

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240008827

APPLICANT REQUESTS:

- promotion reconsideration by a Special Selection Board (SSB) under the Fiscal Year (FY) 2024 criteria
- removal of the adverse summary document from his personnel file
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2707-1 (Department of Defense Report of Result of Trial), 6 January 2016 – reflective of the applicant being found not guilty of two counts of violating Article 120 (Rape and Sexual Assault) and one count of Article 134 (Adultery) of the Uniform Code of Military Justice (UCMJ); one count of violating Article 92 (Failure to Obey a Direct Order) was dismissed without prejudice
- DA Form 4833 (Commanders Report of Disciplinary or Administrative Action), 10 July 2015 – reflective of the applicant's charges of rape being dismissed by the Court Martial Convening Authority
- Memorandum – Subject: Request Review of the Army Adverse Information Program (AAIP) and Undue Bias in the Non-Selection for Promotion as a Result of the Not Guilty Court Martial Findings, 3 May 2024, reflective of:
 - the applicant's submitted request for the reassessment of the AAIP process
 - although his Court-Martial findings were "not guilty", the documents in his records are negatively impacting his career/promotion
- Summary of Adverse Information – reflective of the applicant being found not guilty of the rape charge; trial counsel concurred that probable cause existed to believe the applicant committed the offense of rape
- Memorandum – Subject; Response to Adverse Information Summary, 27 September 2023, reflective of the applicant's submitted request to compete against his peers for promotion selection without prejudice based on the previous charges for which he was found not guilty

- Memorandum – Subject: Probable Cause and Titling Decision, 28 September 2023, reflective of counsel's contention with the low burden of proof associated with the Criminal Investigation Division's ability to title personnel despite being acquitted of charges
- Memorandum – Subject: Probable Cause and Titling Decision, 15 September 2023, reflective of counsel's argument concerning the applicant's titling action and the negative connotation associated with it despite his finding of not guilty
- U.S. Army Intelligence and Security Command, Office of the Inspector General (IG) letter, 6 May 2024, reflective of their response to the applicant's submission for IG assistance in the review of his non-selection for promotion; advised that:
 - the requested action was not within their purview
 - his non-selection for promotion was not in violation of an Army Regulation
- DA Forms 67-10-2 (Field Grade plate (O-4-O-5; CW3-CW5) Officer Evaluation Report), reflective of an evaluation of the applicant's performance as assessed by members of his immediate leadership between 2 June 2018 - 12 September 2023
- Memorandum – Subject: Request for SSB Promotion Reconsideration, 18 April 2024, reflective of:
 - the applicant's submitted request for the reassessment of the AAIP process
 - although his court martial findings were "not guilty", the documents in his records are negatively impacting his career/promotion

FACTS:

1. The applicant states in part:

- On 5 January 2016 – he was found not guilty during a general Court-Martial
- The findings of not guilty were placed in his board file; however, the sensitive nature of the accusations invoked a negative bias against him resulting in his non-selection for promotion to lieutenant colonel (LTC/O-5) during the Fiscal Year 2024 promotion selection board
- His career manager advised him he was the only primary zone officer not selected for promotion with 4 of 5 Most Qualified rating evaluations, emphasizing the negative impact of the adverse information in his file

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

- On or about 17 April 2008 – he was appointed a commission within the Regular Army
- On 17 December 2018 (Orders Number 351-030) – he was promoted to the rank/grade of major (MAJ/O-4), effective 1 January 2019
- On 22 August 2019 – he completed the Intermediate Level Education Course
- The applicant's records are void of any derogatory information; likewise, it is void of circumstances related to an investigation for misconduct

