



The Court agrees that a remand is appropriate here to give the Army the chance to address the issue of LTC's entitlement to a promotion. The remand the government seeks would allow it "to correct simple errors" without expending the resources of the Court and the parties in reviewing a record that may be incorrect or incomplete. SKF USA Inc. v. United States, 254 F.3d 1022, 1029 (Fed. Cir. 2001). In addition, on remand, LTC Miller will have the opportunity to first present all his claims to the Board and to introduce evidence that is currently not in the record and which the Court would not otherwise have the benefit of considering. Metz v. United States, 466 F.3d 991, 998 (Fed. Cir. 2006) (clarifying that when a service member "seek[s] relief from a military corrections board before suing in the Court of Federal Claims . . . the Court of Federal Claims reviews the Board's action under the same standard as any other agency action . . . [which] necessarily limits [its] review to the administrative record") (citations omitted); see also Florida Power & Light Co. v. Lorion, 470 U.S. 729, 743 (1985) ("The focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.") (quoting Camp v. Pitts, 411 U.S. 138, 142 (1973)).

Moreover, on remand, the Board will have the authority to take effective remedial action, including convening a special selection board to determine whether LTC Miller should have been promoted in 2018 and/or 2019. See Dysart v. United States, 369 F.3d 1303, 1315 (Fed. Cir. 2004) (explaining that 10 U.S.C. § 1552 "provides for correction of military records if a promotion has been improperly denied (and for the convening of special selection boards in appropriate cases to determine whether the officer should be promoted), and for judicial review of the Board's decision"); see also 10 U.S.C. § 628(a)(1) (establishing that if, "because of administrative error a person who should have been considered for selection for promotion . . . by a promotion board was not so considered," the Secretary of the military department concerned "shall convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.").

### CONCLUSION

On the basis of the foregoing, the government's motion, ECF No. 13, is **GRANTED**. Pursuant to RCFC 52.2, the case is **REMANDED** to the ABCMR to conduct further proceedings and evaluate LTC Miller's contentions, including his claim that, but for the allegedly erroneous flag placed on his record on April 20, 2017, he would have been promoted in 2018 and 2019. LTC Miller shall be permitted to submit additional evidence in support of his claims. The Board shall also afford him additional relief consistent with its findings, including by convening a special selection board to determine whether he should be promoted pursuant to 10 U.S.C. § 1552.

The Court will retain jurisdiction over the case during the course of the proceedings on remand. The case is **STAYED** pending the results of the proceedings before the ABCMR.

LTC Miller shall file his petition before the ABCMR by **April 8, 2021**. The ABCMR shall complete its review within 120 days of receiving LTC Miller's petition. The parties shall file a joint status report by **June 8, 2021**, and every ninety days thereafter, informing the Court of the status of the proceedings before the ABCMR. Pursuant to RCFC 52.2(e), the parties shall file notice with the Court within thirty days of the ABCMR's decision on remand stating whether

that decision affords a satisfactory basis for the disposition of the case and whether the parties require further proceedings before the Court.

**IT IS SO ORDERED.**

s/ Elaine D. Kaplan  
ELAINE D. KAPLAN  
Judge