

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2025

DOCKET NUMBER: AR20240005404

APPLICANT REQUESTS: Reconsideration of his previous request for a Special Selection Board for promotion to lieutenant colonel (LTC) pursuant to fiscal year (FY) 2020 Judge Advocate Corps (JAGC) LTC Promotion Selection Board (PSB) and personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Reconsideration Request
- Military Personnel (MILPER) Message 20-148 FY 2020 Active Component (AC) LTC JAGC PSB Zones of Consideration
- Memorandum FY 2020 LTC JAGC PSB
- MILPER Message 20-390 Release of FY 2020 AC LTC JAGC PSB
- Department of Defense Instruction (DoDI) Email String
- Joint Policy Branch Email
- DA Form 67-10-2 (Officer Evaluation Report (OER))
- Email U.S. Army Human Resources Command (AHRC) Submission
- SSB Initial Request
- Email AHRC SSB Denial
- Joint Policy Branch Email String
- MILPER Message 22-141 FY 2022 AC LTC JAGC PSB Zones of Consideration
- SSB Request to the Army Review Boards Agency (ARBA)
- Army Board for Correction of Military Records (ABCMR) Denial
- Office of the Judge Advocate General (OTJAG) Administrative Law (ADLAW) Email
- Letter from J - G. D-
- Title 10 U.S. Code (USC) 628 (SSBs)
- Excerpt of Army Regulation 600-8-29 (Officer Promotions)
- DoDI History
- Joint Issuances Snapshot
- Applicant Board File
- Secretary of the Navy (SECNAV) Instruction
- SSB Process

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20230003851 on 7 April 2023.

2. The applicant states, in pertinent part:

- This is a reconsideration request from previous ABCMR denial based on new evidence
- The new evidence demonstrates that the Board's denial was based on an incorrect understanding of what the post-board legal review entailed, and incorrect assumptions as to its meaning
- On 30 November 2021, he requested AHRC convene an SSB which was denied on 5 January 2022
- He then applied to the Board on 28 July 2022; on 1 May 2023, the Board denied his request
- An email from OTJAG states the post board legal review did not review the types of issues raised by the applicant
- The post board legal review did not review the joint-service calculations issues raised by the applicant
- OTJAG does not review whether specific positions or individuals should be identified to the PSB as serving in, or having served in, Joint Staff or Office of the Secretary of Defense (OSD) or as Joint Qualified Officers
- The most critical matter raised by the applicant was not reviewed or considered in the post-board legal review
- A letter from Mr. J- G. D- states he believes the Board denied the applicant's request for relief based on an incorrect understanding of what the post-board legal review entailed
- He explains the Board seems to have glossed over the issues raised by the applicant
- The OTJAG email calls into question the conclusions drawn by the Board and the weight they placed on the G1 denial letter
- Mr. D- states in his opinion the Board's original decision was arbitrary and capricious and the Board should grant reconsideration and return the applicant's petition to a new Board for additional consideration and determination
- The applicant identified three significant legal errors with the FY 20 JAGC LTC PSB
- The Board denied his request for relief on the assumption that these three legal errors had already been reviewed and sanctioned
- MILPER Message 20-148 puts the burden on the Army to notify board members of Judge Advocate majors that are either joint qualified or are currently serving in OSD

