

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230003557

APPLICANT REQUESTS: Her promotion effective date be backdated to compensate for delays in processing at the National Guard Bureau (NGB) level. She is requesting her date of rank (DOR) and effective date of promotion be backdated from 16 February 2023 to 22 October 2022.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Federal Recognition Board ([REDACTED] Army National Guard (ARNG)) - 9 April 2022
- Time Line email
- Emails - 17 pages

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, her state held a Federal Recognition (FedRec) Board on 9 April 2022; however, she did not get promoted until 16 February 2023. Her unit vacancy promotion packet remained at the National Guard Bureau (NGB) for a total of 159 days from submission by the state. Normal processing time is about 45 days. NGB G1 lost [REDACTED] request for an O-6 Controlled Grade for her position, which was the primary reason for the excessive delay (from 20 April to 3 August just for the controlled grade approval). Once scrolled, she was promoted in 148 days. Army Directive 2019-28 also states that scrolls beyond 100 days are considered as an undue delay in the FedRec process. She is only asking for her promotion date to be adjusted to the NGB delays, there were an additional 45 days where her promotion packet was with the Directorate of Military Personnel Management.

3. The applicant enlisted in the U.S. Army Reserve on 15 June 1995, completed basic enlisted training, and was released from active duty to her USAR Troop Program unit.

On 14 February 1997 she enlisted in [REDACTED] ARNG for 6 years, serving under the last name of [REDACTED]

4. She completed Officer's Candidate School and was commissioned as a second lieutenant in the Ordnance Corps on 19 August 2001. On 13 December 2004, she was authorized a transfer to [REDACTED] ARNG ([REDACTED] ARNG) with an effective date of 13 January 2005.

5. The applicant has remained in an active status including a period of mobilized service in Kosovo and as an Active Guard and Reserve officer earning several awards, including two Meritorious Service Medals.

6. The [REDACTED] ARNG received a completed ARNG Fed Rec packet on 20 April 2022; however, it was not processed until 11 July 2022. The records also show a delay in the control grade process and that the packet was forwarded for approval on 11 July 2022, received approval on 3 August 2022, later assigned to scroll on 26 September 2022, and eventually approved on 16 December 2023.

7. In the processing of this case, an advisory opinion was obtained on 29 April 2024, from the Chief, Special Actions Branch, NGB, in coordination with the Army National Guard Federal Recognition office. The advisory recommended partial approval stating the applicant's request for a DOR be partially adjusted to 19 December 2022. The FED REC office found that the Soldier's claim of delays in the federal recognition process were substantiated, and therefore recommended a partial approval. The time frame for assignment of a scroll is approximately two to three weeks and the processing time for a scroll to be completed is approximately seven to eight months. Therefore, the applicant should have been placed on Scroll PL 15-17 with the DOR of 21 May 2018.

8. A copy of the advisory opinion was forwarded to the applicant and no additional comment from the applicant is of record.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and National Guard Bureau- Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for partial relief finding the applicant's date of rank should be adjusted to 19 December 2022.

2. The Board found the applicant's unit vacancy promotion packet was received April 2022, but was not processed until July 2022, which exceeded the expected timeline. The Board noted this delay in processing impacted the applicant's promotion to the next higher rank. The Board determined, based on the advisory opine, there is sufficient evidence to partially correct the applicant's date of rank to 19 December 2022. Therefore, partial relief was granted.

BOARD VOTE:

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| : | : | : | 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 amending the applicant's date of rank (DOR) and effective date of promotion to show 19 December 2022.

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 promotion effective date be backdated to compensate for delays in processing at the National Guard Bureau (NGB) level. She is requesting her date of rank (DOR) and effective date of promotion be backdated from 16 February 2023 to 22 October 2022.

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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. The authority granted by Title 10, U.S. Code, Section 1552 (Correction of Military or Naval Records) is not unlimited. The ABCMR has the authority to correct only Army records. The Board has no authority to correct records created by the Department of Defense, other branches of the Services, Department of Veterans Affairs, or any other governmental agency. In the case of actions, they are State not Federal actions and primarily under the total control of the State Adjutant General. The ABCMR may only recommend possible actions.

3. On 13 August 2018, the National Defense Authorization Act of Fiscal Year 2019 (NDAA FY19) was enacted by Congress. It amended 10 U.S.C. § 14308(f) by adding a paragraph regarding the Secretary of the military department's authority to adjust effective dates of promotion when there was an undue delay in extending federal recognition in the next higher grade. The effective date of promotion could be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion. However, the NDAA FY19 expressly stated the amendment shall take effect on 13 August 2018 (the date of enactment) and "shall apply with respect to promotions of officers whose State effective date is on or after that date."
4. Title 10 USC 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.
5. Title 10, section 14308(f) (Effective date of promotion after Federal Recognition), states 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.
6. National Guard Regulation (NGR) 600-100 provides procedures for processing applications for Federal Recognition. Paragraph 10-15b states that temporary Federal Recognition may be granted by an FRB to those eligible when the board finds that the member has successfully passed the examination prescribed herein, has subscribed to the oath of office, and has been appointed by a state order for assignment to a position vacancy in a federally recognized unit of the ARNG. The FRB will forward the NGB Form 89 and allied documents to The Adjutant General. When the member is favorably recommended, The Adjutant General will endorse the packet to the NGB. If the member meets the qualifications and requirements for Federal Recognition, the Chief NGB extends permanent Federal Recognition to the member in the grade and branch in which the member is qualified.
7. 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."
 - a. What constitutes "unusual circumstances" will, generally, be for the Board to determine based on the available evidence, which often includes an advisory opinion.
 - b. 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.

8. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//