

United States Code Annotated

Title 10. Armed Forces (Refs & Annos)

Subtitle E. Reserve Components

Part III. Promotion and Retention of Officers on the Reserve Active-Status List

Chapter 1407. Failure of Selection for Promotion and Involuntary Separation (Refs & Annos)

10 U.S.C.A. § 14502

§ 14502. Special selection boards: correction of errors

Effective: November 25, 2015

[Currentness](#)

(a) Officers not considered because of administrative error.--(1) In the case of an officer or former officer who the Secretary of the military department concerned determines was not considered for selection for promotion from in or above the promotion zone by a mandatory promotion board convened under [section 14101\(a\)](#) of this title because of administrative error, the Secretary concerned shall convene a special selection board under this subsection to determine whether such officer or former officer should be recommended for promotion. Any such board shall be convened under regulations prescribed by the Secretary of Defense and shall be appointed and composed in accordance with [section 14102](#) of this title and shall include the representation of competitive categories required by that section. The members of a board convened under this subsection shall be required to take an oath in the same manner as prescribed in [section 14103](#) of this title.

(2) A special selection board convened under this subsection shall consider the record of the officer or former officer as that record would have appeared to the promotion board that should have considered the officer or former officer. That record shall be compared with a sampling of the records of those officers of the same grade and competitive category who were recommended for promotion and those officers of the same grade and competitive category who were not recommended for promotion by that board.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer in a grade below the grade of colonel or, in the case of an officer or former officer of the Navy, captain, whose name was referred to it for consideration, the officer or former officer shall be considered to have failed of selection for promotion.

(b) Officers considered but not selected; material error.--(1) In the case of an officer or former officer who was eligible for promotion and was considered for selection for promotion from in or above the promotion zone under this chapter by a mandatory promotion board convened under [section 14101\(a\)](#) of this title but was not selected, the Secretary of the military department concerned may, under regulations prescribed by the Secretary of Defense, convene a special selection board under this subsection to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that--

(A) the action of the mandatory promotion board that considered the officer or former officer was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or

(B) the mandatory promotion board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall be appointed and composed in accordance with [section 14102](#) of this title (including the representation of competitive categories required by that section), and the members of such a board shall take an oath in the same manner as prescribed in [section 14103](#) of this title.

(3) The special selection board shall consider the record of the officer or former officer as that record, if corrected, would have appeared to the mandatory promotion board that considered the officer or former officer. That record shall be compared with a sampling of the records of those officers of the same grade and competitive category who were recommended for promotion and those officers of the same grade and competitive category who were not recommended for promotion by that board.

(4) If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer in the grade of lieutenant colonel or commander or below whose name was referred to it for consideration, the officer or former officer shall be considered to have failed of selection for promotion by the board which did consider the officer but incurs no additional failure of selection for promotion from the action of the special selection board.

(c) **Report.**--Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each officer it recommends for promotion and certifying that the board has considered carefully the record of each officer whose name was referred to it.

(d) **Applicable provisions.**--The provisions of [sections 14104](#), [14109](#), [14110](#), and [14111](#) of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a promotion board convened under [section 14101\(a\)](#) of this title.

(e) **Appointment of officers recommended for promotion.**--(1) An officer whose name is placed on a promotion list as a result of recommendation for promotion by a special selection board convened under this section, shall, as soon as practicable, be appointed to the next higher grade in accordance with the law and policies which would have been applicable had he been recommended for promotion by the board which should have considered or which did consider him.

(2) An officer who is promoted to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon such promotion, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if the officer had been recommended for promotion to that grade by the selection board which should have considered, or which did consider, the officer.

(3) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade an officer not currently eligible for promotion or a former officer whose name was referred to it for consideration, the Secretary concerned may act under [section 1552](#) of this title to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer.

(f) **Time limits for consideration.**--The Secretary of Defense may prescribe by regulation the circumstances under which consideration by a special selection board is contingent upon application for consideration by an officer or former officer and time limits within which an officer or former officer must make such application in order to be considered by a special selection board under this section.

(g) **Limitation of other jurisdiction.**--No official or court of the United States shall have power or jurisdiction--

(1) over any claim based in any way on the failure of an officer or former officer of the armed forces to be selected for promotion by a selection board convened under chapter 1403 of this title until--

(A) the claim has been referred to a special selection board by the Secretary concerned and acted upon by that board; or

(B) the claim has been rejected by the Secretary without consideration by a special selection board; or

(2) to grant any relief on such a claim unless the officer or former officer has been selected for promotion by a special selection board convened under this section to consider the officer's claim.

(h) **Judicial review.**--(1) A court of the United States may review a determination by the Secretary concerned under subsection (a)(1), (b)(1), or (e)(3) not to convene a special selection board. If a court finds the determination to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law, it shall remand the case to the Secretary concerned, who shall provide for consideration of the officer or former officer by a special selection board under this section.

(2) If a court finds that the action of a special selection board which considers an officer or former officer was contrary to law or involved material error of fact or material administrative error, it shall remand the case to the Secretary concerned, who shall provide the officer or former officer reconsideration by a new special selection board.

(i) **Designation of boards.**--The Secretary of the military department concerned may designate a promotion board convened under [section 14101\(a\)](#) of this title as a special selection board convened under this section. A board so designated may function in both capacities.

CREDIT(S)

(Added [Pub.L. 103-337](#), Div. A, Title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2947; amended [Pub.L. 107-107](#), Div. A, Title V, § 505(c)(3)(B), Dec. 28, 2001, 115 Stat. 1088; [Pub.L. 109-364](#), Div. A, Title V, § 514(b), Oct. 17, 2006, 120 Stat. 2185; [Pub.L. 114-92](#), Div. A, Title V, §§ 502(c)(2), 512, Nov. 25, 2015, 129 Stat. 807, 809.)

[Notes of Decisions \(7\)](#)

10 U.S.C.A. § 14502, 10 USCA § 14502

Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253, 115-255 to 115-269. Title 26 current through P.L. 115-270.

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