

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20230003261

APPLICANT REQUESTS:

- adjustment of his date of rank (DOR) to chief warrant officer 3 (CW3)/W-3 to reflect 29 July 2022 vice 31 January 2023
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- 29 July 2022 Federal Recognition Board (FRB) Proceedings
- Special Orders (SO) #62 AR, 13 February 2023

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 on 29 July 2022, in accordance with National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), he was approved for promotion to CW3, and his Federal recognition packet was forwarded to the National Guard Bureau (NGB) with his State approval. He received promotion orders to CW3 on 15 February 2023 with an effective date of 31 January 2023. He is requesting his effective DOR to CW3 be backdated from 31 January 2023 to 29 July 2022, as he believes it is compliant with Title 10, United States Code, paragraph 2 of section 14308(f) and as a result of the undue delays by no fault of his own, he was in the Federal recognition process in excess of well over 100 days.
3. The applicant provides a memorandum, dated 10 August 2022, with the results of the 29 July 2022 FRB Proceedings which indicates the applicant's recommendation for promotion was approved, among others.
4. A review of the applicant's service record shows:

- a. He enlisted in [REDACTED] Army National Guard ([REDACTED] ARNG) on 6 November 2015.
  - b. He entered active duty on 11 May 2016. He was honorably released from active duty on 28 June 2016. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 month and 18 days of active service.
  - c. Having had prior enlisted service in the U.S. Air Force and the ARNG, he was appointed as a Reserve commissioned officer in the ARNG and executed an oath of office on 29 June 2016.
  - d. Orders 217-012, dated 4 August 2016, appointed the applicant to the [REDACTED] ARNG in the rank of WO1 following completion of the Warrant Officer Basic Course (WOBC) within 24 months of the effective date of the appointment.
  - e. On 4 June 2018, the NGB issued Special Orders (SO) #124 announcing the Federal recognition of the applicant's initial appointment as a warrant officer 1 (WO1) within the [REDACTED] ARNG, effective 17 August 2017.
  - f. Orders 154-008, dated 3 June 2018, appointed the applicant in the rank of Chief Warrant Officer 2 (CW2) to the [REDACTED] ARNG with an effective date of 19 June 2018.
  - g. On 14 December 2018, the NGB issued SO #327 announcing the Federal recognition of the applicant's promotion to the rank/grade of CW2, effective 29 June 2018.
  - h. Orders 0004044731.00, dated 21 February 2023, promoted the applicant in the [REDACTED] ARNG to the rank of CW3, effective 31 January 2023 as a UH-60 Pilot.
  - i. On 13 February 2023, the NGB issued SO #62 AR announcing the Federal recognition of the applicant's promotion to the rank of CW3, effective 31 January 2023.
5. On 9 August 2024, the NGB Chief, Special Actions Branch, rendered an advisory opinion in the processing of this case. He opined:
- a. After coordination with the NGB's Federal Recognition Branch, the applicant's promotion packet was submitted by the State to NGB on 12 August 2022. The NGB assigned it to a scroll on 26 October 2022 and it was published with a DOR of 31 January 2023. The scrolling process took 97 days which is under the 100-day limit per ADIR 2019-28. The packet did however take 74 days at NGB which is 14 days over the 60-day allowance for that part of the promotion process.

b. It is the recommendation of the office that the applicant's request be partially approved. The applicant's promotion packet was delayed by 14 days at the NGB and should take no more than 60 days before being assigned to a scroll. The applicant's DOR should be backdated to 16 January 2023 vice the current 31 January 2023 to account for this 14-day delay.

6. On 9 August 2024, the advisory opinion was forwarded to the applicant for his acknowledgment and/or response.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. NGR 600-100, Chapter 10 (Federal Recognition Boards for Other Than General Officers) provides that commissioned officers of the ARNG are appointed and promoted by the State. In order for an officer to be concurrently promoted as a Reserve commission officer, the State action must be federally recognized.

9. By law, 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.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the findings and recommendations of the NGB advisory opinion, the Board concluded there was sufficient evidence of a delay in promotion processing which warrants changing the applicant's date of rank to CW3 to reflect 16 January 2023, vice 31 January 2023.

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 records of the individual concerned be corrected by changing his date of rank and effective date of rank to Chief Warrant Officer Three to reflect 16 January 2023, vice 31 January 2023.

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 changing the date of rank to any earlier date.

2/5/2025

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, U.S. Code, 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. 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, it states in paragraph 2-11 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.

3. National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions) Chapter 10 (Federal Recognition Boards for Other Than General Officers) provides that commissioned officers of the ARNG are appointed and promoted by the State. In order for an officer to be concurrently promoted as a Reserve commissioned officer, the State action must be federally recognized.

4. Title 10, United States Code (USC), Section 14308(f) (Effective Date of Promotion after Federal Recognition) provides that the effective date of a promotion of a Reserve commissioned officer of the Army 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. 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.

5. Department of Defense Instructions 1310.01 (Rank and Seniority of Commissioned

Officers) states 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, USC, Sections 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.

//NOTHING FOLLOWS//