3. On 5 June 2025, the applicant provided the following additional information pertaining to his requested relief:

- Email communication – reflective of the applicant's response to an inquiry concerning the denial of his request by the U.S. Army Human Resources Command (AHRC); on 23 April 2025 – AHRC Promotions Branch advised that they did not have the authority to conduct an SSB for his situation; redirected to the Army Review Boards Agency
- Memorandum - Subject: Supporting Documents for Case AR20240008827 – reflective of the applicant noting that:
 - He was selected for promotion to LTC by the FY25 LTC Promotion Board despite the adverse information in his records
 - He contests that had the adverse information not been in records, he would have been selected by the FY24 Promotion Board
 - He would like to continue pursuing his request for promotion reconsideration by an SSB based on the FY24 promotion criteria
- Excerpt from FY25 LTC Promotion List – reflective of the applicant being recommended for promotion to LTC

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board found that based on the charges not being made until five years after the alleged incident, and the accuser changing the story; the Board determined the incident potentially did not happen. The applicant was subsequently promoted in FY25. Therefore, the Board concluded, based on a preponderance of evidence found in the military record, the applicant's request for reconsideration by a FY24 SSB is warranted.

2. As it relates to the applicant's request for removal of the adverse summary document from his personnel file, the Board determined the applicant demonstrated by a

preponderance of the evidence that an injustice occurred prejudicial to the applicant and supports removal. Therefore, the Board granted relief.

3. 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
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- removing the adverse summary document from his military record
- referring his records to a special selection board (SSB) to be considered for promotion to LTC/O-5 under the criteria for FY24 in which he was in or above the primary zone of consideration based on his date of rank for MAJ/O-4
- if selected for promotion by an SSB, retroactively promoting him to LTC/O-5 and paying him any additional pay and allowances he would then be due as a result of the promotion and correction

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 (AR) 600-8-29 (Officer Promotions) prescribes policies, operating rules, and steps governing promotion of Army commissioned and warrant officers on the active-duty list. Chapter 2 (Selection Boards) provides that whenever the needs of the Service require, the SECARMY will convene selection boards to recommend officers for promotion to the next higher grade according to Title 10, United States Code (USC) 573 or Title 10, USC, 611. The boards will select commissioned officers for promotion to CPT, MAJ, LTC, COL, BG, and MG.

a. Paragraph 2-7 (Promotion Eligibility) provides that to be considered for promotion by a selection board, an officer must be on the Active-Duty List (ADL) on the day the board convenes. Promotion eligibility is determined by the Deputy Chief of Staff (DCS), G-1 and approved by the SECARMY. For centralized promotions, eligibility is based on an officer's Active Date of Rank and time in grade (TIG). For promotion to LTC, Officers must serve 3 years TIG to be considered for promotion. If selected, they may be promoted without regard to any additional TIG requirements.

b. Chapter 6 (Special Selection Boards (SSB)) provides that SSBs are governed by the same instructions provided to the boards that considered or should have considered an officer for promotion. Officers inadvertently omitted from consideration by a promotion board will be given the opportunity to correspond with the SSB; however, such correspondence is not required. SSBs may be convened under Title 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:

- 1) Administrative error.
- 2) Material unfairness.

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

- 1) An administrative error was immaterial, or the officer, in exercising reasonable diligence, could have discovered and corrected the error.
- 2) The Promotion Selection Board (PSB) did not consider correspondence to the board president that was delivered to the Commanding General, AHRC.
- 3) Letters of appreciation, commendation, or other commendatory data for awards below the Silver Star are missing from the service record.

d. An SSB will consider the record of the officer as it should have been considered by the original board. The record will be compared with a sampling of those officers of the same competitive category, who were recommended and not recommended for promotion by the original selection board.

e. Paragraph 6-4 (Notification) provides that AHRC will send written notification to an officer slated for consideration by a SSB at least 30 days before the board convenes. Notification will be sent to the officer's official military email account. Officers considered or reconsidered by an SSB are informed of the results, in writing, through their official military email account. Notice will be sent upon approval of the board report by the appropriate authority. HRC may elect to notify the officer of the board's recommendation after the transmittal of the report to the approval authority.

2. AR 15-185 (ABCMR) paragraph 2-9 states 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 the evidence. 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//