

FILED

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

2023 JUN 12 A 8:36

NICHOLAS HARRISON, et al.,  
Plaintiffs,

v.

LLOYD J. AUSTIN, Secretary of Defense, et al.,  
Defendants.

Civil Action No. 1:18-cv-641 (LMB/IDD)

**MOTION TO CLARIFY AND ENFORCE**

**COMES NOW**, Plaintiff, Nicholas Harrison, to move for clarification and enforcement of the Court’s Order dated April 6, 2022 (as amended on May 10, 2022). In support of this motion, the Plaintiff alleges and states as follows:

1. In the Court’s Order, the Court directed the Secretary of the Army to “rescind her decision denying Harrison’s application in the Judge Advocate General Corps for the District of Columbia National Guard and reevaluate that application in manner consistent with the injunctive relief awarded to the plaintiffs.”
2. However, as noted in the Plaintiff’s Declaration, the Defendants informed the Plaintiff that they cannot comply with the Court’s Order – claiming the original application had been destroyed at some point during the course of litigation and, in the Army’s view, simply updating that application would have been insufficient.
3. Rather than addressing the injustice against the Plaintiff and taking the steps necessary to make him whole, the Defendants directed the Plaintiff to just submit another application and they appointed him as a First Lieutenant (O-2E) with a date of rank in May of 2023 –

also asserting there would be an additional eight-year service obligation upon acceptance of the commission.

4. However, said actions do nothing to acknowledge, accept, and address the injury to the Plaintiff. The case did not come before the Court as an abstract matter. It was a definite case or controversy involving a specific wrong to an individual. The Court did not just vaguely direct the Defendants to change the policy going forward. It specifically directed the Defendants to address the injury done to the Plaintiff – rescinding the decision and reevaluating that application.
5. The Plaintiff originally applied with the intent to complete his twenty-year military career in the Judge Advocate General Corps and to then retire as a commissioned officer. He has already completed twenty-three years of military service and he became eligible for retirement in September of 2020.
6. Moreover, as a new officer with more than twenty years of qualifying service, the Plaintiff will be required to appear before a Selective Retention Board (SRB) pursuant to NGR 635-102. The Plaintiff now faces the possibility of immediate separation as a First Lieutenant (O-2E). Consequently, with no other adjustments to his service record, the Plaintiff would be left without the additional retirement benefits he sought when he originally applied for a commission.
7. In accordance with the process that the Army has established to consider retroactive promotions when a servicemember's packet was not presented to the board due to an error or injustice, the Plaintiff submitted an official request for an Army Special Selection Board (SSB) to the Army's Deputy Chief of Staff (G-1) on August 22, 2022 – to whom said authority has been delegated by the Army's Secretary.

8. The Plaintiff requested that his application be put in front of his peers on the Army Special Selection Board (SSB) and they be allowed to consider the appropriate relief. However, said official request has never been acknowledged or responded to by the Army's Deputy Chief of Staff (G-1). Nor has the Plaintiff's subsequent letter following up on the issue to the Army's Assistant Secretary for Manpower and Reserve Affairs on January 27, 2023.
9. More than six months have elapsed since the Plaintiff tendered an official request and the Army's Secretary has not convened such a board and has not denied consideration by such a board in that case – allowing the Court to review that effective determination to not convene a board in accordance with 10 USC § 628 (g).
10. Since the Defendants cannot comply with the Court's Order, the Plaintiff respectfully requests that the Court clarify and enforce its order by setting aside the effective determination to not convene a board and remanding the Plaintiff's request for consideration to a Special Selection Board (SSB). The Plaintiff also respectfully requests that the Court enjoin the Army from any Selective Retention Board (SRB) proceedings to separate him from the military until a Special Selection Board (SSB) has considered that request and the Army has acted upon any of its recommendations regarding that request.

Respectfully Submitted.

*Nicholas A. Harrison*

**Nicholas A. Harrison**  
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Defendant(s).

LOCAL RULE 83.1(M) CERTIFICATION

I declare under penalty of perjury that:

No attorney has prepared, or assisted in the preparation of Motion to Clarify / Enforce  
(Title of Document)

Nicholas Harrison  
Name of *Pro Se* Party (Print or Type)

Nicholas Harrison  
Signature of *Pro Se* Party

Executed on: June 12, 2023 (Date)

OR

The following attorney(s) prepared or assisted me in preparation of \_\_\_\_\_  
(Title of Document)

\_\_\_\_\_  
(Name of Attorney)

\_\_\_\_\_  
(Address of Attorney)

