

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20220011731

APPLICANT REQUESTS:

- a change to his effective date of promotion to Reserve Component (RC) lieutenant colonel (LTC) from 1 January 2022 to fiscal year 2020 (FY20) with all related back pay and allowances
- an appearance hearing with the Board

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

- DD Form 149 (Application for Correction of Military Record), 19 October 2022
- Counsel letter, 13 October 2022 with exhibits "a" through "j"
- Exhibit "a": Special Orders Number IP-10718, National Guard Bureau (NGB), 25 April 2022, (promotion order)
- Exhibit "b": Inspector General (IG) email, 21 July 2020
- Exhibit "c": memorandum, Secretary of the Army, 6 February 2019 (Removal from Promotion Review Board FY18 (Applicant), Army Promotion List (APL), Competitive Category (CC), and Promotion Selection Board (PSB)
- Exhibit "d": Texas Army National Guard (TXARNG) email, 31 July 2019 and memorandum, U.S. Army Cadet Command, Headquarters (HQ), 1st Brigade TX, Special Selection Board (SSB) Justification for Applicant, 11 June 2019
- Exhibit "e": memorandum, TXARNG, 4 September 2019, Response to Request for SSB FY19 RC LTC APL for applicant
- Exhibit "f": NGB email to TXARNG, 5 September 2019 and TXARNG FY20 LTC APL, 4 September 2019
- Exhibit "g": TXARNG email response, FY20 LTC Army Promotion List (APL) Initial 601 and TXARNG memorandum, dated 4 September 2019, Response to Request for SSB FY19 RC LTC APL (ARNGUS) with FY20 LTC APL Report, 4 September 2019
- Exhibit "h": TXARNG email 12 December 2019
- Exhibit "i": National Guard Bureau (NGB) email, 23 December 2019 and FY20 LTC APL, 23 December 2019
- Exhibit "j": NGB email chain, 11 December 2019 to 22 February 2020 and memorandum, U.S. Army Cadet Command, HQ, 1st Brigade, DA Board FY20 RC LTC APL, dated 16 January 2020

- Exhibit "k": TXARNG email, 4 February 2020
- Exhibit "l": TXARNG email, 5 June 2020 and memorandum, U.S. Army Cadet Command, HQ, 1st Brigade, 4 June 2020 and 3 June 2020 with a timeline
- Exhibit "m": TXARNG "leapfrog" email, 15 December 2021

### FACTS:

#### 1. The applicant states, through counsel:

a. He served our nation for over 20 years after his commissioning as an infantry officer. He served in four combat deployments and completed the Operational Research/Systems Analysis (ORSA) course. His record is impeccable.

b. He was recently promoted to LTC on 1 January 2022 with a date of rank (DOR) of 15 April 2020. Due to miscommunication between the NGB and TXARNG regarding his inclusion on the FY20 LTC promotion board list, he was excluded from the FY20 Board list and had to apply for an SSB.

c. This was an oversight not of his doing and caused a delay in the applicant's selection the LTC and subsequent Promotion Review Board (PRB) process. Once the PRB was adjudicated, he was retained on the FY20 scroll.

d. He was passed over two times or "leapfrogged" on the TXARNG Active Guard Reserve (AGR) sequence list. He filed an IG complaint to the TX Military Department IG regarding a denial of his proper promotion. The TXARNG determined there was in fact an administrative oversight.

#### 2. The applicant provided through counsel, copies of:

a. Promotion orders issued by TXARNG, dated 25 April 2022, showing the Department of the Army and Air Force, NGB authorized his promotion to LTC on 1 January 2022 with a DOR of 15 April 2020.

b. Email traffic, dated 21 July 2020, showing a response from the Office of the Inspector General, concerning his omission from the FY20 LTC promotion board list. This email shows his omission from the RC FY20 LTC promotion board list was an oversight due to administrative error. It further states that after receiving notification from the TXARNG J1 Office of Personnel Management (OPM) and Army Human Resources Command (AHRC) addressing his concern, the IG determined his issue was remedied and would take no further action in his case.

c. A letter from the Secretary of the Army, dated 6 February 2019, showing he was removed from the FY18 LTC ARNGUS APL (Army Promotion List) CC (Competitive Category) PSB (Promotion Selection Board).

d. Email dated 31 July 2019, showing his unit, TXARNG requested the NGB to be placed on the SSB FY19 RC LTC APL PSB.

e. A memorandum issued by U.S. Army Cadet Command, HQ, 1st Brigade, dated 11 June 2019 showing his request for reconsideration for promotion to LTC and inclusion on the FY19 LTC APL.

f. A memorandum issued by the TXARNG dated 4 September 2019, showing his request to be included on the FY19 RC LTC APL was denied by AHRC.