- When his promotion board convened on 28 July 2020, he had been serving in OSD for 17 days
- The Army was required to notify board members of that
- In denying his SSB request, AHRC stated his request for an SSB was not supported by regulation, specifically material error
- Army G1 opined that the DA Secretariat conducted the board in accordance with applicable laws and regulations and there was no evidence that there was material error in his board file that would support his SSB request
- The failure of the Army to properly notify board members of his status as serving in OSD is not only a material error, it is a failure to satisfy a legal requirement that emanates from statute, DoDI, and Chairman of the Joint Chief of Staff Instruction
- It is more than reasonable that the Army's failure could have made the difference in a competitive promotion environment
- He did everything in his power to ensure his file was accurate yet the Army still failed to properly notify board members of his status as serving in OSD
- He should be given a fair chance at promotion with the members properly notified
- This oversight alone should qualify for an SSB
- The Army notified JA majors that qualifying joint service credit would be calculated according to the standards in DoDI 1320.05, an extinct publication
- The Army instructed board members that qualifying joint service would be calculated according to the much different standards in DoDI 1300.19
- DoDI 1320.05 is so old the Joint Policy Division declined to issue an opinion because it would require too much historical interpretations
- The Army advertised a process grounded in a set of standards and instructed officers to prepare board files accordingly
- Then they confidentially applied an entirely different set of standards, the very definition of an arbitrary and capricious decision-making process and certainly one that rises to the level of being materially unfair
- It is physically impossible for officers to prepare board files accurately or even remotely accurately under these conditions
- He spent months trying to prepare his records to the standards he was told
- However, he learned that joint qualification is calculated under a different standard
- Had he known that, he would have prepared accordingly
- This "bait and switch" is an egregious due process error and failure of the Army to follow its own procedures
- It is squarely within the definition of materially unfair and would be next to impossible for the Army to defend in federal court
- The board was instructed to rely not on its current branch specific personnel policy publication, but to use some mysterious version that did not yet exist; it was available only to board members and not available to Judge Advocates at the time

- The PSB convened on 28 July 2020, nearly four full months before the publication date of the key document that board members were instructed to use
- It is hardly fair to instruct board members to apply an unpublished version of the branch's personnel policies controls when the officers before the board are not aware of its existence
- These material errors, taken collectively, represents an arbitrary and capricious process and certainly one that is materially unfair
- While the applicant was ultimately selected, much later, for promotion to LTC, that does not negate the request for an SSB that is now again before the Board
- If selected for promotion by an SSB, he would be given back a year of date of rank, a year of backpay, and a year of eligible service for high three retirement eligibility

3. The applicant provides and his service record shows:

- On 13 May 2002, the applicant took the oath of office as a Reserve Commissioned Officer
- On 8 April 2012, orders were published promoting him to the rank of major effective 1 September 2012
- On 21 May 2020, MILPER Message 20-148 FY 2020 AC LTC JAGC PSB Zones of consideration was published
- On 18 June 2020, Memorandum of Instruction for FY 2020 LTC JAGC PSB was published, the applicant highlighted areas to bring to the Board's attention
- On 23 November 2020, MILPER Message 20-390 Release of FY 2020 AC LTC JAGC PSB was published
- On 19 February 2021, the applicant was part of an email string regarding the DoDIs considered by the PSB
- On 19 May 2021, the applicant was part of an email string with Joint Policy Branch regarding the DoDIs
- An OER from 11 July 2020 through 5 July 2021, shows he works with the OSD; he excels and is most qualified; his senior rater stated select for immediate promotion
- On 30 May 2021, he sent an email to AHRC showing he was requesting an SSB
- On 30 May 2021, he requested a SSB stating the Army failed to identify that the applicant was serving in OSD
- On 7 January 2022, he received an email from AHRC denying his request for an SSB as it was outside the scope of the regulation
- On 20 April 2022, he received an email from Joint Policy Branch stating AHRC does not determine when an officer becomes joint qualified
- On 21 April 2022, MILPER Message 22-141 FY 2022 AC LTC JAGC PSB Zones of Consideration was published

- On 28 July 2022, the applicant requested an SSB through the Board
- On 22 September 2022, a Secretary of Defense Action Memo was published and shows the Secretary of Defense recommended approval of the results of a SSB that considered and recommended the applicant for promotion to the grade of LTC
- On 17 January 2023, orders were published promoting the applicant to LTC effective 12 December 2021
- On 1 May 2023, the Board denied the applicant's request
- On 7 February 2024, OTJAG ADLAW sent him an email stating OTJAG legal reviews of PSB results do not extend to accuracy of calculations used to compile selection status; OTJAG does not review whether specific positions or individuals should be identified to the PSB as serving in, or having served in, Joint Staff or OSD
- On 29 April 2024, Mr. J- G. D- provided a letter unequivocally recommending the Board grant reconsideration of the applicant's request for an SSB
- The applicant's board file is available for the Board's review