\_\_\_\_\_  
(Telephone Number of Attorney)  
Prepared, or assisted in the preparation of, this document

\_\_\_\_\_  
(Name of *Pro Se* Party (Print or Type)

\_\_\_\_\_  
Signature of *Pro Se* Party

Executed on: \_\_\_\_\_ (Date)

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
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**DECLARATION OF NICHOLAS HARRISON**

1. My name is Nicholas Harrison, one of the plaintiffs in *Harrison v. Austin*. I am over eighteen years of age, I am competent to testify about the information contained in this declaration, if needed, and I offer this declaration based on my own actual, personal knowledge.
2. After this Court's Memorandum Opinion of April 6, 2022, the Defendants initially refused to discuss any details regarding the injunctive relief that had been awarded to me and provided no guidance to the District of Columbia National Guard for several months. My enlistment term was set to expire in late July of 2022. Thus, the Defendants asked me to sign a six-month extension to my service commitment – extending my term to January of 2023. At the time, it was suggested that a decision on my application would be reached by then.
3. After I signed that extension, the Defendants informed me they could not comply with this Court's Order dated April 6, 2022 and amended on May 10, 2022 which required "the Secretary of the Army rescind her decision denying Harrison's application in the Judge

Advocate Corps for the District of Columbia National Guard and reevaluate that application in manner consistent with the injunctive relief awarded to the plaintiffs.” The Defendants said my original application had been destroyed at some point during the course of litigation and, in the Army’s view, simply updating that application would have been insufficient.

4. The Defendants directed me to create another application, which required me to reassemble all of the necessary materials, and to reapply and submit another request for a medical waiver for HIV. Although I expressed concern that HIV, in and of itself, should no longer be considered a disqualifying medical condition requiring a waiver and that the Army’s assertion that it still had discretion to discriminate on that basis was problematic, I complied and prepared a request for a medical waiver in the interest of moving along in the process.
5. After I assembled the materials necessary for another application, I followed the Army’s normal procedure to correct errors or injustices resulting when an application was not presented to a selection board – tendering an official request for a Special Selection Board to consider a retroactive appointment and the appropriate time-in-grade promotions. Although this request was submitted through my chain of command to the Army’s Deputy Chief of Staff (G-1) on August 22, 2022, the Defendants have never acknowledged it, nor responded to it.
6. I was informed that my requests for waivers had been approved and my application had been forwarded to the Human Resources Command on November 6, 2022. However, although I was told that the accessions board would convene sometime that month, the Defendants again provided no timeframe for the anticipated completion of the process. My

enlistment term was set to expire again in late January of 2023. Thus, the Defendants asked me to sign another six-month extension – extending my term to July of 2023.

7. After I signed that extension, the Defendants provided no additional updates on the status of my application. I inquired about my official request for a Special Selection Board. When I received no answer, I sent a letter to the Army's Assistant Secretary of Manpower and Reserve Affairs on January 27, 2023. The Defendants have never acknowledged that, nor responded to it. I submitted an application to the Army Board for Correction of Military Records on February 19, 2023. The Army Review Boards Agency acknowledged receipt of that application, but it provided no timeline for the anticipated completion of that process – noting only that there was a backlog which could delay a decision for longer than a year.
8. After almost an entire year had passed and the Defendants had still provided no indication of when a decision might be reached, my legal team filed a Motion for Clarification of Order Dated April 6, 2022 (As Amended May 10, 2022). The motion was filed on April 5, 2023. At 8:00 p.m. on the following day, I suddenly received notification from the Defendants that my application had finally been approved by the accessions board. However, although my superiors had suggested that, based on my experience and qualifications, I would receive a commission as a Captain (O-3) when I submitted my original application in 2014, the Defendants now only offered me an appointment as a First Lieutenant (O-2) in the Judge Advocate General Corps of the District of Columbia National Guard.
9. The Defendants have still never acknowledged that, nor responded to my request for a Special Selection Board. In addition, in the communication informing me that I was being recommended for an appointment, I was told that if I accepted the commission, I would be

obligated to serve for another eight years – even though I already have over twenty years of military service and I became eligible for retirement in 2020.

10. On May 23, 2023, I appeared before the federal recognition board. On May 30, 2023, I was notified that I had officially been appointed as a First Lieutenant (O-2) in the Judge Advocate General Corps of the District of Columbia National Guard. However, at the time of this declaration, I have received no further updates regarding my official request for a Special Selection Board or my application to the Army Board for Correction of Military Records.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on June 8, 2023.

Respectfully Submitted.

*Nicholas A. Harrison*

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