

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240003250

APPLICANT REQUESTS: reconsideration of his previous request for:

- removal of the DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)) covering the period 28 May 2020 through 4 July 2021 from his Army Military Human Resource Record (AMHRR);
- removal of the OER covering the period 5 July 2021 through 4 July 2022 from his AMHRR;
- replacement of these reports in his AMHRR with statements of nonrated time; and
- personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Orders 0004174407, 9 March 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20230004499 on 13 February 2024.

2. As a new contention the applicant states the Board concluded on 16 February 2024, that he was correctly rated as a MAJ, despite his promotion and back dated rank. This decision was based on him being a MAJ at the time of the OER, and that the evaluations in question were used in the subsequent decision for his retroactive promotion. He states these conclusions are in error because:

a. Army Regulation 600-8-29 (Officer Promotions), Chapter 3 (Managing Promotions), Section I (Processing Promotion Lists) 3-5(a) states that "Unless an officer declines a promotion in writing under the provisions of this regulation, he or she is considered to have accepted the promotion on the effective date announced in the

promotion order." Accordingly, he became a LTC on 1 September 2020 and was not a major when the evaluations were rendered.

b. Army Regulation 600-8-29, Chapter 6 (Special Selection Boards), Section I (Managing Special Selection Boards), 6-10(b) states " An officer appointed to the next higher grade as the result of the recommendation of an SSB will have the same date of grade, the same effective date for the pay and allowances of that grade, and the same position on the ADL [active duty list] as the officer would have had if he or she had been recommended for promotion to that grade by the board which should have considered, or which did initially consider, him or her. In the case of an officer who is not on the ADL when appointed to the next higher grade, placement on the ADL pursuant to the preceding sentence will be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent SSB."

c. The SSB selected him for promotion in Fiscal Year 2020, meaning he was retroactively promoted with pay effective 1 September 2020. Since he was retroactively promoted and paid as a LTC, he was not a MAJ irrespective of the billet he occupied.

d. Army Regulation 600-8-29, Chapter 6, Section II (Promotion Board Omission and Special Selection Board Promotion Reconsideration), 6-12(d) states that Officers being reconsidered will not be afforded the opportunity to correspond with the SSB. The officer's file will be constructed as it appeared on the convening date of the promotion board which failed to select the officer for promotion. The only document(s) added or changed, will be the document(s) that is (are) the basis for the SSB. These documents must be submitted to, and present in, the officer's AMHRR prior to requesting the SSB." The contested OERs were therefore NOT considered in the decision of the SSB to promote him, as they were NOT in the file considered by the board that originally considered and rejected him in Fiscal Year 2020. These reports were rendered after the original board met.

3. The applicant's service record shows:

a. He was appointed as a Reserve commissioned officer in the rank/grade of second lieutenant/O-1 and executed an oath of office effective 7 June 2001.

b. He was promoted to the rank/grade MAJ/O-4, effective 1 January 2011.

c. In a prior request, on 30 October 2020, ABCMR Docket Number AR20190015434, the Board recommended correction of his records by removing his OER covering the period 1 March 2016 through 4 August 2016 and replacing it with a statement of nonrated time and referring his records to an SSB for promotion consideration to LTC.

d. On 23 April 2021, U.S. Army Human Resources Command memorandum for record (Nonrated Statement), filed in the performance folder stating an evaluation report was not rendered for the period 1 March 2016 through 4 August 2016 as it was declared nonrated by Headquarters, Department of the Army – ABCMR.

e. He received an extended-annual OER covering the period 28 May 2020 through 4 July 2021 (12 rated months), addressing his duty performance as the Deputy Team Chief, Defense Threat Reduction Agency, Fort Belvoir, VA. The OER shows in:

(1) Part I (Administrative (Rated Officer)), block c (Rank), the entry "MAJ," and in block d (Date of Rank), the entry "20110101 [1 January 2011]2"; and

(2) Part II (Authentication (Rated officer's signature verifies officer has seen completed OER Parts I-VI and the administrative data is correct)), block e1 (Rated Officer Signature), he digitally signed the OER on 20 July 2021.

f. He received an annual OER covering the period 5 July 2021 through 4 July 2022 (12 rated months), addressing his duty performance as the Deputy Team Chief, Defense Threat Reduction Agency, Fort Belvoir, VA. The OER shows in:

(1) Part I (Administrative (Rated Officer)), block c (Rank), the entry "MAJ," and in block d (Date of Rank), the entry "20110101 [1 January 2011]"; and

(2) Part II (Authentication (Rated officer's signature verifies officer has seen completed OER Parts I-VI and the administrative data is correct)), block e1 (Rated Officer Signature), he digitally signed the OER on 17 August 2022.

g. His AMHRR shows both OERs are filed in the performance folder.

h. His records are void of documentation and he did not provide any evidence showing a Commander's Inquiry was requested or conducted.

