

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20230015218

APPLICANT REQUESTS: review by the Special Selection Board (SSB) for consideration of promotion to the rank of lieutenant colonel (LTC). A personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Order Number 347-027, 13 December 2013
- Meritorious Service Medal Certificate – Permanent Order Number 168-02, 17 June 2014
- DA Form 638 (Recommendation for Award), 20 June 2014 with accompanying certificate showing he was awarded the Army Commendation Medal – Permanent Order Number 161-07
- DA Form 1059 (Service School Academic Evaluation Report), showing he completed the 63rd Judge Advocate Officer Graduate Course from 11 August 2014 – 21 May 2015
- Army Staff Identification Certificate, 15 June 2016
- DA Form 638, 1 August 2018 with accompanying certificate showing he was awarded the Meritorious Service Medal – Permanent Order Number 099-002
- DA Form 1059 showing he completed the U.S. Army Command and General Staff Officers Course from 3 May 2018 – 16 August 2018
- Orders Number BL-362-0060, 28 December 2018 with accompanying NATO Travel Order showing his deployment to Afghanistan in support of Operation Freedom's Sentinel for a period of 270 days beginning 14 February 2019
- DA Form 638, 5 April 2019 with accompanying certificate showing he was awarded the Meritorious Service Medal – Permanent Order Number 118-107
- Orders Number BL-362-0060(A1), 29 July 2019 showing amendment to the accounting codes to his previous deployment order
- Permanent Order Number 043-0002, dated 12 February 2020 showing he received the Meritorious Unit Commendation while deployed to Afghanistan
- Meritorious Service Medal Certificate – Permanent Order Number 100-05, 9 April 2020 for exceptional meritorious service and outstanding performance

- Permanent Orders Number 082-01, 23 March 2021 showing he was awarded the Joint Service Commendation Medal with accompanying certificate and citation
- DA Form 638, 15 June 2021 showing he was awarded the Meritorious Service Medal – Permanent Order Number 100-05
- DA Forms 67-10-2 (Field Grade Plate (O4-O5, CW3-CW5) Officer Evaluation Report) covering the periods of 2013 – 2022, all listing him as "Excels", "Proficient", "Highly Qualified" and "Most Qualified"
- Soldier Talent Profile, 17 November 2023 showing his assignments, civilian education, and personnel data
- Email correspondence showing he requested and received the FY18 and FY19 Judge Advocate General (JAG) Officer Promotion Board results
- Military Personnel (MILPER) Message Number 18-149 for FY18 Active Component LTC JAG Corps Promotion Selection Board (PSB) Zones of Consideration
- MILPER Message Number 19-126 for FY19 Active Component LTC JAG Corps Promotion Selection Board Zones of Consideration
- Support Letters from the following officers in favor of the applicant's request:
 - Brigadier General (BG) [REDACTED]
 - BG [REDACTED]
 - BG [REDACTED]
 - Major General (Retired) [REDACTED]
 - Colonel (COL) (Retired) [REDACTED]
 - BG [REDACTED]
 - COL [REDACTED]

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in pertinent part:

- He was informed on 4 April 2023 that he was considered for the Fiscal Year 2018 (FY18) JAG LTC PSB as a primary zone candidate in error
- The primary zone candidates for the FY18 PSB Date of Rank (DOR) fell between 27 April 2012 through 11 March 2013; his DOR to the rank/grade of major (MAJ)/O-4 is 6 January 2014, outside the time frame; however, he was still considered as a primary zone candidate

- At the time of consideration for promotion he was functionally ineligible as he had not completed the Intermediate Level Education at the time the FY18 PSB convened
- He should have been considered in the FY19 JAG LTC PSB as the primary zone candidates DOR fell between 12 March 2013 and 28 March 2014 and would have been considered favorably for promotion and would have likely been selected
- JAG PSB's are very competitive and because of this error, he was no longer considered a top candidate as he fell into the category of above zone disadvantage of only 4 percent of candidates selected and has been passed over for promotion
- He was informed by the U.S. Army Human Resources Command (HRC) that the FY19 Board file was mistakenly deleted which shows irregularity and clear position of injustice
- He has continued to deliver exceptional performance and demonstrates unlimited potential despite not being promoted as evidenced by his Officer Evaluation Reports where he is mostly assessed as "Most Qualified"
- An SSB allows his board file to be considered fairly for a backdated rank and pay

