



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03515

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Effective Date of Rank (EFF DOR) be changed from 11 Aug 22 to 12 Sep 21.

APPLICANT'S CONTENTIONS

His DOR is correctly recorded as 1 Apr 21; however, his EFF DOR was delayed 11 months and incorrectly recorded as 11 Aug 22. He was already selected for promotion to lieutenant colonel (O-5) on the CY20B Lt Col LAF – AIR OPS & SPEC WARF promotion list with a line number of 282 and a projected DOR of 1 Apr 21. On 2 Feb 21, he transferred, via PALACE FRONT, from active duty to the Florida Air National Guard (FL ANG). On 12 Sep 21, he received an ANG appointment to O-5. Per AFI 36-2504, *Officer Promotion, Continuation and Selective Early Removal in the Reserve of the Air Force*, dated 22 Jan 10, paragraph 7.2.2, “ADL to RASL,” member’s Date of Rank “should be calculated using current ARC requirements for IPZ promotions for the officer’s competitive category” and EFF DOR should be commensurate with “appointment to the next higher grade in the new component.”

Per Title 10 U.S.C § 14316; 14317, and Title 32 U.S.C § 307, promoting an airman through the Active Duty List to Reserve Active Status List (ADL to RASL) includes acknowledging Federal Recognition extended to the member while on active duty when SECDEF, acting for the President of the United States (POTUS), signed the CY20B promotion list. The ADL to RASL process is an AFI 36-2504 “Special Promotion Issue” designed to acknowledge a pending active duty promotion and convey it upon appointment to the next higher grade in the Air National Guard (ANG). This did not happen. A contributing factor could have been the poorly written guidance in the old AFI 36-2504, dated 22 Jan 10, which failed to adequately address the “ADL to RASL” procedure as prescribed by Titles 10 & 32. Even though AFI 36-2504 was revised on 4 Aug 23, ultimately the statutes must be followed regardless of inadequate AFI guidance.

Additionally, there is a provision for the maximum time allowed to process EFF DOR. Per 10 U.S.C. § 14308(f), if a delay “exceeds 100 days from the date the National Guard Bureau deems such officer’s application for Federal Recognition to be completely submitted by the State and ready for review at the National Guard Bureau and the delay was not attributable to the action or inaction of such officer, the effective date of the promotion may be adjusted by the Secretary concerned but not earlier than the effect date of the State promotion and the date on which the officer occupies a billet in the next higher grade.”

FLANG signed and sent his promotion package to NGB/A1P on 20 Jan 22. To meet the 100-day requirement of 10 U.S.C. § 14308(f), the latest EFF DOR allowed by NGB/A1P should have been 11 Mar 22. Instead, the actual EFF DOR stamped on his Federal Promotion order was 11 Aug 22,

AFBCMR Docket Number BC-2023-03515

Work-Product

Work-Product

154 days longer than the maximum processing timeline allowed and 338 days past his correct EFF DOR of 12 Sep 21, as prescribed by Title 10 and AFI 36-2504.

There is a systematic issue within the National Guard promotion process where U.S. Code is not being followed and airmen and soldiers with hard earned promotions are being forced to suffer helplessly in a situation that affects their finances, careers, families and retirement. To reiterate, it took 338 days to re-process his promotion to lieutenant colonel, which he was selected for, scrolled, and approved by SECDEF while he was on active duty two years earlier. The result of this excessive delay stripped him of 11 months of pay and a full evaluation period in the higher grade. Furthermore, the incorrect EFF DOR promoted him at 18 years Total Active Federal Military Service (TAFMS), whereas the correct EFF DOR (12 Sep 21) would have promoted him to lieutenant colonel at 17 years TAFMS granting him a hard-earned 20 year retirement in the grade of O-5 vs O-4. Additionally, this incorrect EFF DOR negatively impacts his retirement pay as the "high-3" will be based on a blend of O-4/O-5 pay versus just based on O-5.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an ANG lieutenant colonel (O-5).

On 14 Sep 20, according to IMT 1288, *Application for Ready Reserve Assignment*, the applicant applied for an assignment to the FLANG via Palace Front. On 20 Nov 20, the AFPC/DP2SSR Palace Chase office recommended approval and indicated the Palace Front projection had been completed.

