

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230000467

APPLICANT REQUESTS: in effect, his date of rank (DOR) to major (MAJ/O-4) be adjusted from July 2022 to October 2020, the start of fiscal year 2021 (FY21).

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

- DD Form 149, Application for Correction of Military Record
- Memorandum, Subject: Selections from the FY20 Officer Career Management Board (OCMB) Order of Merit List (OML), 4 June 2020 with Unit Manning Report
- Email correspondence, 27 April 2021
- DA Form 1559, Inspector General Action Request (IGAR), 13 March 2022
- Email correspondence, 1 June 2022
- National Guard Bureau (NGB) Special Orders Number 72 AR, 22 September 2022
- [REDACTED] Army National Guard ([REDACTED] ARNG) Orders 0002060016.00, 27 September 2022
- Case Management Division memorandum, 6 April 2023

FACTS:

1. The applicant states, in effect -

a. The state of [REDACTED] was short of promotable captains (CPT/O-3), so he took action to make sure all of his paperwork was in order to be selected for promotion to MAJ during his first consideration in 2020.

b. In 2020, his unit deployed and during his deployment, he was selected for and accepted promotion. The promotion assignment was to the Director of Military Support (DOMS) position at Joint Force Headquarters (JFHQ), Montgomery, AL. He contends that he coordinated with the Rear Detachment on several occasions regarding his promotion.

c. After returning from deployment, he had still not been promoted despite all his efforts of trying to resolve any issues with his unit. The next reassignment board moved

him to the 226th Maneuver Enhancement Brigade (MEB) in Mobile, AL. At that point, his promotion got pulled into the Department of the Army (DA) Promotion Selection process and the State could not do anything. He talked to his new unit, and they agreed to file an IG complaint. He submitted all his evidence and the IG office agreed that the State of Alabama “messed up” in processing his promotion.

3. Having prior enlisted service, the applicant executed his oath of office in the █ ARNG as a commissioned officer in the rank of second lieutenant/O-1 on 9 August 2010.
4. He was promoted to first lieutenant on 10 March 2012 and subsequently promoted to CPT/O-3 on 18 March 2015.
5. The applicant was ordered to active duty in support of Operation Enduring Freedom (Trans-Sahara) on 7 February 2020.
6. A memorandum, Subject: Selections for the FY20 OCMB OML, 4 June 2020, published by JFHQ, ALARNG, AL, shows the applicant was selected for promotion to MAJ/O-4 based on position vacancy and from his position on the OML. An undated UMR shows the applicant was assigned as a Fire Support Officer with the Headquarters Detachment.
7. The applicant was released from active duty on 15 October 2020.
8. Email correspondence during the period from 16 February 2021 through 27 April 2021 shows several inquiries were made between the 27th Special Forces Group (SFG) Human Resource Technician, first sergeant for JFHQ-Headquarters and Headquarters Detachment, and the █ ARNG Battalion S1 regarding if and when the applicant could be reassigned to Joint Element, Joint Forces paragraph and line number per the reassignment board and OML.
9. A DD Form 1559, IGAR, dated 13 March 2022, shows the applicant requested, in effect, the State of AL take corrective action to adjust his DOR to MAJ/O-4 due to the failure of the █ ARNG to properly process his promotion packet in a timely manner.
10. An IG response, dated 26 May 2022, states, the █ ARNG State IG found that in accordance with National Guard Regulation (NGR) 600-100, Commissioned Officers Federal Recognition and Related Personnel Actions, there was a prescriptive process for promoting mobilized ARNG Officers. However, the applicant’s transfer was not initiated accordingly and delayed his promotion process. Upon the DA Selection Board results, he could request an exception to policy through his unit to the G1 to determine his correct DOR.

11. A memorandum, 22 September 2022, published by the National Guard Bureau (NGB), shows he was promoted to MAJ/O-4 with a DOR/effective DOR of 8 July 2022.

12. Special Orders Number 72 AR, dated 22 September 2022, published by the Departments of the Army and Air Force NGB, promoted the applicant to MAJ/O-4, effective 8 July 2022.

