

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240000237

APPLICANT REQUESTS:

- retroactive promotion to captain (CPT)/O-3 with a date of rank (DOR) of 29 August 2013
- constructive service credit in [REDACTED] Army National Guard ([REDACTED] ARNG) as a CPT/O-3 in mobilization day status (MDAY) status
- reinstatement in the [REDACTED] ARNG as a CPT/O-3, in MDAY status
- all back pay and allowances to which he may be entitled
- reimbursement of \$14,000.00 paid to the U.S Property Fiscal Office (USPFO)
- issuance of an apology for the mistakes made in labeling him as a criminal

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

- DD Form 149 (Application for Correction of Military Record), 26 December 2023
- Counsel 9-page statement, 30 October 2023, with exhibits 1 through 33
- exhibit 1-memorandum, Department of Army Criminal Investigation Division (CID), dated 8 November 2022, (Review of Law Enforcement Report (LER) Number [REDACTED])
- exhibit 2-CID Report of Investigation (ROI) Number [REDACTED] dated 15 August 2012
- exhibit 3-Officer Record Brief (ORB), 6 May 2019
- exhibit 4-NGB Form 337 (Oaths of Office), 15 May 2009
- exhibit 5-U.S. Army Criminal Investigation Command (CID) ROI Number [REDACTED] dated 26 November 2023
- exhibit 6-Orders 246-1000, 3 September 2013, promotion to CPT/O-3
- exhibit 7-memorandum, counsel, dated 30 October 2023, (Human Resource Command Privacy Act Request Response)
- exhibit 8-memorandum, Office of the Adjutant General (OAG), [REDACTED] ARNG, dated 16 July 2014, (Consideration for Promotion as a Reserve Officer of the Army)
- exhibit 9-memorandum, Secretary of the Army (SECARMY), dated 15 February 2018, (Promotion Review Board RP1608-02, Fiscal Year (FY) 2015, Captain, Army National Guard of the United States, Army Promotions List, Promotion Selection Board)

- exhibit 10-DA Form 4833 (Commander's Report of Disciplinary or Administrative Action), dated 9 April 2014
- exhibit 11-memorandum, Headquarters (HQ), 213th Regional Support Group (RSG), [REDACTED] ARNG, dated 8 February 2014, ((Applicant) CID Investigation)
- exhibit 12-memorandum, applicant, [REDACTED] ARNG, dated 4 March 2016, ((Applicant, Promotion Review Board (PRB))
- exhibit 13-exhibit supporting statement, [REDACTED] 18 March 2016
- exhibits 14-17-letters of support from [REDACTED] 18 March 2016; [REDACTED] 30 March 2016; [REDACTED] 31 March 2016; and [REDACTED] 31 March 2016
- exhibit 18-DA Form 1559 (Inspector General (IG) Action Request), dated 3 April 2016
- exhibit 19-memorandum, AGO, [REDACTED] ARNG, 11 April 2016 (Decision on Filing General Officer Memorandum of Reprimand (GOMOR))
- exhibit 20-memorandum, Applicant, [REDACTED] ARNG, 9 May 2016 (Request for Waiver/Remission of Indebtedness)
- exhibit 21-memorandum, Applicant, [REDACTED] ARNG, 9 September 2016 (Applicant)
- exhibit 22-memorandum, Department of Defense Consolidated Adjudication Facility, 13 March 2017 (Favorable Security Determination after Due Process)
- exhibit 23-DA Form 1559, dated 28 November 2017
- exhibit 24-HQ, 728th Combat Sustainment Support Battalion (CSSB), [REDACTED] ARNG, 20 April 2018 (Awards and Decorations for (Applicant) FY18 CPT Board)
- exhibit 25-Leave and Earning Statement (LES), 7 December 2012
- exhibit 26-memorandum, Applicant, [REDACTED] ARNG, 1 November 2018 (Resignation)
- exhibit 27-memorandum, National Guard Bureau (NGB), 13 December 2018
- exhibit 28-U.S. Department of Justice, Fingerprint Result, 23 April 2021
- exhibit 29-letter of reference, Colonel (COL) Retired (Ret) [REDACTED] 9 May 2022
- exhibit 30-DA Form 67-9 (Officer Evaluation Report) (OER), 3 June 2013 to 21 March 2014
- exhibit 31-OAG, [REDACTED] ARNG Orders 322-1070, 18 November 2010
- exhibit 32-memorandum, OAG, [REDACTED] ARNG, 31 July 2015 (Recommendation Regarding (Applicant) Guard Recruiting Assistance Program (G-RAP) Abuse)
- exhibit 33-four DA Forms 67-9 (OERs)

