

IN THE CASE OF: ██████████

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20220009100

APPLICANT REQUESTS: Adjustment of his date of rank (DOR) to major (MAJ) in accordance with the Fiscal Year (FY) 16N MAJ AMEDD Promotion Selection Board.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Email correspondence

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, in effect, he was DA selected as part of the FY16N Major (AMEDD) Board while serving as a member of the 20th Special Forces Group (A), ██████████ Army National Guard (██████ ARNG). He was slotted in a valid Major (MAJ)/O-4 slot at the time of selection and was also selected by the State Selection Board. He was not promoted following the selection due to the unit S-1's failure to submit a packet to ████████ ARNG OPM after selection by the State Career Management Board for promotion to MAJ/O-4.
3. The applicant provides email correspondence as follows:
  - a. Congratulatory email on selection for promotion to MAJ, sent from the Assistant Corps Chief of Staff for Reserve Affairs Medical Services Corps JPSA-FSH, Colonel (COL) ██████████ dated 20 September 2016.
  - b. Between the applicant and the Quota Source Manager, Deputy Chief of Staff Operations - ████████ ARNG, Staff Sergeant (SSG) ██████████ dated between 6 February 2017 and 6 October 2018, regarding the applicant's selection to MAJ and his request for SSG ██████████ to give him a call to discuss options regarding his eligibility for ILE attendance.

c. Between the [REDACTED] ARNG Office of Personnel Management (OPM) Noncommissioned Officer In Charge (NCOIC), Sergeant First Class (SFC) [REDACTED] and the Joint Forces Headquarters – Headquarters and Headquarters Detachment (JFHQ-HHD) First Sergeant (1SG) [REDACTED] dated between 14 and 16 May 2019, regarding the applicant's pending transfer to the Individual Ready Reserve since 2017, his pending promotion, and the fact that Office of Personnel Management (OPM) had not received the applicant's promotion packet from any of the S1s of his assigned units. Further pointing out that the applicant's DA Selection will expire around September 2019.

4. A review of the applicant's service record shows:

a. On 24 May 1994, he took the Oath of Office as a second lieutenant, Reserve Commissioned Officer.

b. He promotions and reassignments within the USAR are as follows:

- Appointed to First Lieutenant (1LT), effective 28 May 1996
- Promoted to Captain (CPT), effective 1 June 1998
- Released from USAR Control Group (AT) to USAR Control Group (Reinf) as a 1LT, effective 11 May 1999, reason: mandatory
- Promoted to CPT (RC), effective 27 May 2001
- Released from USAR Control Group (Reinf) to Standby Reserve (Inactive List) as a CPT, effective 27 December 2006, reason: officer made no MSO Election
- Appointed to 1LT, effective 14 March 2008
- Reassigned to 865 MC Hospital Headquarters and Headquarters Detachment, effective 14 March 2008, reason: appointment
- Submitted DA Form 5074-1-R (Record of Award of Entry Grade Credit (Health Services Officers), dated 17 June 2008
- Promoted to CPT, effective 12 April 2010
- Reassigned to the [REDACTED] ARNG, effective 20 March 2014, reason: voluntary request
- Discharged from [REDACTED] ARNG as a CPT, effective 30 September 2019, reason: NGR 635-100 5a(8) upon becoming a member of the Army Reserve
- Promoted to CPT (USAR), effective 30 September 2019
- Promoted to MAJ (USAR), effective 1 October 2019

c. Effective 30 September 2023, the applicant is with Headquarters, 1st Brigade, Fort Dix USARC, Fort Dix, New Jersey.

5. A National Guard Bureau advisory opinion, dated 7 March 2024, recommends disapproval further stating:

a. The applicant requests the date of rank to MAJ to be adjusted from 1 October 2019. He claims that despite being in a valid O-4 slot at the time of selection and being selected by the State Selection Board, he was not promoted to MAJ because his unit S1 failed to submit a packet to ■■■ ARNG OPM.

