

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 September 2023

DOCKET NUMBER: AR20230001485

APPLICANT REQUESTS: correction of his Date of Rank (DOR) for his promotion to the rank/grade of major (MAJ)/O-4.

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

- DD Form 149 (Application for Correction of Military Record)
- Mobilization Orders
- DA Forms 67-9 (Officer Evaluation Report (OER))

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. Despite repeated requests, he was not provided sufficient details for the Military Education (MILED) waiver program for promotion to MAJ, while serving on continuous Contingency Operation-Active Duty Operational Support orders.

b. He asks the Board to back-date his promotion from captain (CPT) to MAJ as if he had not required Selective Continuation (SELCON). He commissioned as an officer on 10 December 1998. His DOR for promotion to CPT is 23 December 2003 and his DOR for promotion to MAJ is 18 October 2012. Typical Army National Guard (ARNG) Time in Grade (TIG) for promotion from CPT to MAJ was 48 months, at that time.

c. He was an ARNG Soldier on almost continuous mobilization from 12 September 2011 to March 2009, when he completed CO-ADOS orders to transfer to the U.S. Army Reserve (USAR).

d. He was unable to schedule or attend the Captain's Career Course (CCC) or attend Professional Military Education (PME), while serving on mobilization orders. He

requested information from the sources provided in an All Army Activities message about the MILED waiver process but he never received sufficient information to submit a waiver request.

e. He recently discovered the waiver request was very simple, "I am mobilized and not allowed to attend PME." In June 2009, he incurred an injury and was on a temporary profile and further locked out of PME until he was able to obtain a permanent profile from several events of the Army Physical Fitness Test (APFT) in July 2011.

3. The applicant's service record contains the following documents for the Board's consideration:

a. National Guard Bureau (NGB) Form 337 (Oaths of Office), dated 10 December 1998 shows the applicant completed the oath of office in the Vermont ARNG (VTARNG) in the rank/grade of second lieutenant (2LT)/O-1.

b. On 14 January 1999, Special Orders Number 12 issued by the National Guard Bureau (NGB), extended federal recognition for the applicant's initial appointment in the ARNG.

c. DA Form 71 (Oath of Office - Military Personnel), dated 8 January 2000, shows the applicant completed the oath of office as a Reserve commissioned Officer in the rank of 2LT.

d. Orders Number 310-008, published by Green Mountain Armory, Camp Johnson, dated 6 November 2003, promoted the applicant to the rank of CPT with an effective date of 23 December 2003.

e. Memorandum from the NGB, dated 19 April 2004, informed the applicant he was promoted to the rank of CPT with a DOR of 23 December 2003.

f. NGB Form 22 (Report of Separation and Record of Service) shows the applicant was transferred to the Retired Reserve in the rank of CPT on 17 September 2009.

g. By memorandum (undated), the applicant was notified by Headquarters, U.S. Army Reserve Command, that he was not selected for promotion to MAJ because his records did not show he had completed the required civilian and/or military education by the board convene date of 1 March 2010.

h. DA Forms 1059 (Service School Academic Evaluation Report) show the applicant completed Phases 1 and 2 of the Signal CCC on 29 July 2011 and phases 3 and 4 of the Signal CCC on 23 September 2011.

i. On 17 February 2012, by memorandum, 81st Regional Support Command, informed the applicant that a Department of the Army Reserve Components promotion selection board convened, and he was not selected for promotion to MAJ but he was selected for SELCON on the reserve active status list.

j. Orders Number B-11-207159 published by the U.S. Army Human Resources Command (AHRC), dated 8 November 2012, promoted the applicant to the rank of MAJ effective on with a DOR of 19 October 2012.

k. Orders Number B-10-809209, published by AHRC, dated 25 October 2018, promoted the applicant to the rank/grade of lieutenant colonel (LTC)/O-5, effective on with a DOR of 1 November 2018.

4. The applicant provides the following documents for the Board's consideration:

a. Orders showing, he was mobilized, ordered to Active Duty, and completed temporary changes of station from September 2001 through 2 November 2012. The orders are available for the Board's consideration.

b. DA Forms 67-9, which show the applicant was rated as a CPT for the following time periods:

(1) 9 June 2003 through 8 June 2004, he was rated as outstanding performance, must promote and best qualified. His senior rater stated the applicant was the top company grade officer in the Command and Control Support Agency.

(2) 9 June 2004 through 31 March 2005, he was rated as outstanding performance, must promote and best qualified. His senior rater stated the applicant had unlimited potential who was easily in the top 20 percent of officers in his grade that the senior rater rated. Send him to the Signal CCC and promote to MAJ.