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, through counsel:

a. The errors and injustices occurred on or about 26 November 2013 when the applicant was titled in a CID report pertaining to his participation in G-RAP; on or about 18 June 2015 when the Secretary of the Army removed him from the FY 2015 Department of Army Selection Board list; and on 1 November 2018, when he resigned his commission because he was improperly informed as to whether his titling and indexing by CID was proper.

b. It is in the best interest of justice for the Board to consider the applicant's requests because of a new piece of evidence absolving him of any wrongdoing. On 8 November 2022, he received a letter from CID in which CID admitted that he was wrongfully titled and indexed for the allegations against him pertaining to his participation in G-RAP.

c. He served honorably in the [REDACTED] ARNG. In 2008, he participated in G-RAP, a program managed by a contractor that paid Soldiers to recruit in their communities from 2005 to 2012 during the Afghanistan and Iraq Wars. Fraught with fraud, the program's participants became the subjects of many investigations by CID.

d. In 2013, the CID Director announced that the majority of reviewed G-RAP cases required some form of correction. The applicant was one of those who were improperly titled and indexed.

e. His career began in the Army Reserve Officers' Training Corps program in 2007 and he was commissioned a second lieutenant in the [REDACTED] ARNG after graduation. He completed several Army schools and was promoted to first lieutenant. He was recommended for promotion to CPT, but his orders were revoked. He was demoted due to G-RAP allegations coming to light. When the notice of the insufficient basis to title or index letter came from CID, he requested his personnel file, but the records did not contain his 2013 revocation or demotion orders. His well-earned promotion was taken from him over allegations that have been proven false.

f. After having this promotion to CPT taken from him, he was again considered for promotion, by the Department of the Army Mandatory Selection Board (DA MSB) in FY 2015; however, he was removed from the promotion list by the Secretary of the Army and referred to the PRB due to adverse G-RAP information in his record.

g. After he was denied promotion two times, the Army CID completed their investigation and titled him in a Law Enforcement Investigation (LEI) report which created a record in the National Crime Information Center (NCIC). He was subsequently denied promotion over the next several years and he had good cause to believe that he would continue to be denied promotion. He finally resigned his commission.

h. The timeline of events:

- 15 August 2013, CID takes sworn statements and fingerprints from applicant
- 3 September 2013, promotion orders to CPT issued to applicant
- 5 November 2013, CID provides a LEI report to his chain of command
- 26 November 2013, CID files petition to untile applicant and amend CID ROI Final [REDACTED] in which he was charged of theft of government funds, aggravated identity theft, and wire fraud
- 8 February 2014, applicant's chain of command submits memorandum to the AG, [REDACTED] ARNG informing the AG that the chain of command will take no further action against the applicant
- 9 April 2014, his chain of command issues DA Form 4833 regarding his G-RAP allegations
- between September 2013 to September 2014, CPT orders revoked
- 1 September 2014, applicant selected for consideration for promotion to CPT by the DA MSB
- 18 June 2015, [REDACTED] ARNG Joint Force Headquarters (JFHQ) released results of DA MSB FY 2015 in which the applicant was removed from promotion due to G-RAP related allegations
- 1 September 2014 to 18 June 2015, SECARMY removes applicant from the promotion list over G-RAP related allegations
- 31 July 2015, Commander, HQ, 213th RSG, [REDACTED] ARNG recommendation letter to AGO, [REDACTED] ARNG to take no further action against applicant
- 17 February 2016, Brigadier General [REDACTED] issues General Officer Memorandum of Reprimand (GOMOR) for fraudulently obtaining government funds
- 4 March 2016, applicant submits rebuttal to PRB FY 2015
- 18 March 2016, G-RAP recruits character reference letters from [REDACTED] and [REDACTED] in support of applicant
- 30 March 2016, Colonel [REDACTED] submits a character reference letter
- 31 March 2016, Lieutenant Colonel (LTC) [REDACTED] and Major (MAJ) [REDACTED] letters of support
- 3 April 2016, applicant DA Form 1559 request for IG investigation into CID LEI report
- 11 April 2016, BG [REDACTED] reversed his 17 February 2016 GOMOR decision, however he initiates recoupment of \$14,000.00 from applicant through the USPFO
- 9 May 2016, applicant submits a memorandum to the Defense Finance Accounting Service requesting a waiver of indebtedness of \$14,000.00 he was ordered to pay USPFO
- 4 August 2016, Department of Miliary Veterans Affairs (DMVA) letter to applicant with intent to revoke his security clearance