4. The HRC memorandum (SSB Results FY20), 3 March 2023, informed him that he was considered and selected for promotion to LTC by a Department of the Army SSB under the FY20, LTC, Operations Support criteria.

5. Orders 0004174407.00, 9 March 2023, promoted him to LTC, with a retroactive effective date of 1 September 2020.

6. On 13 February 2024 in Docket Number AR20190015434, the ABCMR denied the applicant's request for correction of his records to remove two contested OERs covering the period 28 May 2020 through 4 July 2021 and 5 July 2021 through 4 July 2022.

a. The Board noted both OERs were accurate and reflected the grade the applicant held on the dates both OERs were rendered. There is neither an error nor an injustice in his OERs.

b. The Board further noted the applicant's argument that his promotion to LTC was retroactive to 1 September 2020 is not persuasive for several reasons:

(1) First, when the contested OERs were rendered, his rank was MAJ, he was sitting in a MAJ position, and he was not considered or wearing the rank of LTC when the assessments/ratings were rendered. Thus, there was no error at the time both OERs were submitted.

(2) Secondly, the two contested OERs were considered by the SSB that selected him for promotion to LTC.

(3) Finally, both OERs are favorable and rate him high among his peers.

c. The Board considered the following documents as part of that request:

(1) His memorandum for HRC, Evaluation Appeals Branch (Evaluation Report Appeal (Applicant), 28 May 2020 through 4 July 2021 and (Applicant) 5 July 2021 through 4 July 2021), 23 March 2023, appealed his two OERs based on administrative errors.

(A) He stated the rank and grade were incorrect as they listed him as an MAJ. He received a backdated promotion to LTC on 9 March 2023 with an effective date of 1 September 2020 as the result of an SSB. His rater and senior rater evaluated him as an MAJ and he should have been compared against other LTCs.

(B) He requested removal of the two OERs from his records and replacement with statements of unrated time. He believes leaving the incorrect OERs in his file constitutes an injustice as the information is incorrect, unfairly distinguishes him from his peers, and could cause confusion when viewed by future boards.

(2) The email correspondence from an HRC Evaluation Appeals and Corrections Team technician, 10 April 2023, reviewed his request regarding his two OER appeals. His request was returned without action for the following reasons:

(A) In accordance with Department of the Army Pamphlet 623-3 (Evaluation Reporting System), Table 2-13, Part I, block c (Rank), action required: Enter the rated officer's 3-letter rank abbreviation, not pay grade (for example, "COL" for colonel), as of the "THRU" date of the DA Form 67-10-3 (Strategic Grade Plate (O-6) Officer Evaluation Report).

(1) If the rated officer has been selected for promotion and is serving in a position authorized for the next higher rank, the officer will be rated in the promotable rank and a "P" will be placed after his or her current rank (for example, "LTCP").

(2) If the rated officer is not assigned to a position authorized for the higher rank, no "P" will be entered after the rank.

(3) If the rated officer has been frocked to the next higher rank and is serving in a position authorized for the rank to which he or she is frocked, enter the frocked rank.

(4) If the rated officer has been frocked to a higher rank but is not yet serving in a position authorized for the higher rank, enter the lower rank.

(5) For Army National Guard officers, promotions and promotable status dates are determined by State Adjutant Generals. These dates are not based on release dates of promotion selection lists (see Army Regulation 623-3 (Evaluation Reporting System)).

(B) On the day the contested evaluation report was rendered his rank was MAJ and he was not considered or wearing the rank of LTC when the assessments were rendered by his rating chain during rating period covered for the contested evaluation reports.

(C) In addition, it is those evaluation reports that were used to determine his promotion. The Evaluation Appeals and Corrections Branch is unable to remove the contested evaluation reports unless there was a disposition and requirement based on a Army Special Review Board or ABCMR determination.