On 16 Sep 20, according to NGB/AIPO the applicant was approved for promotion on an Active Duty scroll to lieutenant colonel.

On 1 Feb 21, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably separated for completion of required service and transferred to the ANG, State of Florida.

On 2 Feb 21, according to Order Number **Work-Product** dated 13 Feb 23, the applicant, then a major (O-4), was ordered to Full Time National Guard Duty – Active Guard Reserve in accordance with 32 USC 502 (f) and 32 USC 328, for the period of 2 Feb 21 – 4 Mar 23.

According to Special Order Number **Work-Product** dated 1 Mar 21, provided by the applicant, he was extended Federal recognition and promoted ResAF to the grade of lieutenant colonel with a DOR: 1 Mar 22; and an EFF DOR: 11 Aug 22.

On 20 Jan 22, Special Order **Work-Prod...** provided by the applicant, was published by the FLANG Office of the Adjutant General promoting the applicant to the grade of lieutenant colonel in the FLANG, effective upon Federal Recognition with a date of rank of 1 Apr 21, in accordance with ANGI 36-2504, Chapter 2, and CY20B Lieutenant Colonel LAF-AIR OPS & SPEC WARF.

On 11 Aug 22, according to a letter from the SECDEF, the applicant was appointed to the grade of lieutenant colonel in the Reserve of the Air Force.

On 7 Apr 23, according to Order Number **Work-Product** dated 23 Mar 23, the applicant was ordered to Active Duty – Active Guard Reserve – Statutory Tour – Extended Active Duty, in accordance with 10 USC 12301(d) and 10 USC 12310, for the period of 7 Apr 23 – 6 Apr 27.

On 1 Aug 24, according to Special Order Number [REDACTED] dated 24 Jan 24, the applicant was retired in the grade of lieutenant colonel and was credited with 20 years and 24 days of active service for retirement.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2504, is 9 Jan 03 (Incorporating thru Change 5, 19 Oct 07, Certified Current 22 Jan 10) paragraph 6.4. Transfer of Promotion from the ADL to the RASL. Any officer selected for promotion to a higher grade, who transfers from the ADL to the RASL of the same armed force, will receive their promotion providing the officer remains in the same competitive category. The officer's DOR on the RASL is calculated using the current Reserve of the Air Force requirements for IPZ promotions for the officer's competitive category. HQ ARPC/DPJ will award a DOR based on the calculation (see **Table 5.2.**). *NOTE:* Officers must notify HQ ARPC/DPJ to receive further instructions.

Table 5.2. Date of Rank.

R	A	B
U		
L	If an officer with no pending propriety of promotion action	then the DOR is
E		
13	Transfers from the ADL to the RASL, with a pending ADL promotion	Calculated using the current (as of the date of the transfer) ResAF IPZ eligibility criteria (Note 7)

Note 7. Calculate the officer's date as if selected (using the eligibility criteria based on the officer's service dates) by a Reserve of the Air Force Selection Board. However, at no time will the date be sooner than the date of the officer's transfer to the RASL.

6.17. When to Promote the Officer. Promote first lieutenant through colonel on the effective date of the order announcing the promotion unless the officer declines or delays the promotion.

10 USC §14308. *Promotions: how made*, (f) Effective Date Of Promotion After Federal Recognition:

(1) The effective date of a promotion of a Reserve commissioned officer of the Army or the Air Force who is extended Federal recognition in the next higher grade in the Army National Guard or the Air National Guard under section 307 or 310 of Title 32 shall be the date on which such Federal recognition in that grade is so extended.

(2) If there is a delay in extending Federal recognition in the next higher grade in the Army National Guard or the Air National Guard to a reserve commissioned officer of the Army or the Air Force that exceeds 100 days from the date the National Guard Bureau *deems such officer's application for Federal recognition to be completely submitted by the State and ready for review at the National Guard Bureau*, and the delay was not attributable to the action or inaction of such officer: (A) in the event of State promotion with an effective date before Jan 24, the effective date of the promotion concerned under paragraph (1) may be adjusted to a date determined by the

Secretary concerned, but not earlier than the effective date of the State promotion; 32 U.S. Code § 307 - Federal recognition of officers: examination; certificate of eligibility.

