

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

NICHOLAS HARRISON, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	1:18-cv-641 (LMB/IDD)
	)	
LLOYD J. AUSTIN, Secretary of Defense, <u>et al.</u> ,	)	
	)	
Defendants.	)	

ORDER

For the reasons stated in open court, pro se plaintiff Lieutenant Nicholas Harrison’s (“plaintiff” or “Lieutenant Harrison”) Motion to Clarify and Enforce (“Motion”) [Dkt. No. 372] is GRANTED IN PART and DENIED IN PART, and it is hereby

ORDERED, ADJUDGED, and DECREED that defendants be and are ENJOINED from instituting any Selective Retention Board or other proceeding to separate Lieutenant Harrison involuntarily from military service.

Plaintiff has also sought the Court’s assistance in getting the Special Selection Board (“SSB”) to consider his request for “retroactive appointment and the appropriate time-in-grade promotions.” [Dkt. No. 372-1] at 2. That part of his Motion could not be granted because defendants’ year-long delay in approving his commission to First Lieutenant rendered plaintiff ineligible to apply to the SSB when he did. Moreover, because he will not be eligible to apply for promotion to Captain until he has been a Lieutenant for a year, the delay in commissioning him has further delayed his ability to qualify for promotion.

The Court recognizes that it does not have the authority to order the defendants to evaluate Lieutenant Harrison’s request for retroactive appointment to account for the

unconstitutional rejection of his 2013 application to commission as First Lieutenant in the District of Columbia National Guard Judge Advocate General Corps; however, if Lieutenant Harrison does refile a request to have his appointment to First Lieutenant made retroactive and to receive the appropriate promotions, the Court would urge the defendants to give that request very serious consideration. This officer has provided a great service to the Army not just through his years of military service, which included two tours overseas, but by courageously fighting in court to correct an outdated, unconstitutional policy that needed to be abandoned. His record of loyal service since 2013, despite being denied a promotion for which he was fully qualified, should support appropriate time-in-grade promotions.

The Clerk is directed to forward copies of this Order to counsel of record, and plaintiff, pro se.

Entered this 19<sup>th</sup> day of July, 2023.

Alexandria, Virginia

*1st LMB*  
\_\_\_\_\_  
Leonie M. Brinkena  
United States District Judge