

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240007679

APPLICANT REQUESTS: reconsideration for promotion to the rank/grade of major (MAJ)/O-4 before a Special Selection Board (SSB).

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from counsel
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- DA Form 67-10-2 (Field Grade Plate (O4 through O5; CW3 through CW5) Officer Evaluation Report (OER)
- Letter of support for the Promotion Review Board (PRB) from [REDACTED]
- U.S. Army Human Resources Command (AHRC) Memorandum, Subject: Delay of Promotion and Referral to a PRB
- Letter of support for the PRB from [REDACTED]
- Applicant letter to the PRB
- Secretary of the Army Memorandum
- U.S. Department of Justice letter
- Email from AHRC Special Selection Review Board Results
- Excerpt from Army Regulation (AR) 195-2 (Criminal Investigation Activities)
- Excerpt from AR 600-8-29 (Officer Promotions)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 the request is due to a material error which existed in his Fiscal Year 2018 (FY18) MAJ board file. On 5 November 2018, he

received the notification of the delay of his promotion and subsequent referral to the PRB, citing he received a General Officer Memorandum of Reprimand (GOMOR) on 23 April 2013 and a Military Police Report dated 3 November 2014.

a. The Military Police Report referenced the allegation that he had unlawful sexual contact with a minor in 2014 after the alleged disclosure was made during an employment polygraph in which the allegation dated back to 2005. He submitted a statement to the president of the PRB in which he explained any contact he had with his 14-year old relative was unintentional. Despite this information he was removed from the FY18 promotion list. He was again selected for promotion to MAJ on the FY24 list, but he again was removed from the list for the same information. In accordance with AR 600-8-29, paragraph 6-12 (Processing requests for SSB promotion reconsideration), an officer who discover that a material error existed in their file at the time they were non-selected for promotion may request reconsideration.

b. He recently completed a Federal background check on himself which was clear that he was not titled for any offense in the National Crime Information Center database. Therefore, in accordance with AR 195-2 (Criminal Investigation Activities) paragraph 4-4 states if credible information does not exist to believe an individual committed an offense for which titled as a subject at the time the investigation was initiated it can be requested to be removed.

c. It was a material error and unjust to have the Military Police Report in the post selection screening as it is based on non-credible information that was determined by the lead case agent.

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

a. With prior Regular Army (RA) enlisted service, the applicant was ordered to active duty to accept his commission, effective 31 July 2008.

b. On 15 August 2011, Orders Number 227-038, issued by AHRC, the applicant was promoted to the rank/grade of captain (CPT)/O-3, effective 1 September 2011 with the same date of rank.

c. On 23 April 2013, the applicant was reprimanded by the Commanding General, U.S. Army Maneuver Center of Excellence, for gambling with subordinates while he commanded Alpha Company, 1st Battalion, 50th Infantry Regiment by participating in poker games with his first sergeant and drill sergeants. Further, he allowed and fostered a permissible command environment which allowed noncommissioned officers to gamble among themselves, both in garrison and on field exercises.

d. On 25 September 2014, AHRC notified the applicant he was considered for appointment in the U.S. Army Reserve (USAR); however, based on the established eligibility requirements, he was not selected for appointment.

e. On 1 April 2015, the applicant was honorably discharged from active duty in the rank of CPT. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 6-years, 8-months, and 1-day of active service.

f. On 15 September 2016, Special Orders Number 196, issued by the National Guard Bureau (NGB), the applicant was appointed to [REDACTED] Army National Guard (ARNG), effective 3 May 2016, in the rank of CPT with the date of rank of 1 September 2011. The applicant's service record is void of his oath of office in the ARNG.

g. On 28 May 2019, the Secretary of the Army directed the applicant be removed immediately from the FY18 MAJ, ARNG of the United States promotion list.

h. On 14 November 2019, the Department of the Army Suitability Evaluation Board (DASEB) determined the evidence presented before the Board did not provide substantial evidence that the document in his record had served its intended purpose and that its transfer would be in the best interest of the Army. Therefore, the overall merits of the case did not warrant relief.

i. During the applicant's ARNG service he was ordered to active duty multiple times.

j. On 19 January 2021, the NGB notified the applicant the DASEB found the evidence did not justify altering or withdrawing the General Officer Letter of Reprimand from his Army Military Human Resources Record.

k. The applicant remains in the ARNG.

