

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 April 2024

DOCKET NUMBER: AR20230000787

APPLICANT REQUESTS: in effect, his date of rank (DOR) to captain (CPT)/O-3 be back dated from 16 August 2022 to 17 May 2021.

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

- DD Form 149, Application for Correction of Military Record
- Orders 302-020, 29 October 2019
- Special Orders Number 65 AR, 13 September 2022
- Orders 0002097667.00, 18 October 2022
- Email correspondence, 18 October 2022

FACTS:

1. At the time of his request, the applicant was serving as a commissioned officer in the Active Guard Reserve (AGR).
2. The applicant states his DOR for his promotion to CPT is incorrect. He contends that delays and promotion packet errors prevented his promotion from being processed with the correct DOR.
3. Having prior enlisted service, the applicant accepted an appointment as a Reserve commissioned officer in the Arkansas Army National Guard (ARARNG) on 17 November 2017, in the rank and pay grade of second lieutenant/(2LT/O-1).
4. The applicant was promoted to first lieutenant/(1LT/O-2) and extended Federal recognition, effective 17 May 2019.
5. He completed the Field Artillery Officer Basic Leader Course on 13 August 2019.
6. Special Orders Number 65 AR, National Guard Bureau, 13 September 2022, extended the applicant Federal recognition for his promotion to CPT, with an effective date and DOR of 16 August 2022.
7. He completed the Field Artillery Captain's Career Course on 16 June 2023.

8. The applicant provides email correspondence which shows he contacted the State Officer Personnel Manager, ARARNG on 18 October 2022, regarding the DOR listed on his promotion orders. This ARARNG official stated, in effect, that the applicant's promotion packet was not submitted until October 2021. It was returned to his unit a couple of times because of errors and finally accepted in December 2021. The packet went to the Federal Recognition board in January 2022. This Official further stated that the applicant was eligible for promotion to CPT in May 2021 therefore his unit delayed his promotion by not submitting the packet on time which seems to have cost the applicant six to eight months of processing time.

9. 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 may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion.

10. The ABCMR may correct an officer's DOR/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. Defense of Defense Instructions 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.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The evidence shows the NGB extended the applicant Federal recognition for promotion to CPT with a date of rank and effective date of 16 August 2022. However, there was clearly a delay in his promotion processing. The NGB recognized this delay and adjusted the applicant's effective date and date of rank to 1 May 2022, in line with the guidance in the 2023 NDAA. His promotion packet was actually submitted in October 2021. When taking normal processing time (staffing, processing, scroll), the May 2022 date seems reasonable. Therefore, the Board determined no further relief is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[REDACTED]			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.

[REDACTED]

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, U.S. Code, Section 14308(f), Effective Date of Promotion after Federal Recognition, states that 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. Further stated is that 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 may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion.
2. Title 10, U.S. Code, section 14303. Eligibility for consideration for promotion: minimum years of service in grade states in subparagraph:
 - a. Officers in Pay Grades O-1 and O-2. An officer who is on the reserve active-status list of the Army and holds a permanent appointment in the grade of second lieutenant or first lieutenant as a reserve officer of the Army, may not be promoted to the next higher grade until the officer has completed two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant.
 - b. Officers in Pay Grades O-3 and above. Subject to subsection (d), an officer who is on the reserve active-status list of the Army and holds a permanent appointment in a grade above first lieutenant, may not be considered for selection for promotion to the next higher grade until the officer has completed three years, in the case of an officer of the Army holding a permanent appointment in the grade of captain, major, or lieutenant colonel.
3. National Guard Regulation (NGR) 600-100, Commissioned Officer Federal Recognition and Related Personnel Activities, states that a commissioned Officer who has been promoted by the State and extended Federal Recognition in the higher grade will be concurrently promoted to the higher grade in the Reserve of the Army with assignment to the Army National Guard. Federal recognition will be extended by the NGB to those Officers found qualified by the board and approved by the Secretary of the Army after Senate confirmation of appointment. The effective date of Federal recognition will be the date of Senate confirmation if vacancies exist within the statutory

limitation prescribed by Title 10, U.S. Code, section 3218, or, if no vacancies exist at that time, on the date such vacancies occur.

a. A second lieutenant (2LT) must complete a minimum of 3 years of service as a 2LT prior to being considered for promotion to first lieutenant (1LT)/O-2 and Federal Recognition in that grade.

b. A 1LT must complete a minimum of 2 years of service as a 1LT prior to being considered for promotion to captain (CPT)/O-3 and Federal Recognition in that grade.

c. An officer in the grade of 2LT or 1LT who has been assigned and served creditably for at least one year in a CPT or higher may be examined by the Federal Recognition Board for promotion to the next higher grade. Further, that officer must have served for at least one year in the grade immediately preceding the rank to which he or she is being promoted. An officer may be promoted only once under this exception and must meet all other promotion eligibility criteria. Except as provided above, a 2LT who is promoted to the grade of 1LT will be extended Federal recognition in the higher grade on the date he or she completes three years of promotion service.

4. AR 135-100, Appointment of Commissioned and Warrant Officers of the Army, prescribes policy and procedures for the appointment of commissioned and warrant officers in the Army National Guard of the United States and the USAR. Paragraph 3-12 Appointment grade and date of rank, states persons receiving original appointments as Reserve officers of the Army with assignment to the JAGC and granted commission service credit of 3 years or more, but less than 7 years, appointment grade will be first lieutenant.

5. 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 Instructions 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.

6. AR 135-155, Promotion of Commissioned Officers and Warrant Officers other than General Officers, states that the minimum time in grade (TIG) for promotion to First Lieutenant (1LT)/O-2 is 2 years with 42 months being the maximum TIG. The minimum TIG for promotion to Captain (CPT)/O-3 is 2 years with 5 years being the maximum TIG. The minimum TIG for promotion to Major (MAJ) is 4 years with 7 years being the maximum TIG.

//NOTHING FOLLOWS//