

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240007430

APPLICANT REQUESTS:

- reconsideration for promotion to the rank/grade of lieutenant colonel (LTC)/O-5 before a Special Selection Board (SSB) and placement on the retired list as a LTC
- personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- Military Personnel (MILPER) Message 03-170 (Applications for Special Boards and Special Selection Boards)
- Office of the Deputy Chief of Staff G1 Memorandum, Subject: Request for Promotion Reconsideration – H-, C- (the applicant)

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 the rank/grade of LTC/O-5 before a SSB and to be placed on the retired listed in the rank of LTC, and a personal appearance before the Board via video or telephonically. The instructions that were provided to the members of the Fiscal Year 1997 promotion selection board gave special promotion consideration to women and minorities. These instructions denied him the right to equal opportunity for promotion and resulted in the material unfair treatment towards him as guaranteed by the Fifth Amendment of the U. S. Constitution. Further the U. S. Army Human Resources Command (AHRC) failed to notify him of the discriminatory actions and redress to apply for a SSB. Also, while he was serving in Afghanistan did not allow him for the opportunity to redress. He believes if he would have been notified by U. S. AHRC or by any personnel official of the MILPER Message

03-170, he would have been able to meet the time limitations which cause U.S. AHRC personnel to allow him the opportunity for redress at the time of the injustice.

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

a. On 5 August 1981, the applicant executed his oath of office and was appointed a Regular Army officer in the rank of second lieutenant.

b. DA Form 1059 (Service School Academic Evaluation Report) shows the applicant achieved course standards for the Infantry Officers Basic Course during the period of 23 August through 4 December 1981.

c. DA Form 1059 shows the applicant achieved course standards for the Aviation Officers Advanced Course during the period of 8 June through 29 October 1986.

d. On 9 July 1993, Orders Number 105-011, issued by the U. S. Total Army Personnel Command, the applicant was promoted to the rank of major (MAJ)/O4 effective 1 August 1993.

e. DA Form 1059 shows the applicant achieved course standard for the Command and General Staff Officer Course during the period of 15 October 1990 through 25 January 1994.

f. On 3 August 1989, the U.S. Total Army Personnel Command notified the applicant the Department of the Army Competitive Category Promotion Selection Board (PSB) convened to consider officers for promotion to the rank of LTC. Unfortunately, he was not selected for promotion by the board. In its comparative judgement of future potential, the board considered such factors as performance reflected by Officer Evaluation Reports, assignments, military and civilian training and education. His non-selection reflects the unavoidable fact that not all of the highly professional officer corps can be promoted through each successive grade. However, the selection board did convene to consider twice non-selected MAJs for continuation on active duty. He was recommended for selective continuation which the applicant accepted.

g. On 2 February 2001, the U.S. Total Army Personnel Command notified the applicant the Secretary of the Army had approved a recommendation by a SSB to continue him in his present grade on active duty beyond retirement eligibility. The selection for continuation reflects the Army's confidence in his ability as well as his potential to continue to make a difference in the Army. This selection allows him to continue to service on active duty until he reached 24-years of active commissioned service.

h. On 26 October 2004, Orders Number 300-0021, issued by Headquarters, I Corps and Fort Lewis, the applicant was retired from active duty in the rank of MAJ and placed on the retired list effective 1 September 2005 in the same grade.

i. On 31 August 2005, the applicant was honorably retired from active duty and assigned to the U. S. Army Reserve Control Group (Retired Reserve). DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 24-years and 26-days of active service.

4. The applicant provides:

a. MILPER Message 03-170 dated 12 May 2003 which stated all applications for special boards and SSB must be received by the appropriate agency no later than 1-year after the official release date of this message or the original board results were released, whichever was later. Applications received more than 1-year after release of this message or the date the original board results were released, whichever is later, will be treated as untimely and will be denied reconsideration unless the member provides the approval authority with compelling justification. Applications received within 1-year of the date of this message, may be based on original board results that were released within 6-years of the application. After 1-year from the date of this message, applications based on original board results that were released more than 1-year before the date of this message will be treated as untimely, absent compelling justification as noted above. The special boards or SSB must be convened or denied within 6-months of the approval authority receiving the request.