4. The applicant provides:

a. Character reference for the retention of the applicant from [REDACTED] dated 18 June 2013 states he is an officer who puts people and the organization before his own personal needs. He is an outstanding husband and father of three girls who spent quality time with them. The applicant should be recognized for his outstanding service and be allowed to continue to practice his superior military skills for the benefit of all concerned and the U.S. Army.

b. Statement of support dated 3 July 2013 from [REDACTED] states he served with the applicant during the period of August 2011 through June 2012 and had daily contact with him both in professional and personal settings. The applicant demonstrated an

impressive work ethic, professional demeanor and willingness to integrate into the team. The commander of a basic training unit must possess maturity, solid judgement and have accomplished problem solving abilities without constant supervision. He showcased all facets of Army values and leadership for the trainees. He had no doubt regarding the applicant's ability to mature, develop and contribute. One blemish on a promising career should not be allowed to derail a solid officer from continued service.

c. Character reference dated 4 July 2013 from [REDACTED] stated then he had known the applicant for 20-years and he had always demonstrated the highest level of honesty, integrity, work ethic, leadership and loyalty as well as devotion to country. He was driven to reach the highest levels of excellence in the Army. He earns the trust and respect of those around him because he expects as much of himself as he does those he is leading. The applicant is serious minded and a principled leader who conducts himself with the highest moral standards. Without reservation he recommended the applicant be retained in the U.S. Army.

d. Letter of support dated 18 February 2014 from [REDACTED] stated he recommended the applicant be retained in the U.S. Army. He demonstrated that he could overcome any adversity and remain positive, professional and hardworking. The punishment and embarrassment he experienced contributed positively to his development and maturity as a leader. His ability to demonstrate continued achievement in spite of his circumstances, shows he is a capable leader who has learned from his mistakes and will continue to succeed and provide value to the Army. The Army would be better to have more individuals of his caliber. The applicant epitomizes the qualities that are valued in a professional officer and he has demonstrated those qualities. He has the potential to succeed in future leadership positions and will continue to provide exemplary service to the U.S. Army.

e. DA Form 67-10-2 for the rating period of 14 November 2017 through 27 September 2018 shows the applicant was rated as the Executive Officer of the Defense Intelligence Agency (DIA) Reserve Integration Office. His rater rated his performance as excels and commented that he had shown an ability to think and operate at the strategic level, supporting executive level engagement with the joint service, interagency and international partners. His senior rater rated his potential as most qualified and commented the applicant possess unlimited potential and should be promoted to MAJ immediately.

f. Letter of support dated 27 September 2018 from the mobilization assistant to the director of DIA stated the applicant was the perfect example of the type of officer that the Army needs to promote and provide increasingly challenging assignments. He has known the applicant both on a professional and personal level, he is an extremely competent officer and has performed exceptionally well in a high stress joint strategic environment in which many of his peers did not have the opportunity to operate. No

leader is perfect and he had his share of mistakes. He has demonstrated that he is an officer that learns from his mistakes and utilizes the lessons learned to become a better rounded and more resilient officer and individual. He believed the Board would see the applicant is an officer that overcomes adversity, seeks out increasingly challenging leadership positions and is an invaluable leader both in the Army and in the Joint Force. He is worthy of being placed back on the promotion list and promoted at the earliest opportunity.

g. AHRC Memorandum, Subject: Delay in Promotion and Referral to a PRB, dated 5 November 2018, stated the applicant was recommended for promotion to MAJ by the FY18 MAJ promotion selection board. In accordance with the regulation the appointment of an officer may be delayed in any case in which there is cause to believe the officer is mentally, physically, morally or professionally unqualified to perform the duties of the grade which he was selected for promotion. The receipt of the GOMOR dated 23 April 2013 and a military police report dated 3 November 2014 were identified in the post selection screening. His records were referred to the PRB for recommendation to the Secretary of the Army for:

- Retain on promotion list
- Removal from the promotion list
- Show cause for retention on active duty

h. Letter of support from the senior Reserve Army advisor to DIA dated 30 November 2018 stated the applicant was worthy of a favorable consideration by the PRB. He demonstrated that he developed into the epitome of an Army officer. He has shown resiliency in the face of adversity, a critical lesson the Army teaches our Soldiers. He has proven himself trustworthy in his actions, an officer of high moral standards and professional in every right. He has shown an unwavering moral compass actively challenging in the appearance of questionable bending the rule over the hard right. The applicant has shown the ability to redefine himself using lessons learned of the past and position himself along a path that continuously support the core values embodied by the Army. He is a highly qualified officer and has earned the right to be promoted to the rank of MAJ.