9. Orders 0002060016.00, dated 27 September 2022, published by the [REDACTED] ARNG, Augoe Army Element JFHQ Army, [REDACTED], promoted the applicant to MAJ/O-4 effective 8 July 2022. These orders further show he was assigned in the duty position of Fire Support Officer.

10. On 6 December 2023, the Chief, Special Actions Branch, NGB provided an advisory opinion and recommended partial approval of the applicant's request to adjust his DOR to MAJ/O-4. This official stated, in effect:

a. The applicant claims the delay in his promotion was a result of 15-month transfer process which would have permitted a Unit Vacancy Promotion (UVP).

b. The applicant was informed of a shortage in promotable CPTs in FY17/18. He completed the Finance Captain's Career Course in FY19. He completed and submitted a promotion packet prior to deployment with the 20th SFG in January 2020; the applicant deployed from January to October 2020. In May 2020 he was informed via email of selection for promotion, and he accepted. The applicant claims to have been moved to a O-4 position and worked with the State to process the promotion. From 16 February 2021 to 27 April 2021 email documents show the Battalion S1, Unit Human Resources Technician, and JFHQ communicating to move the applicant to the Joint Element Joint Forces (8CGAA) in para/line number 100-08 in order to complete the promotion.

c. The applicant had a 1 October 2021 transfer date to the 226th MEB with an after deployment first Inactive Duty Training (IDT) date of November 2021. He continued with promotion efforts. The applicant was informed by the unit the promotion packet would go before the DA Selection Board. He contends being behind peers in year group 2010 by years.

d. The IG inquiry found his transfer was not initiated accordingly and had delayed the promotion process. The IG stated upon the DA Selection Board results, the applicant could request an exception to policy through the unit to the G1 to determine his correct DOR.

e. The [REDACTED] ARNG Office of Personnel Management (OPM) representative along with the previous OPM Noncommissioned Officer in Charge, confirms the applicant was

selected for the FY20 OML for promotion. The applicant was then listed on the FY20 Reassignment Board to be moved into a promotable position. ■■■ ARNG OPM representative states only two service members (SM) from the FY20 OML were moved to promotable positions and these positions were not originally listed on the OML document. The OML document states SMs will be promoted as vacancies become available. The next available position opened 1 October 2021 with the 226th MEB.

f. The previous OPM NCOIC states the applicant's unit communicated that the applicant would be placed in a MAJ/O-4 position but was not. He was placed in a CPT/O-3 position prohibiting the completion of a UVP. He could have been placed in a vacant position per the FY20 Reassignment Board document as of 1 September 2020. This position remained vacant until 1 August 2021.

g. The DOMS states the position number 00070275, Deputy J1 paragraph and line number 100/06 that the applicant was to be placed in was frozen until another SM was placed into the position. No date of fulfillment was specified.

h. The ■■■ ARNG OPM representative states the applicant had a suspense date of 1 November 2021 to submit a UVP packet but did not have the first IDT until November 2021. During November 2021 the applicant fell within the DA Promotion Board Zone and was no longer eligible for UVP.

i. The applicant provides an IG final response letter, IG packet, Promotion orders, 8 July 2022, and Battalion S1, Unit HR Tech, JFHQ email correspondence from 16 February 2021 to 27 April 2021, and OCMB OML memorandum as supporting documents.

j. The ■■■ ARNG OPM provides email correspondence from the DOMS as supporting documentation.

k. A review of the applicant's request was conducted by the ARNG Officer Policy branch. The Officer Policy Branch Action Officer (AO) states while NGR 600-100, Personnel-General-Commissioned Officers Federal Recognition and Related Personnel Actions, paragraph 8-7 authorizes the promotion of mobilized ARNG officers, there was an administrative issue preventing the applicant's promotion while mobilized (during the year 2020). The Officer Policy Branch AO review shows the State OPM seems to request a full relief as early as September 2020 and another request was initiated on 16 February 2021. Although the applicant was eligible and recommended prior to February 2021, it appears there were some concerns with slotting/availability while mobilized, and the physical act of State appointment in the higher grade wasn't feasible until the return from deployment. Given the time when the unit was making the effort to get the applicant promoted, combined with The Adjutant General memorandum

announcing the OML when positions become available, the Officer Policy Branch AO recommends a DOR adjustment for no earlier than 16 February 2021.