g. Email traffic from NGB, dated 5 September 2019, notifying his command of the FY20 LTC APL Board schedule date of 28 January 2020.

h. Email traffic from the TXARNG sent to the NGB on 12 December 2019, requesting the applicant be included on the FY20 LTC DA Board, and that he received a message that he was removed from the FY20 DA Board by AHRC.

i. Email traffic from the NGB to TXARNG, dated 12 December 2019, notifying his command of the second FY20 RC LTC APL.

j. Email traffic from the NGB and notification to the TXARNG, dated 11 December 2019 to 22 February 2020, showing the applicant's request was sent on the suspense date, the same date the Board had completed and sent the FY20 LTC APL to AHRC for RC promotions.

j. A memorandum for the record issued by U.S. Army Cadet Command, HQ, 1st Brigade, dated 16 January 2020, referencing an AHRC exception to policy is permitted to allow candidates to be added to the officer promotion board.

k. Email from TXARNG to the applicant, dated 4 February 2020, notifying him he was listed on the FY20 RC LTC APL.

l. Email from TXARNG to the applicant, dated 5 June 2020, notifying the applicant his request was forwarded to AHRC.

m. An email from the TXARNG, to the applicant, dated 15 December 2021 and notifying him of a "leapfrog" business rule, that other qualified officers could be considered for promotion while he waited final determination of his PRB.

3. A review of the applicant's service records shows:

a. He is presently assigned in the TXARNG.

b. On 14 December 2001, the applicant took his oath of office and was appointed a Reserve Commissioned Officer in the Infantry Corps.

c. On 24 September 2004, he completed an Oath of Office as a second lieutenant in the TXARNG.

d. Special Orders Number 333, dated 23 December 2013, shows he was promoted to major (MAJ)/O-4 in the ARNG, with an effective date of 15 February 2013, with a DOR to MAJ of 19 October 2012.

e. Order 092-031, issued by the TXARNG, dated 1 April 2016, shows he was assigned to Joint Force Headquarters, TXARNG.

f. On 3 July 2018, the Commander, TXMF, JFHQ, notified him he was selected for promotion following the RC LTC Selection Board convened on 30 January 2018.

g. On 6 February 2019, the Secretary of the Army removed him from the FY18, LTC ARNGUS APL Competitive Category (CC) recommended promotion list.

h. On 1 May 2020, he was reassigned by an ARNG intra command move in duty position of Chief Assessment Officer in the rank/grade of MAJ.

i. On 20 July 2021, the Deputy Chief of Staff, G-1, retained him on SSB for consideration on the FY20 LTC ARNGUS, APL CC, PSB.

j. Orders issued by the AG, JFHQ, TXARNG, dated 6 June 2022, promoted him to LTC, effective 1 January 2022 with a DOR of 15 April 2020.

4. On 6 September 2023, the Chief, Special Actions Branch, NGB, provided the Army Review Boards Agency (ARBA) an advisory opinion recommending approval of his request. This memorandum reads, in part:

a. The (Applicant) was promoted to LTC with a DOR of 15 April 2020 and an effective date of 1 January 2022. He requests that ABCMR approve the change to his effective date of promotion to LTC from 1 January 2022 to a date in FY 2020 because he claims his promotion was delayed due to no fault of his own.

b. The applicant's records show that he was selected by the FY18 RC LTC APL PSB but was subsequently removed from the FY18 RC LTC ARNGUS APL CC

recommended promotion list prior to the recession of the FY19 RC LTC APL PSB. In June 2019, the applicant submitted a request for a SSB based on the fact that he could not submit his records for the FY19 RC LTC APL PSB. In September 2019, HRC denied the request for SSB because he was still in a promotable status when the FY19 RC LTC APL board convened on 30 January 2019. In September 2019 when the FY20 LTC APL Initial 601 was being reviewed by NGB for validation, (Applicant) was removed because of his promotion code as DA selected. The TX JFHQ followed up during the same month and added the (Applicant) to the 601 because he was removed from the FY18 list. However, in December 2019, the (Applicant) received a notification from HRC that he was removed as a candidate from the FY20 LTC APL PSB, and TX OPM attempted to add him back to the list. A week later when the validated FY20 LTC APL 601 was received by NGB, the (Applicant's) name was on the AG 601 roster. A month later in January 2020 when the (Applicant) attempted to access his board files, he was unable to and he notified the OPM. The (Applicant) submitted a 30-day memo to the TX OPM the same day it was requested in order to access his board files, but this memorandum was never sent to NGB because TX OPM verified that the applicant was already on the FY20 LTC APL board. In February 2020, the (Applicant) received a notification from NGB that his 30-day memorandum was not received in time for the FY20 LTC APL. In June 2020, another SSB was submitted for FY20 LTC APL to HRC.