- 9 September 2016, applicant submits his rebuttal memorandum to DMVA security clearance revocation memorandum
- 9 September 2016, applicant agrees to return the \$14,000.00 to USPFO
- 13 March 2017, DMVA determines applicant is eligible for access to classified information
- 28 November 2017, applicant second DA Form 1599 requesting IG assistance to determine the status of his promotion to CPT
- 20 April 2018, MAJ [REDACTED] memorandum certifying applicants awards and decorations for consideration in FY18 PSB
- 17 October 2018, applicant completes payment of \$14,000.00 of contested funds to the USPFO
- 1 November 2018, applicant resigns his commission
- 13 December 2018, applicant's Federal Recognition is withdrawn and he is granted an honorable characterization of service
- 23 April 2021, applicant NCIC records still reflect G-RAP related offenses
- 9 May 2022, COL [REDACTED] reference letter supporting applicant
- 8 November 2022, CID issues letter admitting an insufficient basis upon which to title or index applicant in the Law Enforcement databases for any offense related to G-RAP

3. The applicant provides through counsel (marked as exhibits 1 through 33):

a. Exhibit 1; memorandum, CID, Review of LER Number [REDACTED] [REDACTED] which reads, in part, "This review has determined that, based upon the information available to CID in relevant files, there is an insufficient basis upon which to title or index you in law enforcement databases for any offense related to RAP. As relates to subject LER, CID has removed your name and identifying information from law enforcement systems, to include the Defense Clearance and Investigations Index (DCII) and the Federal Bureau of Investigation's Interstate Identification Index (III)."

b. Exhibit 2: CID ROI Number [REDACTED] outlining an investigating officer's report, containing transcripts of an interview with the applicant; a basis of which was a request from the Fort Dix Joint Base McGuire-Dix-Lakehurst.

c. Exhibit 3: the applicant's ORB.

d. Exhibit 4: Oath of Office, [REDACTED] ARNG.

e. Exhibit 5: CID Final ROI Number [REDACTED] reflecting the applicant was the subject of an investigation for aggravated identity theft, wire fraud, and theft of government funds. This ROI shows that probable cause existed to believe the applicant committed the listed offenses with a total loss of \$34,000.00 to

the U.S. Government. This 134-page report contains an agent's summary, witness statements, and references 18 attachments.

f. Exhibit 6: Promotion Orders 246-1000, AGO, [REDACTED] RANG, reflecting the applicant was promoted to CPT on 29 August 2013 with a date of rank of 29 August 2013.

g. Exhibit 7: Counsel's letter to Army Review Boards Agency (ARBA) requesting information pertaining to missing records from the applicant's Army Military Human Resources Record (AMHRR). Counsel states through a privacy act request that records showing why his rank was revoked or rescinded are not contained in the records.

h. Exhibit 8: An AGO, [REDACTED] ARNG memorandum, notifying the applicant he will be considered for promotion to CPT as a Reserve Officer of the Army and a MSB will convened on 2 December 2014. This memorandum further notified the applicant what documents the MSB will consider and how to review his ORB and how to update and verify his documentation for MSB consideration.

i. Exhibit 9: A SECARMY memorandum, dated 15 February 2018, notifying the applicant he was removed from the FY 2015 CPT Promotion Selection List.

j. Exhibit 10: A DA Form 4833, 9 April 2014, showing the Commanding Officer, [REDACTED] ARNG, counseled the applicant for aggravated identity theft, wire fraud, and theft of government funds, but decided to take no action.

k. Exhibit 11: A memorandum, [REDACTED] ARNG, 8 February 2014, (Applicant) CID Investigation, which reads, in part,

(1) "This command has reviewed the CID investigation of [the Applicant] provided on 5 November 2013. It appears that all allegations of aggravated identify theft, wire fraud, and theft of governments funds occurred either prior to [applicant's] appointment in the [REDACTED] ARNG or not on a Title 32 duty status.

(2) "This command does not exercise Uniform Code of Military Justice authority over [applicant].

(3) At this point in time, the Command is going to take no further action on this investigation. However, in the event of the institution of criminal charges by civilian authorities against [the applicant] for the above listed offenses will result in adverse administrative action being taken against the service member.

