

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2025

DOCKET NUMBER: AR20240007227

APPLICANT REQUESTS:

- promotion by a Special Selection Board (SSB) for the rank/grade of lieutenant colonel (LTC)/O-5
- a personal appearance (video/telephonically)

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 November 2015 – service on active duty from 5 June 1997 - 30 November 2015; retirement at the rank/grade of major (MAJ)/O-4
- DD Form 214, 4 June 1997 – enlisted service on active duty from 16 April 1991 - 4 June 1997
- DD Form 214, 13 December 1989 – enlisted service on active duty from 12 September 1989 – 13 December 1989 as a member of the Army National Guard (ARNG)
- DA Form 4037 (Officer Record Brief) – reflective of pertinent personnel information to include assignment, award and promotion history
- Memorandum – Subject: Mandatory Retirement Date Due to Non-Selection for Promotion, 31 July 2014 – due to his second non-selection for promotion; pending involuntary retirement no later than 31 January 2015; option to voluntarily request retirement
- Memorandum – Subject: Acknowledgment of Mandatory Retirement Date Due to Non-Selection for Promotion – acknowledgement of pending involuntary retirement; document is unsigned
- Orders Number 132-0003, 12 May 2015 – retirement order; 30 November 2015 effective retirement date at the rank of MAJ
- (23) Officer Evaluation Reports – reflective of the applicant's performance in various duty positions, as assessed by members of his immediate leadership from October 1998 through 30 June 2015

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:

- he requests reconsideration for promotion to LTC/O-5
- served in an O-5 billet for over 5 years
- despite his positive evaluations, non-selected for promotion to LTC due to the limited number of Officers in the FA Functional Area (FA) 52 (Nuclear and Countering Weapons of Mass Destruction) career field
- 2x non-selection forced him to retire

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

- On 5 June 1997 – the applicant was appointed a Reserve commission and ordered to active duty as an Infantry Officer
- On 18 January 2007 (Orders Number 018-038) – announced promotion to the rank/grade of MAJ/O-4, effective 1 February 2007
- On 28 May 2009 – the applicant completed the Intermediate Level Education Course
- Officer Record Brief shows he completed the Nuclear and Counterproliferation training in 2010 and the Nuclear Weapons Employment Officer Course in 2014 and served in functional area 52
- On 8 April 2015 – the applicant submitted a request for voluntary retirement on 30 November 2015 and placement on the Retired list on 1 December 2015
- On 12 May 2015 (Orders Number 132-0003) – the applicant was pending release from active duty on 30 November 2015 for retirement
- On 30 November 2015 – retired from active duty at the rank of MAJ

4. On 19 March 2025, the U.S. Army Human Resources Command, Officer Promotions Special Actions, provided an advisory opinion noting that the applicant's request for promotion reconsideration was without merit. Although he contends that he was disadvantaged due to the low percentage rate allocated for promotion in his functional area, there is nothing to suggest that this contention is substantiated, or that the results of the promotion selection were unfair or unjust. The reasons for the applicant's non-selection are unknown because statutory requirements set forth in Title 10, U.S.C., Section 613a (Nondisclosure of Selection Board Proceedings) prevents disclosure of these proceedings to anyone outside the promotion board in question.

5. On 21 March 2025, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments.

BOARD DISCUSSION:

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. Upon review of the applicant's petition, the service record, and advisory opinion provided by the U.S. Army Human Resources Command (HRC) the Board determined the applicant's request for promotion reconsideration was without merit. Although he contends that he was disadvantaged due to the low percentage rate allocated for promotion in his functional area, there is nothing to suggest that this contention is substantiated, or that the results of the promotion selection were unfair or unjust. HRC found no administrative error within the applicant's record. The Board concurred with HRC and found no material error in his records. The Board concluded, the applicant does not meet the criteria for a Special Selection Board.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record 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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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. 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 (Purpose of Boards) provides that Special Selection Boards (SSB) may be convened under 10 USC 628 to consider, or reconsider commissioned or warrant officers for promotion when Headquarters Department of the Army (HQDA) determines that one or more of the following circumstances exist:

- administrative error
- material unfairness

b. Paragraph 6-3 (Cases not Considered) provides that an officer will not be considered or reconsidered for promotion by an SSB when the following occurs:

- 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
- an administrative error was immaterial, or the officer, in exercising reasonable diligence, could have discovered and corrected the error
- letters of appreciation, commendation, or other commendatory data for awards below the Silver Star are missing from the officer's Army Military Human Resources Record
- the Promotion Selection Board (PSB) did not see a nonmandatory DA Form 4037 submitted to HRC after the suspense established in the promotion board zone of consideration Military Personnel message
- the PSB did not see a DA official photograph or saw an outdated DA official photograph
- the PSB did not consider correspondence to the board president that was delivered to the Commanding General, AHRC
- the consideration in question involved an officer below the promotion zone

c. Paragraph 6-9 (Effect of Two-Time Non-Selection for Promotion) provides that a warrant officer or commissioned officer twice non-selected for promotion by a HQDA PSB, and not approved to be Selective Continuation, will continue to be processed for separation in accordance with 10 USC 580 and 10 USC 632 respectively.

d. Paragraph 6-12 (Processing Requests for Special Selection Board Promotion Reconsideration) provides that Officers who discover that a material error existed in their file at the time they were non-selected for promotion may request reconsideration. Requests will be forwarded to the Commanding General, U.S. Army Human Resources Command, Promotions Branch (AHRC-PDV-PS), 1600 Spearhead Division Avenue, Department 472, Fort Knox, KY 40122-5407 or usarmy.knox.hrc.mbx.tagd-opsa@mail.mil. Reconsideration will normally not be granted when the error is minor or when the officer, by exercising reason-able due diligence, could have detected and corrected the error. 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. SSB requests must be forwarded to HRC within 12 months after the board's results are released. Requests submitted after this time must be submitted to the ARBA.

3. Title 10, USC, section 613 states the proceedings of a selection board convened under section 573, 611, 628, or 20211 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. 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 (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 applicant's 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//