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

- On 2 January 2006, he was appointed as a commissioned officer in the Regular Army Judge Advocate General Corps in the rank/grade of first lieutenant (1LT)/O-2 and executed an oath of office
- Order Number 347-027, dated 13 December 2013 was issued promoting him to the rank/grade of MAJ/O-4, effective 6 January 2014
- DA Form 1059 shows the applicant attended and completed the ILE Common Core from 3 May 2018 through 16 August 2018
- He continues service with the Regular Army

4. On 25 November 2024. The Office of the Judge Advocate General, Deputy Chief, Plans, Programs, and Policies, provided an advisory opinion recommending disapproval of the applicant's request stating, in pertinent part:

a. In the provided documents, the applicant requests the ABCMR review his application and "grant a SSB considering his board file for promotion to LTC." This opinion advises against appointing an SSB as review of the provided documents and allied board documents reveals (1) he was properly considered (and not selected) by the FY18 JAGC LTC PSB as a below zone candidate, (2) he was properly considered (and not selected) by the FY19 JAGC LTC PSB as a primary zone candidate, and (3) the presence of no material unfairness with respect to the applicant.

b. Review of the provided documents and allied board documents detail he was properly considered by the FY18 JAGC LTC PSB as a below zone candidate. His DOR to MAJ is 6 January 2014. The FY18 JAGC LTC PSB MILPER Message (18-149) defined the below the zone population as those officers having Active Duty Dates of Rank (ADOR) from 12 March 2013 thru 28 March 2014. Review of allied board documents reflect he was a below zone candidate considered by the FY18 JAGC LTC PSB. Further, review of the provided documents fails to reveal any indication or documentation that support his assertion that he was considered as a primary zone candidate.

c. Review of the provided documents and allied board documents detail he was properly considered by the FY19 JAGC LTC PSB as a primary zone candidate. The FY19 JAGC LTC PSB MILPER Message (19-126) defined the below the zone population as those officers having ADOR from 12 March 2013 thru 28 March 2014. Review of allied board documents reflect he was an in zone candidate considered by the FY19 JAGC LTC PSB. Additionally, the FY19 JAGC LTC PSB certified compliance with all law and policy requirements including the requirement that all in and above zone officers compete amongst themselves for promotion as required by Title 10 U.S.C., section 619(c) and Department of the Army Memorandum 600-2, dated 25 September 2006 (superseded by Headquarters Department of the Army Policy Notice 600-2, dated 23 November 2021). Although above zone promotion rates tend to be lower due to the promotion of most or all best qualified officers in prior years, boards are required to give remaining officers considered above the zone full and fair consideration and prohibited from not selecting an officer solely because of a prior non-selection in a primary zone. Accordingly, any existing error would not be material without additional evidence that the FY19 JAGC LTC PSB acted contrary to law and policy in evaluating his board file.

d. Pursuant to Title 10 U.S.C. section 628(b), an officer considered "for selection for promotion by a promotion board but not selected," may receive a SSB when "there was material unfairness with respect to that person." Title 10 U.S.C. section 628(b) further states that "in order to determine that there was material unfairness, the Secretary must determine that the action of the promotion board that considered the person was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or the board did not have before it for its consideration material information." Here, review of allied board documents reveals the FY18 JAGC LTC PSB was authorized to recommend zero (0) below the zone candidates for promotion. As such, even if he was provided an SSB to consider him as a below zone candidate, pursuant to the requirement detailed in Title 10 U.S.C. section 628(b)(2) and the standing SSB Memorandum of Instruction (4 April 2016) which requires SSB proceedings to "be conducted in accordance with the specific Memorandum of Instruction used by the original selection board for which consideration is being provided" an SSB could not recommend him for promotion as the FY18 JAGC

LTC PSB was authorized to recommend zero (0) below the zone candidates for promotion.

5. On 27 November 2024, the applicant was provided a copy of the advisory opinion and afforded an opportunity to respond.