c. Per Army Regulation 600-8-29, paragraph 3-8, the ADOR and effective date of promotion may be earlier than the date of the actual order after a delay. Additionally, per paragraph 6-10, an officer appointed to the next higher grade as the result of the recommendation of an SSB will have the same date of grade, the same effective date for the pay and allowances of that grade, and the same position on the ADL as the officer would have had if he or she had been recommended for promotion to that grade by the board which should have considered, or which did initially consider, him or her. Paragraph 7-11 also states that an officer or warrant officer retained on the promotion list by the SECARMY shall, upon such promotion, have the same DOR, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he or she would have had if no delay had intervened, unless the SECARMY determines that the officer was unqualified for promotion for any part of the delay.

d. After further investigation, it appears that there were significant miscommunication and mishandling of his promotion between the NGB and TX JFHQ. This oversight, not of the applicants doing, caused a delay in the applicant's selection to LTC and subsequent PRB process. Once the PRB was adjudicated, he was then retained on the FY20 Scroll. While waiting on the SSB and PRB, he was passed over twice, or "leapfrogged" on the TXARNG AGR sequence list. TXARNG supports the applicant's request and recommends that his effective date of promotion should be changed to 24 September 2020 when he was mobilized under T10 authority. Currently, the (Applicant's) DOR is 15 April 2020 because that is the date of the FY20 DA Board

list approval, but at this time, he was not assigned to a higher-grade position nor was a controlled-grade available. On 1 May 2020, the AG, TXARNG selected him for an O5 position, but there was still no controlled-grade available. On 24 September 2020, he was mobilized and no longer fell under T32 AGR controlled-grade restraints, so he was eligible for promotion on T10 orders while mobilized because he met all qualifications.

e. For these reasons, it is the recommendation of this office that the applicant's request be approved. Based on the evidence presented and according to TXARNG, the applicant's delay in promotion was through no fault of his own and this office recommends that his effective date of promotion be changed to 24 September 2020 and receive back pay and allowances.

5. On 8 January 2024, the applicant was provided with a copy of this advisory opinion to give him an opportunity to submit a response/rebuttal. He did not respond.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
3. The Board concurs with the NGB advisory opinion; there were significant miscommunications and mishandling of the applicant's promotion between the NGB and TXARNG. This oversight was not the fault of the applicant. The Board recommends correcting the applicant's effective date of promotion to 24 September 2020 and that he receives back pay and allowances base on this correction.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	█	: : GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- a. correcting his record to show his effective date of promotion to LTC/O-5 as 24 September 2020; and
- b. paying him back pay and allowances as appropriate, based on this correction.

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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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, paragraph 2-11 reads that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Title 10, United States Code (U.S. Code), section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

3. Title 10, U.S. Code, section 1552, the law which governs the operation of the Board, states that "The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be."

4. Army Regulation 600-8-29 (Officer Promotions), currently in effect (9 September 2020), prescribes the officer promotion function of military human resources (HR) support operations. It is linked to AR 600-8 and provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support Active Component officer promotions.

a. Paragraph 3-8. Date of rank and effective date of promotion after a delay. When a delay in promotion is ended, the promotion approval authority will determine if the officer was, in fact, unqualified (as opposed to ineligible, as described in this regulation) for promotion during all or part of the delay and will adjust the date of rank (DOR) and effective date of promotion accordingly. For officers on HQDA-centralized promotion lists, the promotion approval authority is HRC—Chief, Promotions Branch. The ADOR and effective date of promotion may be earlier than the date of the actual order.



b. Paragraph 6-10. Effect of selection for promotion.

(1) Officers selected for promotion by an SSB will, as soon as practicable, be appointed to that grade in accordance with 10 USC 624, or, in the case of a warrant officer, of 10 USC 578.

(2) An officer appointed to the next higher grade as the result of the recommendation of an SSB will have the same date of grade, the same effective date for the pay and allowances of that grade, and the same position on the ADL as the officer would have had if he or she had been recommended for promotion to that grade by the board which should have considered, or which did initially consider, him or her. In the case of an officer who is not on the ADL when appointed to the next higher grade, placement on the ADL pursuant to the preceding sentence will be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent SSB.

c. Paragraph 7-11. Effect of retention. An officer or warrant officer retained on the promotion list by the SECARMY shall, upon such promotion, have the same DOR, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he or she would have had if no delay had intervened, unless the SECARMY determines that the officer was unqualified for promotion for any part of the delay. If the SECARMY makes such a determination, the Secretary may adjust such DOR, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

//NOTHING FOLLOWS//