(3) 1 April 2005 through 18 July 2005, he was rated as satisfactory performance, promote and best qualified. His senior rater stated the applicant had excellent potential for promotion.

(4) 19 July 2005 through 3 January 2006, he was rated as outstanding performance, must promote and best qualified. His senior rater stated the applicant would be an excellent company commander.

(5) 4 January 2006 through 31 July 2006, he was rated as outstanding performance, must promote and best qualified. His senior rater stated the applicant had excellent potential for company command selection and promotion to MAJ.

(6) 23 September 2006 through 6 February 2007, he was rated as satisfactory performance, promote and best qualified. His senior rater stated the applicant should take company command at the earliest possible date and be promoted to MAJ.

(7) February 2007 through 10 January 2008, he was rated as outstanding performance, must promote and best qualified. His senior rater stated select for company command, resident CCC, and promote.

(8) 11 January 2008 through 25 July 2008, he was rated as outstanding performance, must promote and best qualified. His senior rater stated promote to MAJ and then challenge him with the most demanding positions the Army and Department of Defense (DoD) have to offer.

(9) 25 July 2008 through 10 March 2009, he was rated as outstanding performance, must promote and best qualified. His senior rater stated promote to MAJ and then challenge him with the most demanding positions the Army and DoD have to offer.

(10) 10 March 2009 through 9 March 2010, he was rated as outstanding performance, must promote and fully qualified. His senior rater stated once he successfully completed CCC, he should be selected for promotion.

(11) 10 March 2010 through 9 March 2011, he was rated as satisfactory performance, promote and fully qualified. His senior rater stated promote to MAJ as soon as possible and select for challenging assignments.

(12) 10 March 2011 through 15 July 2011, he was rated as outstanding performance, must promote and fully qualified. His senior rater stated the applicant made significant contributions to the Brigade's automation efforts, during the brief rating period.

(13) 16 July 2011 through 15 July 2012, he was rated as outstanding performance, must promote and best qualified. His senior rater stated best CPT the senior rater served with in 29 years. The applicant was already working at the Field Grade level and should be wearing the rank of MAJ now.

5. On 6 September 2023, the NGB, Chief, Special Actions Branch, provided an advisory opinion, with attachments, for the Board's consideration, which states, in effect:

a. The applicant requests his DOR to MAJ of 18 October 2012 to be retroactively adjusted to a date that corresponds with TIG requirements for promotion to MAJ. The NGB recommended disapproval of his request.

b. The applicant alleges he was unable to apply for a MILED waiver following numerous unsuccessful requests for information from his unit about the program. He claims that he was unable to attend his PME due to being on continuous mobilization orders from September of 2001 to March of 2009 prior to his transfer to the USAR. He also notes that he incurred an injury in June 2009 that further prevented him from attending PME due to being on a permanent profile for several months. The applicant contends his promotion to MAJ did not occur according to the typical promotion timeline (48 months TIG) for CPT to MAJ. Therefore, he requests backdating his DOR based on the presumption of earlier eligibility.

c. The applicant was appointed to the grade of 2LT in the VTARNG on 10 December 1998. He was subsequently promoted to CPT on 23 December 2003. On 28 April 2009, the applicant requested and was approved for a conditional release in order to be appointed in the USAR. Effective 17 September 2009, the applicant was discharged from the VTARNG and transferred to the USAR Control Group (Reinforcement). On 7 October 2009, he was reassigned to the 75th Battle Command Training Division. On 1 March 2010, he was first notified by the Department of the Army (DA) Reserve Components Mandatory Selection Board of his non-selection for promotion. A subsequent DA Promotion Selection Board selection memorandum, dated 17 February 2009 informed the applicant of his consecutive non-selection for promotion along with his approval for SELCON by the Secretary of the Army per recommendation of the of the SELCON board. Effective 19 October 2012, he was promoted to the rank of MAJ in the USAR. Thereafter, the applicant was promoted to the rank of LTC effective 1 November 2018.

d. Pursuant to National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), dated 22 November 2002, chapter 8, Section II, paragraph 8-7a, eligibility requirements to be considered for federal recognition following state promotion to fill a vacancy include but are not limited to:

- to be in an active status for one year minimum;
- to be medically fit and meet height and weight standards;
- have met TIG;
- have completed MILED and civilian education requirements
- have passed the APFT/Army Combat Fitness Test