(a) To be eligible for Federal recognition as an officer of the National Guard, a person must: (1) receive an appointment with a view to filling a vacancy in a federally recognized unit or organization of the National Guard; (2) have the qualifications prescribed by the Secretary concerned for the grade, branch, position, and type of unit or organization involved; and (3) except as provided in subsections (d) and (e) of this section, pass an examination for physical, moral, and professional fitness to be prescribed by the President, and subscribe to the oath of office prescribed by Section 312 of this title.

(b) The examination prescribed by subsection (a): (1) shall be conducted, for the Army National Guard, by a board of three commissioned officers designated by the Secretary of the Army from members of the Regular Army or the Army National Guard of the United States, or both, and for the Air National Guard, by a board of three commissioned officers designated by the Secretary of the Air Force from members of the Regular Air Force or the Air National Guard of the United States, or both; and (2) may be held before original appointment or promotion.

DoDI 1310.01, *Rank and Seniority of Commissioned Officers*, Section 4 (d) d. An officer on the active-duty list and on a promotion list who is removed from the active duty list and placed on the reserve active-status list of the same Military Service and in the same competitive category (including a Regular officer who on removal from the active-duty list is appointed as a Reserve Officer and placed on the reserve active-status list) will be placed on an appropriate promotion list in accordance with section 14317(c) of Reference (e). The effective date of promotion and date of rank will be the same as if the officer had been selected to the grade concerned by the promotion board for reserve active-status list officers. If the Secretary of the Military Department concerned determines circumstances exist such that an inequity would result in following the foregoing method in determining date of rank, he or she may set the date of rank.

AIR FORCE EVALUATION

NGB/AIPO recommends denying the request. Based on a review of the applicant's package and evidence provided, there is no evidence of an error or injustice that supports backdating his EFF DOR. The applicant was approved for promotion on an Active Duty scroll on 16 Sep 20. Although a member may transfer with an approved promotion, in order for it to be honored it must be process through the ADL to RASL promotion process and the EFF DOR is then based on SECDEF approval. All ADL to RASL promotion packages are submitted quarterly and may take four to six months for SECDEF approval. On 2 Feb 21, he was appointed in to the ANG with a Projected Promotion Date of Rank of 1 Apr 21, as calculated by Headquarters, Air Force Personnel Center. On 20 Jan 22, his ADL to RASL promotion package was sent to NGB/AIPO during the 2022 1st Quarter ADL RASL promotion cycle and on 20 May 22 was routed along with other ADL to RASL 1st Quarter promotion packages and was approved by SecDEF on 11 Aug 22; just under three months from the time it was routed for approval.

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), and the applicant replied on 27 Dec 23. In his response, he contends regardless of the logic NGB uses to support their recommendation, the fact remains there was an egregious delay in extending Federal recognition beyond the provisions outlined in 10 USC. Furthermore, 10 USC

§ 14308(f) is backed by Public Law 117-263, “Backdating of Effective Date of Rank for Reserve Officers in the National Guard Due to Undue Delays in Federal Recognition,” requires higher authority than the OPR for determination and action. This authority lies with the “Secretary concerned.” In this case, SECAF.

The applicant’s complete response is at Exhibit E.

REVISED AIR FORCE EVALUATION

NGB/AIPO recommends denying the request. Based on a review of the applicant’s package there is no evidence to support backdating the EFF DOR. Although a member may transfer with an approved promotion, for it to be honored and processed, the SECDEF must sign for approval through the ADL to RASL promotion process. A member’s DOR and EFF DOR cannot be determined until the member transfers to the ANG. Once transferred, his DOR (projected promotion date) is calculated via AFPC using the Air Reserve Component In-the-Promotion Zone (ARC IPZ) eligibility criteria, per AFI 36-2504, Table 6.1, Date of Rank, Rule Number 13, “Calculated using the current (as of date of the transfer) ARC IPZ eligibility criteria. Note: The officer must be on an approved promotion list prior to transfer. The officer must also be subsequently appointed as a Reserve officer and subsequently appointed in the higher grade on the RASL. (Note 6 and paragraph 7.2.2).”