6. On 9 December 2024, he provided a rebuttal to the advisory opinion stating, in pertinent part:

- He respectfully disagrees with the advisory opinion as it does not address the HRC representative emails on the Freedom of Information Act request or the deletion of the FY19 Board file
- While the FY18 and FY19 MILPER Messages were correct and accurate, the advisory fails to identify which zone he was considered in as a candidate during the FY18 and FY19 PSB
- HRC admits to errors in both FY18 and FY19 PSB but does not address those errors; they reference review of "allied documents" but do not clarify what those documents are; he requests the ability to review the "allied documents" reviewed by the Plans, Programs, and Policies Office
- The advisory is contradictory to the communication from HRC stating he was a below zone candidate for FY18 PSB based upon the MILPER message; however, it also defines the below zone candidates for the FY19 PSB as DOR from 12 March 2013 through 28 March 2014, meaning he was considered a below the promotion zone candidate in FY19.
- Based on the errors by HRC and JAG it cannot be verified whether he was erroneously considered a candidate in the FY19 JAG LTC PSB and whether his board file was complete and the FY19 Board file was deleted
- These errors create a material unfairness and can have detrimental effects to his career
- Email correspondence with HRC Ms. B- states he was not a candidate in the FY19 PSB, but the advisory does not acknowledge or explain that statement; if he was only considered in the FY18 PSB as a below zone candidate, he would not have been considered; per HRC, he was considered, therefore he had to have been accidentally considered as primary zone.
- HRC's representative and the Freedom of Information Act response indicate an error occurred
- The advisory opinion states "an SSB could not be recommended as the FY18 JAG LTC PSB was authorized to recommend zero below zone candidates for promotion; however, it also identifies him as a "below the zone population" for FY19
- He is not asking for an SSB for the FY18 PSB as a below zone candidate, he is asking for an SSB for a primary zone or above zone candidate for promotion to

LTC in the FY19 PSB or after based on a complete and accurate copy of his board file and accompanying documentation with this petition

- In summary, the advisory does not address any of his arguments put forth in his original request on 17 November 2023, makes errors to the zone of consideration in FY19, and cannot verify his FY19 board file because the entire file was deleted; it is these errors that unfairly disadvantage him from promotion consideration against his peers.

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's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.
3. The evidence of record, and the advisory opinion provide that the applicant was properly considered (and not selected) by the FY18 JAGC LTC PSB as a below zone candidate, he was properly considered (and not selected) by the FY19 JAGC LTC PSB as a primary zone candidate. He is not entitled to an SSB because he was properly considered at each juncture and there is no presence of material unfairness with respect to the applicant.

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.

5/6/2025

X

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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

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

a. Paragraph 6–2 (Special Selection Board),a. SSBs may be convened under Title 10, USC, 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 (SSB required). An officer was not considered from in or above the promotion zone by a regularly scheduled board because of administrative error.

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

b. Paragraph 6–7 (Information provided to SSBs), 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. Paragraph 7–2 (Basis for referral to Promotion Review board), HQDA will continuously review promotion lists to ensure that no officer is promoted where there is cause to believe that he or she is mentally, physically, morally, or professionally unqualified to perform the duties of the higher grade. An officer may be referred to a PRB for the following reasons (the list is not exclusive):

- a referred evaluation reports
- punishment under Uniform Code of Military Justice, Article 15 (whether filed in the restricted or performance file of the Army Military Human Resources Record (AMHRR))
- any court-martial conviction

- a memorandum of reprimand placed in the AMHRR
- adverse documentation filed in the AMHRR
- initiation of elimination action
- failure to make satisfactory progress in the Army Body Composition Program other adverse information received by HQDA but not filed in the AMHRR, if the referral authority finds that the information is substantiated, relevant, and might reasonably and materially affect a promotion recommendation

3. Title 10 USC, section 628 (Special Selection Boards), (a) Persons Not Considered by Promotion Boards Due to Administrative Error. (1) If the Secretary of the military department concerned determines that because of administrative error a person who should have been considered for selection for promotion from in or above the promotion zone by a promotion board was not so considered, the Secretary shall convene a SSB under this subsection to determine whether that person should be recommended for promotion. (b) Persons Considered by Promotion Boards in Unfair Manner. (1) If the Secretary of the military department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene a SSB under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.

4. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//