4. On 7 April 2023, the Board made a decision regarding the applicant's request for an SSB in docket number AR20230003851. The Board found, in pertinent part:

- The Board determined relief was not warranted
- One potential outcome discussed was to grant relief based upon AHRC failing to follow specific instructions outlined with the promotion board announcement
- Based upon the findings outlined in the G1 denial letter, there was no evidence of material error to support an SSB

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. One potential outcome was to grant relief particularly given the timing irregularities of the applicant's submission and AHRC's documented failure to adhere to specific instructions outlined in the promotion board announcement.

2. However, the Board determined that these issues did not ultimately outweigh the prevailing facts. Upon review of the applicant's petition, available military records and G-1 advisory, the Board majority ultimately voted to deny relief based on finding the applicant has since received an SSB and been promoted to the rank of Lieutenant Colonel (LTC), with an effective date of 12 December 2021, thus achieving the requested relief through subsequent selection. There was insufficient evidence to support a claim that the applicant did not fully understand the procedural requirements, or the criteria

established by the promotion Board. As such, based on the totality of the evidence and in alignment with the G-1 advisory, the Board concluded that reversal of the prior determination lacks sufficient merit. Therefore, the Board denies the applicant's request for relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	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 to amend decision of the ABCMR set forth in Docket Number AR20230003851, dated 7 April 2023.

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 600-8-29 (Officer Promotions) prescribes policies, operating rules, and steps governing promotion of Army commissioned and warrant officers on the active-duty list (ADL). Chapter 6 (SSB) provides that SSBs may be convened under Title 10, USC, section 628 (SSB) to consider, or reconsider commissioned or warrant officers for promotion when HQDA determines that one or more of the following circumstances exist:

a. Administrative error (Title 10, USC, section 628(a)(1)) (SSB required) - an officer was not considered from in or above the promotion zone by a regularly scheduled board because of administrative error.

b. Material unfairness (Title 10, USC, section 628(b)(1)) (HRC discretionary).

2. An officer will not be considered or reconsidered for promotion by an SSB when the following occurs:

a. The officer is pending removal from a promotion or recommended list and the removal action was not finalized by the SECARMY before the next selection board convened to consider officers of his or her grade.

b. An administrative error was immaterial, or the officer, in exercising reasonable diligence, could have discovered and corrected the error in the DA Form 4037 or AMHRR. The DA Form 4037 is a summary document of information generally available elsewhere in the officer's record. It is the officer's responsibility to review his or her DA Form 4037, AMHRR, and MBF before the board convenes and to notify the board, in writing, of possible administrative deficiencies.

c. Letters of appreciation, commendation, or other commendatory data for awards below the Silver Star are missing from the officer's AMHRR.

d. The PSB did not see a nonmandatory DA Form 4037 submitted to HRC after the suspense established in the promotion board zone of consideration MILPER message.

e. The PSB did not see a DA official photograph or saw an outdated DA official photograph.

f. The PSB did not consider correspondence to the board president that was delivered to the Commanding General, U.S. Army Human Resources Command after the cutoff date for such correspondence established in the respective promotion board zone of consideration MILPER message.

3. Title 10, USC, section 14104 (Nondisclosure of board proceedings) states the proceedings of a selection board convened under section 14101 or 14502 of this title may not be disclosed to any person not a member of the board, except as authorized or required to process the report of the board. This prohibition is a statutory exemption from disclosure, as described in section 552(b)(3) of title 5. (b)Prohibited Uses of Board Discussions, Deliberations, Notes, and Records.—The discussions and deliberations of a selection board described in subsection (a) and any written or documentary record of such discussions and deliberations—

- are immune from legal process
- may not be admitted as evidence; and
- may not be used for any purpose in any action, suit, or judicial or administrative proceeding without the consent of the Secretary of the military department concerned.

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 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//