Once the applicant’s DOR requirement was met, he was then eligible for promotion submittal; however, he was not submitted for promotion until after he was moved into his current promotable position on 12 Sep 21. Then, after going thru the State’s internal promotion approval process, his promotion package was submitted to NGB/AIPO on 20 Jan 22.

Per Department of Defense Instruction (DoDI) 1300.4, *Inter-Service and Inter-Component Transfers of Service Members*, Section 3, b. *Appointments and Promotions*, paragraph (3) states “A commissioned officer who transfers between Military Services is on a promotion list to the next higher grade in accordance with Sections 624, or 1403 of Title 10, U.S.C., the Secretary of the Military Department concerned will integrate the officer into the promotion list of the gaining Military Service based on the officer’s date of rank in his or her current grade in the losing Military Service.” He was awarded on EFF DOR on 11 Aug 22, based on the timeframe the package was submitted and routed. All ADL to RASL promotion packages are submitted quarterly and may take four to six months to be approved. Based on the 20 May 22 routing date and SECDEF approval date, the final EFF DOR was awarded earlier than expected at just under three months.

Therefore, per DoDI 1300.4, his DOR of 1 Apr 21 and EFF DOR of 11 Aug 22 for promotion to lieutenant colonel is correct.

The complete advisory opinion is at Exhibit F.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 10 Apr 24 for comment (Exhibit G), and the applicant replied on 16 Apr 24. In his response, he contends the FY23 NDAA updates the Title 10 USC verbiage which provides SECAF the authority to backdate a member’s EFF DOR in cases such as his. He was selected for promotion in the Regular Air Force, then he was required to be re-selected twice again in the ANG; once at the State level then again at the Federal level without due consideration for EFF DOR backdating as outline in Title 10 USC, pursuant to the FY23 NDAA. Instead of a five month differential between his DOR of 1 Apr 21 and his EFF

DOR, there is an 18-month differential caused by an excessively long and redundant ANG promotion process with no consideration given to backdating EFF DORs.

The applicant's complete response is at Exhibit H.

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 not the victim of an error or injustice. While the Board notes the two advisory opinions prepared by NGB/AIPO in this case; however, after thoroughly reviewing this application, the Board concurs with the rationale and recommendation of the NGB/AIPO advisory, dated 7 Feb 23 and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends an egregious delay, caused by an excessively long and redundant ANG promotion process in extending Federal recognition, led to an 18-month deferential between his date of rank and his effective date of rank. However, the Board disagrees. The Board determines his date of rank and effective date of rank were accurately determined through the ADL to RASL promotion process in accordance with governing directives and law. Although he claims the timeline for being extended Federal recognition should be based on his DOR, he is mistaken. Once his DOR was established, he was then eligible for promotion consideration contingent on being placed in a promotable position. He was placed in a promotable position on 12 Sep 21, and after going through his State's internal approval process, his package was submitted to the National Guard Bureau on 20 Jan 22. The Board finds given that all ADL to RASL promotion packages are submitted quarterly and may take four to six months to be approved, the 20 May 22 routing date to SECDEF and SECDEF's approval date, the applicant was extended Federal recognition well within the timeline established by governing directives and law. Finally, in regard to his request that his effective date of rank should be backdated by the authority granted to SECAF, the Board finds the applicant's circumstances to be no different from similarly situated officers. Therefore, the Board recommends against correcting the applicant's records.
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 Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

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-2023-03515 in Executive Session on 11 Jun 24:

Work-Product

Panel Chair

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Panel Member

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Panel Member

AFBCMR Docket Number BC-2023-03515

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 25 Oct 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/AIPO, dated 22 Nov 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Dec 23.
- Exhibit E: Applicant's Response, w/atchs, dated 27 Dec 23.
- Exhibit F: Revised Advisory Opinion, NGB/AIPO, dated 7 Feb 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 10 Apr 24.
- Exhibit H: Applicant's Response, w/atchs, dated 16 Apr 24.

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.

1/10/2025

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Board Operations Manager, AFBCMR

Signed by:

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