i. Applicant's memorandum dated 30 November 2018 to the president of the PRB stated the documents the PRB will review represent a singular moment in his journey through life. One of the moments occurred before he joined the Army and the other during his Army career as an officer. Those learning moments provided him opportunities to grow, develop and remain resilient. In spite of these learning moments and past missteps, he is a confident that the man he is has learned from the entirety of his past and will act only in a way that maintains his character, trustworthiness, integrity, family values, and the immense responsibility placed on those that serve in the U.S. Army.

(1) In regard to the military police report, it was a one-time occurrence which occurred in 2005 at a family gathering. During a moment of horseplay, a female relative grabbed his groin and he accidentally touched her chest. Both actions took place outside of their clothing in a non-sexual manner. This was an unintentional interaction, not pre-meditated and a singular event. During a polygraph session conducted by the U.S. Secret Service, he explained in a no more than description to express a range of time. Though the incident only occurred one time, he expressed it in no more than three times as he visited the relative's residence three times. The description caused a discrepancy in the one time that the event occurred versus three times. He explained it in this manner to make sure he did not miss something in the lifestyle examination. The U.S. Secret Service forwarded the information to the U.S. Army for their determination if the matter should be further investigated. The U.S. Army Criminal Investigation Division (USACID) conducted an inquiry which resulted in the military police report. The investigation determined that since the distant relative did not report the interaction and the passage of time, the incident was outside the statute of limitations to warrant further investigation. The inquiry was closed with no action by military or civilian authorities.

(2) In regard to the GOMOR, his decision to play poker with noncommissioned officers was improper. The true and intended purpose for his participation and to allow poker to occur was to promote a team building activity. He wanted to spend time with and to get to know his subordinates, for which he took full responsibility for his decisions and actions. He has learned from his mistake and endeavored since to be a better leader, employee and mentor those he works with and mentor. This incident is not a reflection of his overall character, work ethic, integrity, respect for the rules or values.

j. U.S. Department of Justice letter dated 9 February 2024 stated a search of fingerprints of the applicant revealed no prior arrest data at the Federal Bureau of Investigations. This does not preclude further criminal history at the state and local level.

k. Email dated 4 March 2024 from AHRC stated his records were referred to the Department of the Army Special Selection Review Board for a recommendation on his promotable status. After careful consideration, the Secretary of the Army directed the removal of the applicant's name from the promotion list which constitutes a non-selection. The Secretary of the Army further directed the action to be forwarded for a show cause authority consideration. If directed, the show cause will be administered by the U.S. Army Reserve Command.

l. Excerpt from AR 195-2, highlighted from paragraph 4-4 states the burden of proof to substantiate the request rests with the individual. Requests to delete a person's name from the subject block will be granted if it is determined that credible information did not exist to believe that the individual committed the offense for which titled as a subject at the time the investigation was initiated, or the wrong person's name has been entered

as a result of mistaken identity. The decision to list a person's name in the title block of a USACID is an investigative determination that is independent of judicial, nonjudicial, or administrative action taken against the individual or the results of such action. Credible Information defined as information disclosed to or obtained by an investigator that, considering the source and nature of the information and the totality of the circumstances is sufficiently believable to indicate that criminal activity has occurred and would cause a reasonable investigator under similar circumstances to pursue further the facts of the case to determine whether a criminal act occurred or may have occurred.

m. Excerpt from AR 600-8-29 (regulation pertaining to Active Duty officers), highlighted from paragraph:

(1) 6-8 states b. Reconsideration cases, a commissioned officer or warrant officer who was considered but not selected for promotion by a regular selection board incurs no additional failure of selection if he or she is subsequently not selected by a SSB.

(2) 6-12 states a. Officers who discover that a material error existed in their file at the time they were non-selected for promotion may request reconsideration to be forwarded to AHRC, Promotions Branch. c. Reconsideration will normally not be granted when the error is minor or when the officer, by exercising reasonable due diligence, could have detected and corrected the error. f 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 Army Review Boards Agency (ARBA). Commanders must inform non-select officers of this requirement upon notification of non-selection. An officer who has been voluntarily separated from the active duty list must request a SSB through ARBA.