b. The applicant states that he was a part of the FY16N (AMEDD) board for selection to MAJ and was notified in September 2016 by Medical Service Corps. In February 2017, he submitted a memorandum accepting his promotion with 20th SFG, the unit he was assigned to at the time. The applicant also started his transfer process into the IRR in 2017. However, neither of these were processed by 20th SFG. When he tried to submit paperwork to enroll in ILE in September 2018, he was unable to do so because he had not yet been selected by the state selection board and he did not have a DA Selection Memorandum or a State promotion order. He was eventually selected by the State Career Management Board for promotion to MAJ, but his promotion packet was never sent to NGB. The unit requested a new DD Form 368 and an updated memorandum to process his promotion packet, which the applicant provided, but he was missing OERs and APFTs from 2014 to 2016, so his promotion packet and his transfer to IRR could not be completed. The applicant eventually transferred to IRR effective 30 September 2019 and was promoted to MAJ on 1 October 2019.

c. After scrutinization of the available information, the applicant did not have OERs and APFTs in his personnel files that could be used to put together his promotion packet for promotion to MAJ. His unit requested a DA Form 4187 to indicate whether he intended to transfer to the IRR or not, but the applicant refused to provide a DA Form 4187 until his promotion packet was submitted. There was a delay caused by inaction on both sides. Since his promotion packet was not submitted by May 2019, his DA selection was set to expire in September 2019. The applicant eventually transferred and accepted his promotion in IRR. His personnel records show that he is still missing OERs and APFTs from 2014 to 2016. Additionally, based on the unit modified tables of organization and equipment (MTOE), the position he was in during 2016 to 2018 is a O-3 CPT position. He therefore could not have been promoted to MAJ while serving in that position.

d. For these reasons, it is the recommendation of this office that the applicant's request be disapproved. Based on the applicant's records, his promotion packet was delayed due to inaction on both sides. Since he was in a O-3 position until at least 10 September 2018, he would not have been eligible for promotion until then. After he left this position, he failed to provide documents needed to submit his promotion packet. He eventually transferred to IRR, which was his intent beginning in 2017, and accepted the promotion to MAJ.

e. The Army National Guard Federal Recognition Branch did not provide input for this recommendation. However, the ■■■ ARNG concurs with this recommendation.

6. The applicant was provided a copy of the advisory opinion for his review and comment. He has not responded.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board found no evidence that would contradict the advisory official's conclusion that the applicant could not have been promoted to MAJ while serving in the ALARNG. Based on a preponderance of the evidence, the Board determined the applicant's date of rank for MAJ is not in error or unjust.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

:            :            :            GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

█           █           █            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

6/25/2024

X

█

CHAIRPERSON

█

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10 U.S. Code, section 741 (Rank: commissioned officers in the armed forces), states, in pertinent part, the Secretary concerned may adjust the date of rank of an officer appointed under section 624(a) of this title to a higher grade that is not a general officer or flag officer grade if the appointment of that officer to that grade is delayed from the date on which (as determined by the Secretary) it would otherwise have been made by reason of unusual circumstances (as determined by the Secretary) that cause an unintended delay in (i) the processing or approval of the report of the selection board recommending the appointment of that officer to that grade; or (ii) the processing or approval of the promotion list established on the basis of that report.
3. Title 10 U.S. Code, section 14308 (Promotions: how made) provides:
  - a. 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.
  - b. If the Secretary concerned determines that there was an undue 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, and the delay was not attributable to the action (or inaction) of such officer, the effective date of the promotion concerned under paragraph (a) above may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion.
4. Department of Defense Instruction 1310.01 (Rank and Seniority of Commissioned Officers) provides that The Secretary of the Military Department concerned may adjust the date of rank of an officer, except a general or flag officer, appointed to a higher grade under Title 10 U.S. Code, section 624(a) or 14308(a) if the appointment of that officer to the higher grade is delayed by unusual circumstances. The Secretary of the Military Department concerned must determine that the unusual circumstance caused an unintended delay in processing or approval of the selection board report or promotion list in order for an officer's date of rank to be adjusted and will notify the Under Secretary of Defense for Personnel and Readiness (USD (P&R)) of adjustments

exercised under this authority. The notification will include the name of the officer(s) and a discussion of the reasons for the adjustment of the date of rank.

5. National Guard Regulation 600-100 (Commissioned Officers – Federal Recognition and Related Personnel Actions), in effect at the time, provides procedures for processing all applications for Federal recognition. Paragraph 2-2(b) states the effective date of Federal recognition for original appointment is that date on which the commissioned officer executes the oath of office in the State.

//NOTHING FOLLOWS//