7. He is currently assigned to the Office of the Deputy Chief of Staff, G-3/5/7, in the rank of LTC as the Team Lead – Europe Foreign Area Officer at the Pentagon.

8. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the applicant's argument being centrally-based upon his retroactive promotion to LTC, and not on any error in the processing or filing of the OER documents, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

X **//SIGNED//**

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the Army Board for Correction of Military Records (ABCMR). The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

2. Title 10, U.S. Code, section 628 (Special Selection Boards), paragraph (b)(1), states 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 an SSB under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine:

a. 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

b. the board did not have before it material information for its consideration.

3. Army Regulation 623-3 (Evaluation Reporting System), prescribed the policies for completing evaluation reports that support the Evaluation Reporting System. It also provides guidance regarding redress programs, including commander's inquiries and appeals. The regulation provides that:

a. Evaluation reports are assessments of how well the rated Soldier met duty requirements and adhered to the professional standards of the Army Officer or Noncommissioned Officer Corps. Performance will be evaluated by observing action, demonstrated behavior, and results from the point of view of the values, leadership framework and responsibilities identified on the evaluation forms, counseling forms, and as explained in Department of the Army Pamphlet 623-3 (Evaluation Reporting System). Consideration will be given to the relative experience of the rated officer, the efforts made by the rated officer, and the results that could be reasonably expected given the time and resources available. Potential evaluations will be performance-based assessments of the rated officers of the same grade to perform in positions of greater

responsibility and/or higher grades. Assessment of potential will apply to all officers, regardless of their opportunity to be selected for higher positions or grades.

b. The senior rater is the senior rating official in the military rating chain or as officially designated by the academic institution. Senior raters use their position and experience to evaluate the rated Soldier from a broad organizational perspective, military program of instruction, or civilian academic course standards. Senior raters will ensure support forms are provided to all rated Soldiers they senior rate at the beginning of and throughout the respective rating periods; use all reasonable means to become familiar with a rated Soldier's performance; assess the ability of the rated Soldier; ensure that rating officials counsel the rated Soldier individually and throughout the rating period on meeting their objectives and complying with the professional standards of the Army; consider the information on the applicable support forms when evaluating the rated individual; evaluate the rated Soldier's potential relative to his or her contemporaries; and ensure that all reports, which the senior rater and subordinates write, are complete and provide a realistic evaluation in compliance with procedures established in Department of the Army Pamphlet 623-3.

c. Each report will be an independent evaluation of the rated Soldier for a specific rating period. It will not refer to prior or subsequent reports. It will not remark on performance or incidents occurring before or after the period covered.

d. When a commander or commandant discovers that an evaluation report rendered by a subordinate or a subordinate command may be illegal, unjust, or otherwise in violation of this regulation, he or she will conduct an inquiry into the matter. The Commander's or Commandant's Inquiry will be confined to matters related to the clarity of the evaluation report, the facts contained in the evaluation report, the compliance of the evaluation with policy and procedures established by Headquarters, Department of the Army, and the conduct of the rated Soldier and members of the rating chain. The official does not have the authority to direct that an evaluation report be changed; command influence may not be used to alter the honest evaluation of a rated Soldier by a rating official. The procedures used by the commander or commandant to process such an inquiry are described in chapter 4.

e. Paragraph 3-37 stated modification to previously submitted evaluation reports provides an exception to a completed evaluation report filed in a Soldier's AMHRR be altered, withdraw or replaced with another evaluation report will not be honored will only be granted when:

(1) Information that was unknown or unverified when the evaluation report was prepared is brought to light or verified.

(2) 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.

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

f. The burden of proof rests with the appellant.

(1) Accordingly, to justify deletion or amendment of an evaluation report, the appellant will produce evidence that establishes clearly and convincingly that:

(a) the presumption of regularity will not be applied to the report under consideration; and

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

(2) 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 appellant'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 appellant'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.

g. Paragraph 4-7 stated an evaluation report accepted for inclusion in the rated Soldier's AMHRR is presumed to be administratively correct, have been prepared by the proper rating officials, and represent the considered opinion and objective judgment of the rating officials at the time of preparation. An appeal will be supported by substantiated evidence. An appeal that alleges an evaluation report is incorrect, inaccurate, or unjust without usable supporting evidence will not be considered.