(4) "Based upon consultation with this Command's servicing Judge Advocate, it would be more efficient and practical to await a decision by civilian law enforcement authorities before taking action."

l. Exhibit 12: A memorandum authored by the applicant while he was assigned to [REDACTED] RNG, 4 March 2016, in which he rebuts the HQ Department of the Army (HQDA) PRB results in which he was removed from the promotion list because of allegations made by CID against him for past involvement in the ARNG G-RAP program from 2008 to 2010. He disputes the CID allegations as unfounded and requests consideration for the FY 2017 CPT [REDACTED]. This was based upon a decision from the civilian prosecutors of the office of the [REDACTED] ARNG not to prosecute him and the CID declining to take further actions.

m. Exhibits 13 through 17: Supporting written statement by recruit [REDACTED] 18 March 2018; recruit [REDACTED] 18 March 2018; Deputy G3, [REDACTED] ARNG, 31 March 2016; and Executive Officer [REDACTED] ARNG, 31 March 2016, generally reflecting they willingly provided information to the applicant for entry into the G-RAP program and/or they supported him as an officer with high moral and strong principles of character.

n. Exhibit 18: A DA Form 1559, reflecting the applicant requested an IG investigation of the [REDACTED] ARNG for its role in handling the CID investigation and why he was not assigned to a temporary duty station when he requested such assignment.

o. Exhibit 19: A memorandum from the Assistant Adjutant General, [REDACTED] ARNG, 11 April 2016, notifying him a GOMOR previously given to him would not be filed in his military records.

p. Exhibit 20: A memorandum from the applicant, authored while he was assigned to [REDACTED] RNG, 9 May 2016, in which he requested remission of debt in the amount of \$14,000.00 based upon his following the G-RAP recruiting guidelines in good faith, and the inadequacy of training provided to him in the program. He further states that the training modules were modified over 60 times and these modifications were not provided to those already participating as recruiting assistants.

q. Exhibit 21: A memorandum from the applicant, authored while he was assigned to [REDACTED] RNG, 9 September 2016, in which he provided a four page rebuttal with statements of reasons why his security clearance should not be revoked. In this memorandum, he agreed to pay the full amount of \$14,000.00 in question regarding the G-RAP payments he received.

r. Exhibit 22: A memorandum from the DMVA notifying him his security clearance access would not be revoked after a positive determination was made in his case.

s. Exhibit 23: A DA Form 1559, in which the applicant applied a second time for an IG investigate as to why his promotion packet had not been acted upon.

t. Exhibit 24: A memorandum from [REDACTED] ARNG, 20 April 2018, for the FY 2018 CPT APL PSB, certifying awards and decorations he had received during his career thus far.

u. Exhibit 25: An LES reflecting deductions made towards a \$14,000.00 debt. An unpaid debt balance of \$7,619.40 is noted on this LES.

v. Exhibit 26: a memorandum from the applicant, while he was assigned to HQ and [REDACTED] ARNG, 1 November 2018, in which he resigned his commission from the [REDACTED] ARNG, and requested a discharge date of 2 December 2018. In this resignation, he noted severe post-traumatic stress disorder, lower back injury, and traumatic brain injury as issues which had been adding to the ongoing stresses in his life. His mother was suffering from terminal cancer, and he had taken responsibility to care for her. He felt it would be in his and his family's best interest if he resigned.

w. Exhibit 27: ARNG Orders 32-1, honorably discharged him from the ARNG, effective 13 December 2018.

x. Exhibit 28: A letter from the Federal Bureau of Investigations, Criminal Justice Information Services Division, 23 April 2021, showing a search of his fingerprints showed prior arrest data at the FBI.

y. Exhibit 29: A letter of reference from Ret COL [REDACTED] 9 May 2022, outlining his service while deployed to Afghanistan, and the detrimental effects of the investigation on his promotion to CPT.

z. Exhibits 30 through 31: Three pages of documents from his service records.

aa. Exhibit 32: A memorandum from [REDACTED] ARNG, recommending no further administrative or punitive action be taken against him in his case regarding alleged abuse of G-RAP.

bb. Exhibit 33: OERs for earlier periods of service while he was in the [REDACTED] ARNG.

