

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 September 2024

DOCKET NUMBER: AR20230015227

APPLICANT REQUESTS: correction of his captain (CPT)/O-3 Date of Rank (DOR) to reflect October 2017 vice 31 October 2022.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letters
- DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 20 June 2019
- Orders Number 4640958, 4 May 2023
- Fiscal Year (FY)17 Reserve Component CPT Army Promotion List (APL) Promotion Selection Board Release, 6 December 2017

FACTS:

1. The applicant states in part that he was originally considered and not selected for promotion to CPT in October 2017. He was later selected and promoted to CPT effective 31 October 2022. He notes that his promotion was delayed because the board considered documents that they should not have; documents related to accusations/charges that he was later found innocent of. As evidence of this action, he provides statements from his former commander and the reported victim involved in the applicable investigation. He consulted with legal assistance and was advised that the related documents should not be included in his records because he was never charged with a crime of sexual assault, or any other allegation investigated by the Criminal Investigation Division. As such, he is seeking administratively relief in accordance with Army Regulation (AR) 135-155 (Promotion of Commissioned Officers and Warrant Officers other than General Officers), Paragraph 7-11(b) and 7-12, in that the previous promotion board should not have viewed the documents related to allegations that he was never charged for. Instead, his DOR should be adjusted to a date commensurate with his peers.

2. A review of the applicant's available service records reflects the following:

a. After serving as an enlisted Soldier in both the Regular Army and Army National Guard (ARNG), on 14 August 2011, the applicant was appointed as a Reserve commissioned officer and extended Federal recognition in the INARNG.

b. On 12 April 2013, the National Guard Bureau (NGB) issued Special Orders Number 97 AR announcing Federal recognition of the applicant's promotion to the rank/grade of first lieutenant (1LT)/O-2, effective 14 February 2013.

c. On 3 August 2017, the NGB issued Special Orders Number 157 announcing the withdrawal of the applicant's Federal recognition and transfer into the U.S. Army Reserve (USAR), effective 14 July 2017.

d. On 18 June 2019, the Secretary of the Army (SECARMY) directed that the applicant's name be immediately removed from the FY17, CPT, Army Reserve Non-Active Guard/Reserve, APL Competitive Category, recommended promotion list in accordance with Section 14310, Title 10, U.S.C., Executive Order 13358, Secretary of Defense Delegation to the SECARMY and AR 135-155, Paragraph 3-18.

e. On 7 December 2020, the applicant was notified of his second non-selection for promotion to CPT.

f. On 20 December 2021, the applicant was again notified of his non-selection for promotion to CPT.

g. On 4 May 2023, the Department of the Army issued Orders Number 4640958 announcing the applicant's promotion to the rank/grade of CPT/O-3, effective 31 October 2022.

3. The applicant provides the following a:

a. Self-authored letter, Mr. A_ H_, former commander familiar with the applicant's previously alleged assault (2002). Mr. A_ H_ provides that he initiated charges against the applicant but after receiving legal counsel, Mr. A_ H_ opted to discontinue the investigation and allow the applicant to continue with his military career which was later followed by his promotion to sergeant (SGT) and appointment as a commissioned officer.

b. Self-authored letter, Ms. D_ J_, close friend of the applicant familiar with the alleged assault in 2002. Ms. D_ J_ provides that the applicant was not involved in the incident and all charges against him were dropped. Since then, the applicant has not been in any trouble.

c. DA Form 268 dated 20 June 2019, reflective of the removal of the applicant's "F – Headquarters Department of the Army" initiated flag on 18 June 2019 noting that the conditions were closed unfavorably.

d. FY 17 Reserve Component CPT APL Promotion Selection Board Release dated 6 December 2017, reflective of the applicant being selected for promotion to CPT.

4. On 2 July 2024, the U.S. Army Human Resources Command, Chief, Officer Promotions-Special Actions, provided an advisory opinion recommending approval of the applicant's request noting that he was originally recommended for promotion by the FY17, RC CPT APL, and was referred to a Promotion Review Board (PRB) on 13 February 2018, based on adverse or derogatory information identified during the post-board screening process. SECARMY subsequently removed the applicant from the promotion list on 18 June 2019. The applicant was once again recommended for promotion by the FY22 RC CPT APL and was referred to a another PRB on 17 November 2022, upon which he was retained by the SECARMY on 27 March 2023. Therefore, it is his opinion that the applicant be granted the original DOR based on the FY17 board criteria if the ABCMR determines that the adverse information presented to the PRB was unjust or in error. A review of the applicant's service records verified that the adverse information presented to the PRB for the FY22 RC CPT APL, in which he was retained, is the same adverse information presented as part of the FY17 PRB. As such the original DOR is warranted without the conduct of an additional Special Selection Board (SSB).

5. On 3 July 2024, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments. As of 27 August 2024, the applicant has not responded.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant was originally recommended for promotion by the FY17, RC CPT APL, and was referred to a Promotion Review Board (PRB) on 13 February 2018, based on adverse or derogatory information identified during the post-board screening process. The Secretary of the Army subsequently removed the applicant from the promotion list on 18 June 2019. The applicant was once again recommended for promotion by the FY22 RC CPT APL and was referred to a another PRB on 17 November 2022, upon which he was retained by the Secretary of the Army on 27 March 2023.

b. The evidence also shows the adverse information presented to the PRB for the FY22 RC CPT APL, in which he was retained, is the same adverse information presented as part of the FY17 PRB. The Board reviewed and agreed with the advisory official's findings that the adverse information presented to the PRB was unjust or in error. This is further confirmed by the statement from the applicant's former commander who states he is familiar with the applicant's previously alleged assault in 2002, and that he initiated charges against the applicant but after receiving legal counsel, he opted to discontinue the investigation. As such, the Board found the applicant's argument convincing and determine that an adjustment to the applicant's original DOR is warranted.

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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending Orders Number 4640958 by Department of the Army on 4 May 2023 to show the applicant's promotion to the rank/grade of CPT/O-3, with a date of rank and effective date commensurate with the approval date of the FY17, RC CPT APL.

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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 other than General Officers), Paragraph 7-11 (Effect of Removable) provides that an Officer, 1LT or above, whose name is removed from a promotion list by the SECARMY based on recommendation of the PRB is considered to have failed selection for promotion. The next regular selection board convened may consider Officers for promotion to that grade and competitive category will consider the Officer (if eligible). If the next board recommends promotion, and the recommendation is approved, the Officer may petition the SECARMY through the Army Review Boards Agency to be granted the same DOR and position on the Active Duty List the officer would have had if the Officer's name had not been removed from the initial promotion list.
2. Title 10, USC, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.
3. The ABCMR may correct an officer's date of rank/effective date of rank when a proper appointment has already occurred. Title 10, USC, sections 624 and 741 provide for situations in which properly appointed officers are provided "backdated" dates of rank and effective dates to remedy errors or inequities affecting their promotion. The authority to remedy these errors or inequities is given to the Service Secretaries.

//NOTHING FOLLOWS//