4. Department of the Army Pamphlet 623-3 (Evaluation Reporting System), provides procedural guidance for completing and submitting to Headquarters, Department of the

Army, evaluation reports and associated support forms that are the basis for the Army's Evaluation Reporting System.

a. Section IV (DA Form 67-10-2), paragraph 2-9 (Part I, Administrative Data), states Part I of the DA Form 67-10-2 is for administrative data, including identification of the rated officer, unit data, the period covered, number of rated months, nonrated time codes, and the reason for submission of the DA Form 67-10-2 (see Table 2-24 for a list of codes and reasons for submitting OERs and Table 2-25 for the codes and reasons for nonrated periods). Table 2-7 details instructions for completing part I of the DA Form 67-10-2.

b. Table 2-7 (Administrative Data for DA Form 67-10-2) states in:

(1) Part I, block c (Rank), enter the rated officer's 3-letter rank abbreviation, not pay grade (for example, "MAJ" for major or "CW3" for chief warrant officer three) as of the "THRU" date of the DA Form 67-10-2.

(a) If the rated officer has been selected for promotion and is serving in a position authorized for the next higher rank, they will be rated in the promotable rank and a "P" will be placed after his or her current rank (for example, "CPTP" and "CW3P").

(b) If the rated officer is not assigned to a position authorized for the higher rank, no "P" will be entered after the rank.

(c) If the rated officer has been frocked to the next higher rank and is serving in a position authorized for the rank to which he or she is frocked, enter the frocked rank.

(d) If the rated officer has been frocked to a higher rank but is not yet serving in a position authorized for the higher rank, enter the lower rank.

(2) Part I, block d (Date of Rank), enter the date of rank (YYYYMMDD) for the rated officer's rank as of the "THRU" date of the DA Form 67-10-2. If the officer is promotable, but not yet promoted, the date of rank is for the current rank. If the rated officer has been frocked to a higher rank and is serving in an authorized position, enter the effective date of the frocking. If the rated officer has been frocked to a higher rank and is not yet serving in an authorized position requiring the higher rank, enter the date of rank of the lower rank.

c. Chapter 2, Section III, Para2-14(b)(3) prescribes that the senior rater will "Assess and evaluate the abilities and/or potential of the rated Soldier relative to their contemporaries. For OERs, this includes officers of the same rank and promotable officers who are serving at the same rank as the rated officer.

5. Army Regulation 600-8-29 (Officer Promotions) prescribes (Officer Promotions) prescribes the officer promotion function of military human resources support operations. It provides for career progression based upon recognition of an officer's potential to serve in positions of increased responsibility. Additionally, it precludes promoting officers who are not eligible or become disqualified, thus providing an equitable system for all officers.

a. Chapter 3 (Managing Promotions), Section I (Processing Promotion Lists) 3-5(a) states that "Unless an officer declines a promotion in writing under the provisions of this regulation, he or she is considered to have accepted the promotion on the effective date announced in the promotion order".

b. Chapter 6 (Special Selection Boards) states an SSB may be convened to consider or reconsider commissioned officers for promotion when Headquarters, Department of the Army, determines that one or more of the following circumstances exists:

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

(2) Material Unfairness. The action of the promotion board that considered the officer from in or above the promotion zone was contrary to law in a material to the division of the board or involved material error or fact or material administrative error; or the board that considered the officer from in or above the promotion zone did not have before it for its consideration material information.

(3) Section I, 6-10(b) states "An officer appointed to the next higher grade as the result of the recommendation of an SSB will have the same date of grade, the same effective date for the pay and allowances of that grade, and the same position on the ADL as the officer would have had if he or she had been recommended for promotion to that grade by the board which should have considered, or which did initially consider, him or her."

(4) Section II, 6-12(d) states that during the SSB "The officer's file will be constructed as it appeared on the convening date of the promotion board which failed to select the officer for promotion. The only document(s) added or changed, will be the document(s) that is (are) the basis for the SSB."

6. Army Regulation 600-8-104 (Army Military Human Resource Records Management) governs the composition of the Official Military Personnel File (OMPF) and states the performance folder is used for filing performance, commendatory, and disciplinary data. Once placed in the OMPF, the document becomes a permanent part of that file. The document will not be removed from or moved to another part of the OMPF unless

directed by certain agencies, to include this Board. Appendix B states the DA Form 67-10-2 is filed in the performance folder of the Soldier's OMPF.

//NOTHING FOLLOWS//