5. On 17 January 2025, in the processing of this case, the NGB, provided an advisory opinion regarding the applicant's request for reconsideration for promotion to the rank of MAJ by an SSB. The advisory official recommended disapproval of the applicant's request as there is no error as his GOMOR and investigation and military police report in his records are valid and were cited as the reason for the removal from the promotion list. His promotion file was viewed before the FY18 MAJ promotion selection board on 7 March 2018 and he was recommended for promotion. He was referred to the PRB because of derogatory information found in the post board screening. A GOMOR and an investigation was the cause for the referral. He was removed from the promotion list on 28 May 2019. He was again selected for promotion on the FY21 promotion selection board and again referred to the PRB and removed from the promotion list on 20 February 2024. The applicant stated that there was a material error which existed in his board file as during a background check the investigation and indecent assault on a child did not show on his record and should not be included in his board file stating it was not criminal information. He requested the DASEB removed the GOMOR to the restricted file was denied by the board.

6. On 28 January 2025, the ARBA, Case Management Division provided the applicant the advisory opinion for review and comment. The applicant, through counsel, responded on 11 February 2025 stating the advisory is wrong and mischaracterizes the applicant's appeal.

**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 National Guard Bureau the Board determined the applicant was referred to the PRB because of derogatory information found in the post board screening. A GOMOR and an investigation was the cause for the referral. He was removed from the promotion list on 28 May 2019. The applicant was selected for promotion on the FY21 promotion selection board and again referred to the PRB and removed from the promotion list on 20 February 2024. The Board majority concurred with NGB and found no material error in his records. The Board majority concluded the applicant does not meet the criteria for a Special Selection Board. The Board minority noted the applicant's contention that the advisory opinion was wrong and mischaracterizes his appeal and determined relief was appropriate.

BOARD VOTE:

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

6/6/2025

X \_\_\_\_\_

CHAIRPERSON

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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, USC, 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. AR 135-155 (Army National Guard and U.S. Army Reserve – Promotion of Commissioned Officers and Warrant Officers Other Than General Officers) in effect at the time, prescribes policy and procedures used for selecting and promoting commissioned officers (other than commissioned warrant officers) of the Army National Guard of the United States (ARNGUS) and of commissioned and warrant officers (WO) of the U.S. Army Reserve (USAR).

a. Paragraph 3–18 (Removal from a promotion list), An officer's name will not be removed from a promotion list except as authorized in this paragraph. The authority for the removal of a name from a promotion list rests with the President for commissioned officers (other than commissioned warrant officers). (2) If the Secretary of the Army (SA) recommends removal of the name of an officer from a selection board's report and the recommendation includes information that was not presented to the selection board, the information will be made available to the officer. The officer will be allowed a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. (3) Promotion advisory boards will be convened to consider the promotion status of officers who are recommended for removal from a promotion list based on physical, personal or professional disqualification. The board's recommendation for removal will be forwarded through the DCS, G-1 and the SA to the Secretary of Defense. The Office of Promotions (Reserve Component) will terminate requests for removal not supported by the promotion advisory board. An officer in an above grade who is removed from a mandatory promotion list based on a promotion advisory board recommendation or failure to receive Senate confirmation will be considered to have twice failed of selection for promotion if the officer, the officer's name is again removed from the promotion list or from the promotion board report.

b. Paragraph 3-19, officers who have either failed of selection for promotion, or who were erroneously not considered for promotion through administrative error may be reconsidered for promotion by an SSB. SSBs, convened under the Reserve Officer Personnel Management Act (ROPMA) on and after 1 October 1996, will reconsider commissioned officers, who were wrongly not considered and reconsider commissioned officers who were considered but not selected by mandatory promotion boards that convened on or after 1 October 1996. These boards do not reconsider officers who were not considered or not selected by mandatory promotion boards that convened

before 1 October 1996. The board will convene to correct/prevent an injustice to an officer or former officer who was eligible for promotion but whose records:

- Through error, were not submitted to a mandatory promotion selection board for consideration
- Contained a material error when reviewed by the mandatory selection board

Records of officers or former officers will be referred for SSB action when the Office of Promotions (RC) determines the following:

- officer was eligible for promotion consideration; however, the officer's records were, through error, not submitted to a mandatory promotion selection board
- review of a mandatory selection board finds that an officer's records contained a material error
- ABCMR requests such a referral

//NOTHING FOLLOWS//