Additionally, paragraph 8-10i stipulated that MILED waivers are for consideration by DA Mandatory Boards only. Subparagraph 8-10i(2) further provides that MILED waivers are authorized for promotion to the grades of MAJ and LTC only. CPTS and MAJs may request a waiver if they are in or above the zone of consideration for the DA Board, served 12 or more cumulative months of documented outside the Continental U.S. deployments within the 36 months preceding the convening date of their mandatory

promotion board. For promotion to MAJ, CPTs must have completed the nonresident portion of the CCC.

e. The applicant did not fulfill all of the aforementioned eligibility requirements for a unit vacancy promotion. Though he reached the TIG requirements on 22 December 2007, he could not have been considered for promotion, at the time, due to not having completed his MILED. In fact, MILED waivers are not applicable for unit vacancy promotions as they are for consideration by DA Mandatory Boards only. Furthermore, in reviewing the applicant's eligibility for a MILED waiver, it appears he served in Afghanistan on a deployment from 7 July 2005 to 13 July 2006, among other active duty orders, mostly for special work, operational support, contingency operations, and mobilizations within the continental U.S. However, that deployment does not fall within the 36 months preceding the convening date of his mandatory promotion board on 1 March 2010. Besides, the applicant's DA Form 1059 indicated he completed his non-resident distance learning requirement as part of his CCC (phases 1 and 2) on 29 July 2011. The applicant successfully finalized his CCC on 23 September 2011. Based on the above, it is difficult to argue, therefore that the applicant could have been eligible for a MILED waiver prior to his mandatory promotion board.

f. To further inquire about this matter, NGB contacted the VTARNG. The State indicated the applicant could not have been considered for a unit vacancy promotion to MAJ at 48 months due to not having completed his MILED requirements. It is also opined the applicant's promotion to MAJ would have required a selection by the Fiscal Year 2010 Reserve Component DA Board. Additionally, the State highlights the MILED waiver information for that board was provided in the 09-269 Military Personnel Message issued on 10 November 2009. Meanwhile, it notes the applicant's effective date of separation from the VTARNG was 17 September 2009. As a result, the State could not have provided this information to the applicant past his discharge.

g. While it is unfortunate that a significant gap occurred in the applicant's promotion from CPT to MAJ, the reasons for his consecutive non-selection by the DA Board are unknown, at this time. It is likely that such outcome could have wholly or partially resulted from lack of the MILED required for promotion to a higher grade at the time.

h. In light of the above, the NGB deems that there is not substantiating evidence to believe that a MILED waiver, if submitted timely, could have impacted the outcome of the board decision. This is corroborated by the fact the applicant was ineligible for a MILED waiver based on the requirements outlined above. Consequently, NGB does not support the applicant's request for his DOR to MAJ be retroactively adjusted to a date compatible with the promotion timeline for CPT to MAJ.

i. The opinion was developed in collaboration with the VTARNG and the ARNG Officer Policy Branch.

6. On 11 September 2023, the advisory opinion, and attachments, were provided to the applicant to allow him the opportunity to respond. He did not respond.

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 Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board noted that the applicant did not fulfill all the eligibility requirements for a unit vacancy promotion. Although the applicant reached time in grade in December 2007, he was ineligible for a unit vacancy promotion due to his not having met the MILED requirements. The Board found the documentation available for review insufficient to determine a reason that would have disallowed the applicant from completing the necessary training and allow for consideration for a unit vacancy promotion to MAJ. Therefore, the Board found insufficient evidence of an error or injustice to warrant a recommendation for relief.

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 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.



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 3 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 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition and Related Personnel Activities) prescribes policies and procedures governing the appointment, assignment, temporary Federal recognition, Federal recognition of commissioned officer of the Army National Guard.

a. Paragraph 8 -7 promotion to fill unit vacancies states to be considered for federal recognition following State promotion to fill a unit vacancy, an ARNG commissioned officer must have completed the minimum MILED requirements. For promotion to MAJ that included completion of the CCC.

b. Paragraph 8-8 states a commissioned officer must complete the following minimum TIG prior to be considered for promotion and federal recognition in the higher grade. To be promoted from CPT to MAJ a minimum of 4 years TIG.

3. Department of Defense Instructions 1310.01 (Rank and Seniority of Commissioned Officers) states the Secretary of the Military Department concerned may adjust the DOR of an officer, except a general or flag officer, appointed to a higher grade under Title 10, USC, sections 624(a) or 14308(a) (Promotions: how made) 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 DOR to be adjusted.

//NOTHING FOLLOWS//