b. Office of the Deputy Chief of Staff G1, Memorandum dated 18 October 2005, Subject: Request for Promotion Reconsideration – H-, C- stated a special board considered the applicant's request for a SSB and found that reconsideration for promotion to the grade of LTC was not warranted. In accordance with MILPER Message 03-170, a special board must receive an application for promotion reconsideration no later than 12 May 2004 or within 1-years of the release of the original board's results, whichever is later. The special board may deny untimely applications for promotion reconsideration, unless the applicant provides compelling justification. The applicant's application was submitted on 14 April 2005, was untimely. Furthermore, the special board had considered the matters he submitted and found that the matters did not present a compelling justification for reconsideration. His request for reconsideration was denied.

5. On 19 February 2025, in the processing of his case, the U.S. AHRC provided an advisory opinion regarding the applicant's request for a SSB. The advisory official recommended disapproval of his request. A review of his records and application determined his request did not have merit. There was nothing to suggest his contention was substantiated or that the results of the promotion selection board was unfair, unjust

or denied him the right to equal opportunity. The reasons of his non-selection are unknown because statutory requirements set forth by law, which prevent disclosure of the proceedings to anyone outside the promotion board in question. It could only be concluded that the promotion board determined his overall record, when compared with the records of his contemporaries, did not reflect as high a potential as those selected. The applicant's second time non-select did offer him selective continuation which he accepted and he was permitted to remain on active duty until he was eligible for retirement at 20-years of Active Federal Service. In 2001, he was granted an extension to his selective continuation which allowed him to remain on active duty for an additional 4-years, during which time he continued to receive consideration for promotion. Therefore, reconsideration can only occur as a directive of the Army Board for Correction of Military Records.

6. On 21 February 2025, the Army Review Boards Agency Case Management Division provided the applicant the advisory opinion for review and comment.

BOARD DISCUSSION:

1. 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 was promoted to the rank of major on 1 August 1993. On 3 August 1989, the applicant was notified he was not selected for promotion by the board to lieutenant colonel. The Board concurred with HRC's advisory opinion finding nothing to suggest his contention was substantiated or that the results of his promotion selection board were unfair, unjust, or denied him the right to equal opportunity. Therefore, the Board denied relief for the applicant's request pertaining to an SSB and placement on the retired list as a LTC.

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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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
Signed by:

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) 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 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.

3. Army Regulation (AR) 600-8-29 (Officer Promotions), prescribes the officer promotion function of military human resources (HR) support operations.

a. Paragraph 3-13 (Failure to be selected for promotion), an officer on the Active Duty List (ADL) who has failed to be selected for promotion to LTC a second time is subject to one of the following:

- Discharge or release from active duty
- Retirement under any provision of law, if eligible, on the date requested by the officer and approved by proper authority, retirement will ensue no later than the first day of the 7th month beginning after the month in which the President or the President's designee approves the report of the board that considered the officer the second time
- Retained on active duty until eligible for retirement if, on the date the officer would otherwise have been discharged, the officer is within 2-years of being eligible to retire
- Selective Continuation SELCON; completes 24-years of active commissioned service, unless promoted to the regular grade of LTC

b. Chapter 6 (Special Selection Boards (SSB)), SSBs are governed by the same instructions provided to the boards that considered or should have considered an officer for promotion. SSBs may be convened to consider or reconsider commissioned for promotion when HQDA determines that one or more of the following circumstances exist:

- Administrative error , an officer was not considered from in or above the promotion zone by a regularly scheduled board because of administrative error
- Material unfairness (HRC discretionary).

- action of the promotion board that considered the officer from in or above the promotion zone was contrary to law in a matter material to the division of the board or involved material error of fact or material administrative error
- board that considered the officer from in or above the promotion zone did not have before it for its consideration material information

A special SELCON board may be convened for commissioned officers to consider officers for SELCON who have twice failed selection for promotion, provided the officers would or should have been considered by a SELCON board following their second failure of selection for promotion. An officer will not be considered or reconsidered for promotion by an SSB when the 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 AMHRR.

//NOTHING FOLLOWS//