4. A review of the applicant's service records shows:

a. On 14 November 2007, he enlisted in the U.S. Army Reserve Cadet Program for 8 years.

b. On 15 May 2009, he executed an oath of office and was appointed as a Reserve commissioned officer in the [REDACTED] ARNG.

c. On 15 November 2010, he was promoted to first lieutenant/O-2.

d. On 3 September 2013, AGO, [REDACTED] ARNG, issued Orders 246-1000, promoting him to CPT/O-3, effective 29 August 2013.

e. On 15 February 2018, the SECARMY withdrew Federal recognition and removed him from the FY 2015 CPT ARNG Promotion Selection List.

f. On 12 September 2018, the AGO, [REDACTED] ARNG notified him his eligibility for promotion on the CPT APL Mandatory Board was approved on 30 August 2018.

g. On 13 December 2018, the NGB issued orders 32-1, honorably discharging him from the ARNG in the rank/grade of 1LT/O-2. He was transferred to the U.S. Army Reserve.

h. On 14 July 2022, he was honorably discharged from the U.S. Army Reserve.

5. On 22 August 2024, the NGB provided ARBA an advisory opinion in response to the applicant's issues, recommending partial approval. It reads, in part:

a. The applicant requests promotion to the rank of CPT/O3 with a date of rank (DOR) of 29 August 2013, reinstatement in an MDAY status as a CPT/O3, constructive service credit in the [REDACTED] ARNG from 13 December 2018 until reinstatement, back pay and allowances based on previous correction requests, reimbursement of \$14,000.00 remitted to the USPFO, and apology to him for labeling him as a criminal as a result of involvement in the GRAP CID investigation.

b. He was placed in a CID investigation for involvement in the G-RAP from 2008-2010. As a result of the G-RAP investigation he was flagged effective 31 May 2013, delaying his promotion to CPT/O3. The final CID report dated 26 November 2013 stated the investigation established probable cause in the offenses of wire fraud, theft of government funds and aggravated identity theft. In August 2016, it was determined he would repay \$14,000.00, the monies received from the incentive. He repaid the debt to the [REDACTED] USPFO out of fear of his security clearance being revoked but included a rebuttal memorandum. He submitted a request to resign his commission dated 1 November 2018 stating personal reasons. CID had an insufficient basis to index or title him in law enforcement databases for any offense related to the G-RAP.

c. He submitted a memorandum dated 1 November 2018 requesting resignation of his commission with reasoning of PTSD, lower back pain, and caring for his terminally ill mother as well as civilian work conflicts. He did not resign due to the G-RAP CID investigation. He requested his separation date from [REDACTED] ARNG to be 2 December 2018 with an honorable discharge he received his separation effective 13 December 2018.

d. It is the recommendation of this office that the applicant's request be partially approved. The CID investigation resulted in insufficient data to index or title him of any wrongdoing in G-RAP. As a result, his DOR to CPT should be backdated to 29 August 2013 with all pay and allowances, his initial state order date. He should be reimbursed the \$14,000.00 debt he repaid as he was awarded that incentive for participating in the G-RAP and it has been determined it was not awarded due to wrongdoing. He resigned his commission for reasons other than the G-RAP case and should not be reinstated to the [REDACTED] ARNG as an O3/Captain in MDAY status or receive any constructive credit after his separation. [REDACTED] ARNG believes that an apology should be extended to him. He can rejoin the [REDACTED] ARNG through regular recruiting routes if he chooses to explore those options.

6. On 23 August 2024, he was provided a copy of the NGB advisory opinion to give him an opportunity to rebut the recommendations as to relief, however he did not respond.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted.

2. The Board concurred with the conclusion of the advisory official in part.

a. The Board found the applicant's removal from the promotion list after being recommended for promotion by the FY 2018 CPT ARNG APL PSB to be unjust considering the later action taken to remove the applicant's name as the subject of an investigation related to G-RAP. The Board determined his name should be restored to the list, and the promotion to CPT should be forwarded to the FED REC process. Once completed, his effective date of rank for CPT should be the effective date of his promotion by the State [REDACTED] which was 29 August 2013. Once the process is successfully completed, he should be paid any additional pay and allowances he is due, and his NGB Form 22 and USAR discharge orders should be corrected to show he held the rank/grade of CPT/O-3 at the time of separation.

b. The Board noted the advisory official's observation that the applicant did not cite the CID investigation as a reason for his resignation. As such, the Board found no basis for reinstating him. The Board determined his discharge was not in error or unjust.

c. The Board further determined he should be reimbursed for any monies he paid as a result of the unjust debt he incurred resulting from the CID investigation.

