



Work-Product

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03135

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT’S REQUEST

His date of rank (DOR) to colonel (O-6) be changed from 22 Jun 23 to 2 Dec 20 and he receive all back pay and allowances.

APPLICANT’S CONTENTIONS

He was the victim of a false and libelous inspector general (IG) complaint which took more than five years to conclude far exceeding the appropriate management of IG complaints. This egregious and inappropriate delay prevented him from being promoted on the initial Air Force timeline when he was initially selected for promotion, resulting in severe opportunity costs that have caused significant harm as he was selected for promotion long after this IG investigation should have been completed. This delay in promotion also negatively impacted the time in grade he had versus what he should have had and could cause a significant loss of retirement pay should he decide to retire. If he chooses not to retire, this delay will cause reductions in time in grade, eliminating further promotion opportunities. Due to errors and in an attempt to correct a terrible injustice, his DOR should be corrected to reflect 2 Dec 20 and he should receive all back pay and allowances.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard (ANG) colonel (O-6).

According to documentation provided by the applicant:

On 20 Nov 18, according to an *IG Investigation – Notification to Subject’s Commander* memorandum, the applicant was notified by the National Guard Bureau (NGB) Director, A5/8/9, he is a subject of a California Air National Guard (CANG) Joint Forces Headquarters (JFHQ) IG investigation.

Dated 18 Jun 20, according to Special Order Work-Product the applicant was notified he was promoted to the grade of Colonel in the Massachusetts ANG with an effective date upon Federal Recognition.

Dated 15 Feb 23, according to Special Order Work-Product the applicant was notified he was promoted to the grade of Colonel in the Massachusetts ANG with an effective date upon Federal Recognition.

Dated 22 Jun 23, according to Special Order Number Work-Product the applicant was notified he was promoted in the Reserve of the Air Force to the grade of Colonel per 10 U.S.C. 14303, 14308,

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14311, and 14316 and 32 U.S.C 307(e), with a DOR and Promotion Effective Date (PED) of 21 Jun 23.

On 17 Jan 24, a printout from the applicant's Military Personnel Database System records confirms his grade of Colonel and a DOR of 21 Jun 23.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

AIR FORCE EVALUATION

NGB/AIPO, recommends partially granting the request. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. Had the applicant not had an open investigation, his promotion package would have been routed with the CY20 Fall Colonel Federal Recognition Review Board Select List (FRRB). Although he requests his DOR be corrected to 2 Dec 20, this is the date the applicant was notified, and not the date the Senate confirmed the CY20 Fall FRRB Select List, which was confirmed on 25 Mar 21. In accordance with Air National Guard Instruction 36-2504, *Federal Recognition of Promotion in the Air National Guard (ANG) and as a Reserve of the Air Force below the Grade of General Officer*, paragraph 4.1, states "Federal recognition orders for promotions to colonel cannot be issued until the Senate confirms the promotions." Therefore, they recommend his DOR and PED be corrected to reflect 25 Mar 21.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 8 Dec 23 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of NGB/AIPO and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided the results of an IG investigation which found the allegations against him as being not substantiated. The Board notes had the applicant not been the subject of an IG investigation, his promotion package would have been forwarded to the CY20 Fall Colonel Federal Recognition Review Board Select List, which was subsequently confirmed by the Senate on 25 Mar 21. As such, given the lengthy delays in the IG investigation and the fact that all allegations were found unsubstantiated, the Board finds sufficient evidence to justify changing his DOR to 25 Mar 21, the date he would have otherwise been promoted. However, for the remainder of the applicant's request, the Board determines in accordance with ANGI 36-2504, *Federal Recognition of Promotion in the Air National Guard (ANG) and as a Reserve of the Air Force below the Grade of General Officer*, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. Therefore, the Board recommends correcting the applicant's records as indicated below.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show his Date of Rank and Promotion Eligibility Date to the grade of Colonel (O-6) in the Air National Guard reflect 25 Mar 21.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-03135 in Executive Session on 12 Mar 24:

- Work-Product Panel Chair
- Work-Product Panel Member
- Work-Product Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 25 Sep 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, NGB/A1PO, dated 20 Nov 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 8 Dec 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

7/3/2024

X Work-Product

Work-Product
 Board Operations Manager, AFBCMR
 Signed by: Work-Product