request the applicant provided email communication dated 23 July 2024, between himself and the Case Management Division, wherein, he states, he will formally submit comments regarding the ruling as he believes there is much confusion around his request. Title 10, U.S. Code (USC), section 14502 clearly outlines how his DOR must be adjusted according to the original board proceedings, so he believes additional work must be done on this request. He requested a phone conversation to provide clarity.

5. On 25 July 2024, the NGB, Chief, Special Actions Branch provided a "corrected" advisory opinion for this case and recommended approval. The advisory official stated:

a. The applicant states after being a two time non-select to MAJ a previous ABCMR case granted relief in allowing him to be seen before an SSB. The applicant was seen before a SSB to MAJ for FY2016. The applicant was selected by the SSB for promotion in a memorandum dated 24 May 2022. The applicant's FEDREC was withdrawn in accordance with NGR 635-100 paragraph 5a on 28 February 2017 for being a two time non-select. He was recommissioned in the rank of Captain with a DOR of 19 July 2022. He is requesting a promotion to MAJ with a DOR in FY16.

b. After review of the applicant's submission and coordination with the KSARNG and NGB's FEDREC Branch, the withdrawal of the applicant's FEDREC was not erroneous and was completed IAW NGR 635-100 paragraph 5a following all regulations and procedures. The applicant continued as an enlisted M-DAY Soldier following his separation on 28 February 2017. The Soldier was seen before an SSB to MAJ for FY16, results nullified the second non-select which eliminates the requirement for separation and FEDREC withdrawal. IAW Title 10, USC, section 14502 paragraph (e)(2), an officer

appointed to the next higher grade as the result of the recommendation of an SSB will have the same DOR the same effective DOR and the same seniority as if the officer would have been if recommended for promotion to that grade by the board which originally considered them.

c. The applicant received a promotion letter to MAJ, effective 19 July 2022; however, he was recommissioned as a Captain with a DOR of 19 July 2022. He should have been recommissioned in the rank of MAJ with a DOR and effective DOR of 3 August 2016, IAW Title 10, USC, section 14502.

d. It is the recommendation of this office that the applicant's request be approved. The applicant should be promoted to MAJ with a DOR and effective DOR of 3 August 2016 IAW Title 10, USC, section 14502. This advisory opinion was coordinated with The National Guard Bureau's FEDREC and the KSARNG.

6. The applicant and KSARNG G-1 provided comments and rebuttals to the initial NGB advisory opinion dated 22 July 2024. The memorandums can be reviewed in their entirety in the supporting documents.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board reviewed and noted the Chief, Special Actions Branch, National Guard Bureau's advisory opinion recommending approval of the applicant's request for a date of rank adjustment to major (MAJ)/O-4 based on administrative irregularity. The Board also reviewed and concurred with the Joint Forces Headquarters – Kansas G1's advising official finding the applicant was not placed in a vacant MAJ/O-4 position due to his separation as an officer; however, he could have been promoted into a valid vacancy at the time he was selected for promotion in 2016. It was their intention to select the applicant for promotion to MAJ/O-4 in 2016 had the promotion selection board selected him for promotion. The Board concluded that the applicant's date of rank and effective date of promotion should be adjusted to 3 August 2016

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	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 the Army and Army National Guard records of the individual concerned be corrected by issuing the applicant a Special Order extending him Federal recognition for promotion to MAJ with an effective date and date or rank as 3 August 2016, with entitlement to back pay and allowances (if applicable) as a result of this correction.

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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. AR 135-155 (Promotion of Commissioned Officers and Warrant Officers) prescribes the officer promotion function of the military human resource support operations for officers on the Reserve active status list (RASL) and U.S. Army Reserve warrant officers. In pertinent part, Chapter 6 (Special Selection Boards (SSB)) states in:

a. Paragraph 6-1, SSBs are governed by the same instructions provided to the boards that considered or should have considered an officer for promotion. Inquiries concerning these boards should be addressed to Commander, U.S. Army Human Resources Command (HRC), Fort Knox, KY.

b. Paragraph 6-2, SSBs are convened under Title 10, U.S. Code (USC), section 14502 to consider or reconsider commissioned officers on the RASL for promotion when Headquarters, Department of the Army determines that one or more of the following circumstances exist:

(1) Administrative error (Title 10, USC, section 14502(a)) (SSB required). An officer was not considered from in or above the promotion zone by a regularly scheduled board because of an 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 RASL.

(2) Material errors (Title 10, USC, section 14502(b)) (HRC discretionary, see paragraph 6-13a). (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 decision of the board or involved material error of fact or administrative error. (b) The board that considered the officer from in or above the promotion zone did not have before it material information for its consideration.

c. Paragraph 6-10 (Effect of selection for promotion) states:

(1) Officers selected for promotion by an SSB, will, as soon as practicable, be appointed to that grade in accordance with Title 10, USC, section 14308, and chapter 3 of this regulation.

(2) An officer appointed to the next higher grade as the result of the recommendation of an SSB will have the same DOR, the same effective date for the pay and allowances of that grade, and the same seniority as the officer would have had if recommended for promotion to that grade by the board which should have considered, or which did consider, him or her. In the case of an officer who is not on the RASL when appointed to the next higher grade, placement on the RASL pursuant to the

preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent SSB.

2. Title 10, USC, section 14502 - Special selection boards: correction of errors, states:

a. An officer whose name is placed on a promotion list as a result of recommendation for promotion by an SSB convened under this section, shall, as soon as practicable, be appointed to the next higher grade in accordance with the law and policies which would have been applicable had he been recommended for promotion by the board which should have considered, or which did consider him.

b. An officer who is promoted to the next higher grade as the result of the recommendation of an SSB convened under this section shall, upon such promotion, have the same DOR, the same effective date for the pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if the officer had been recommended for promotion to that grade by the selection board which should have considered, or which did consider, the officer.

3. Title 10, USC, section 628 - Special selection boards, states:

a. If the report of an SSB convened under this section, as approved by the President, recommends for promotion to the next higher grade a person whose name was referred to it for consideration, that person shall, as soon as practicable, be appointed to that grade in accordance with subsections (b), (c), and (d) of section 624 of this title.

b. A person who is appointed to the next higher grade as the result of the recommendation of an SSB convened under this section shall, upon that appointment, have the same DOR, the same effective date for the pay and allowances of that grade, and the same position on the active-duty list as he would have had if he had been recommended for promotion to that grade by the board which should have considered, or which did consider, him.

4. Title 10, USC, section 14308 - Promotions: how made, states:

a. When the report of an SSB convened under section 14101(a) or 14502 of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers selected for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of seniority of those officers on the reserve active-status list. A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.

b. The DOR of an officer appointed to a higher grade under this section is determined under section 741(d)(2) of this title. The DOR of an officer appointed to a higher grade under this section may be adjusted in the same manner as an adjustment may be made under section 741(d)(4) of this title in the DOR of an officer appointed to a higher grade under section 624(a) of this title. In any use of the authority under the preceding sentence, subparagraph (C)(ii) of such section shall be applied by substituting "reserve active-status list" for "active-duty list".

//NOTHING FOLLOWS//