d. Finally, the Board found the issuance of an apology for the mistakes made in labeling him as a criminal does not constitute a record correction and determined there is no action for the Board to take on this portion of his request.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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:

a. Restoring his name to the promotion list generated by the FY 2018 CPT ARNG APL PSB and processing the recommendation for Federal Recognition with an effective date of promotion of 29 August 2013 once complete;

b. Paying him any additional pay and allowance he is authorized as a result of promotion to CPT;

c. Amending his NGB Form 22 and USAR discharge orders to show he held the rank/grade of CPT/O-3 at the time of separation;

d. Reimbursing any monies he paid as a result of the unjust debt he incurred resulting from the CID investigation.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

4/1/2025

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. Title 10, U.S. Code Section 619 (d)(Certain Officers Not To Be considered)(1) states a selection board convened under section 611(a) of this title may not consider for

promotion to the next higher grade an officer whose name is on a promotion list for that grade as a result of his selection for promotion to that grade by an earlier selection board convened under that section.

2. Title 10, U.S. Code, Section 628 (Special Selection Boards) states persons not considered by promotion boards due to administrative error.

a. 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 special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.

b. A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record would have appeared to the board that should have considered him. That record shall be compared with a sampling of the records of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that should have considered him.

3. Title 10, U.S. Code, Section 629(a) (Remove by President) states the President may remove the name of any officer from a list of officers recommended for promotion by a selection board convened under this chapter.

4. Title 10, U.S. Code, Section 629(e) (Continued Eligibility for Promotion) states an officer whose name is removed from a list under subsection (a)-Removal by President), (b)-Removal Due to Senate Not Giving Advice and Consent), or (c)-Removal After 18 Months) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board convened for his grade and competitive category and he is promoted, the Secretary of the military department concerned may, upon such promotion, grant him the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed.

5. Title 10, U.S. Code, Section 1552 (Correction of Military Records: Claims Incident Thereto) 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.

6. Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers), states if the report of a Special Selection Board

(SSB), approved by the President, recommends for promotion to the next higher grade an officer not currently eligible for promotion, or a former officer whose name was referred to it, the Secretary of the Army may act through the ABCMR to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer.

7. Army Regulation 600-8-29 (Officer Promotions) prescribes the officer promotion function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support officer promotions. To be considered for promotion by a selection board, an officer must be on the active duty list (ADL) on the day the board convenes. Officers under suspension of favorable personnel actions or in a non-promotable status remain eligible for consideration. Service in the Individual Ready Reserve is considered service in an active status.

a. Paragraph 7-2 states that SSB may be convened under Title 10, USC, section 628 to consider or reconsider commissioned or warrant officers for promotion when Headquarters Department of the Army discovers one or more of the following:

(1) 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 active duty list (SSB required).

(2) The board that considered an Officer from in or above the promotion zone acted contrary to law or made a material error (SSB discretionary).

(3) The board that considered an Officer from in or above the promotion zone did not have before it some material information (SSB discretionary).

c. Paragraph 7-11, Officers who discover that material error existed in their file at the time they were non-selected for promotion may request reconsideration.

8. The U.S. Army Stand-To webpage, published 11 December 2008, stated that the Army National Guard's Recruiting Assistance Program (G-RAP) is the ARNG's adaptation of civilian contract recruiting. The G-RAP program as of 1 December 2008 had 132,371 active recruiting assistants (RAs). The RAs are traditional ARNG Soldiers. Active Guard Reserve (AGR) Soldiers (Title 10 and Title 32), military technicians, and Soldiers serving on active duty operational support (ADOS) or mobilization are currently excluded from participation in G-RAP. Significant features of G-RAP implementation include:

a. The G-RAP program requires additional training and contractual performance by selected subcontractors such as a prospecting phase, a prequalification phase, a salesmanship phase, an applicant processing phase and a sponsorship phase. These phases are worked by the contractor in concert with a local recruiter to attract and enlist the best qualified applicants and to reduce the risk of training pipeline attrition.

b. Upon verified enlistment, the RA receives an initial \$1,000 payment, with a second \$1,000 payment upon verification of the Soldier's successful shipment to basic training for non-prior service contracts or a full \$2,000 payment for prior-service contracts. Exact payment timelines vary depending upon prior service/non-prior status and availability of training seats.

9. Title 10, U.S. Code, Section 1552, the law which governs the operation of the Board, states that "The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be."

//NOTHING FOLLOWS//