l. After further review of the applicant's documents provided and discussions with the ■■■ ARNG and ARNG Officer Policy branch, it is the conclusion of this office, that the applicant met time in grade and education requirements for portion resulting in his addition to the FY20 OML promotion list. However, the OML board memorandum states the applicant will be promoted as vacancies become available and the first available position with the 20th SFG was on or about 16 February 2021 and 1 October 2021 with the 226th MEB.

m. The State initiated a request for promotion on 16 February 2021. This office recommends the applicant's DOR be adjusted to 16 February 2021. The ARNG Officer Policy branch concurs with this recommendation.

n. The ■■■ ARNG concurs with DOR adjustment to 16 February 2021. This is the date of next attempt by the applicant's unit for promotion into a verified vacant position prior to the DA Selection Board. The ■■■ ARNG expressed concurrence with the DOR adjustment of 1 September 2020 as well, because the error was no fault by the applicant. The ■■■ ARNG states 1 September 2020 is the applicant's eligible movement date had a UVP been completed.

11. On 6 April 2023, the applicant was provided a copy of this advisory opinion for comment and/or rebuttal. On 28 December 2023, he responded that he concurred with the proposed date of 16 February 2021.

12. The ABCMR may correct an officer's DOR/effective DOR when a proper appointment has already occurred.

13. Title 10, U.S. Code 624 and 741 provide for situations in which properly appointed officers are provided "backdated" dates of rank and effective dates to remedy errors or inequities affecting their promotion. The authority to remedy these errors or inequities is given to the Service Secretaries.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted.
2. The Board concurred with the conclusion of the advisory official that the evidence supports adjustment of the applicant's DOR for MAJ/O-4. Based on a preponderance of the evidence, the Board determined his DOR for MAJ/O-4 should be changed to 16 February 2021.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by showing he was promoted to MAJ/O-4 effective 16 February 2021. He should receive any additional pay and allowances he is due as a result of this correction.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to (list what was denied).

7/23/2024

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. NGR 600-100, Commissioned Officers – Federal Recognition and Related Personnel Actions, states upon selection and promotion to a higher grade, the Active Guard and Reserve management branch will forward correspondence inviting the State to promote the officer to the next higher grade effective on a specific date. If acceptable, the State will issue orders promoting the officer. In order for an officer to be concurrently appointed and promoted as a Reserve commissioned officer of the Army, the State action must be federally recognized. Federal recognition action is the acknowledgment by the Federal government that an officer appointed, promoted, or transferred to an authorized grade and position vacancy in the ARNG meets the prescribed laws and regulations.

2. The ABCMR may not appoint an officer to a higher grade. That authority is reserved for the President and has not been delegated below the Secretary of Defense.

3. The ABCMR may correct an officer's date of rank/effective date of rank when a proper appointment has already occurred.

a. Title 10, U.S. Code 624 and 741 provide for situations in which properly appointed officers are provided "backdated" dates of rank and effective dates to remedy errors or inequities affecting their promotion. The authority to remedy these errors or inequities is given to the Service Secretaries.

b. Department of Defense Instruction (DODI) 1310.01 (23 August 2013) provides that a Service Secretary may "adjust the date of rank of an officer ... appointed to a higher grade ... if the appointment of that officer to the higher grade is delayed by unusual circumstances."

c. What constitutes "unusual circumstances" will, generally, be for the Board to determine based on the available evidence, which often includes an advisory opinion.

d. There may be cases (specifically correction of constructive credit that affects original appointment grade) where relief is not possible because an appointment to a higher grade has not yet occurred. In those cases, the Board should be advised of the limits of its authority. The Board may also be advised that the applicant can submit a request for reconsideration after he or she has been appointed to a higher grade.

//NOTHING FOLLOWS//