

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 September 2024

DOCKET NUMBER: AR20230003658

APPLICANT REQUESTS: amendment of his date of rank to lieutenant colonel (LTC)/O-5 to 22 July 2021 vice 17 February 2023.

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

- DD Form 149 (Application for Correction of Military Record)
- Assignment Orders 279th Armed Forces Support Brigade (AFSB)
- Criminal Investigation Letter (CID)
- Federal Recognition (Fed Rec) Notice, 16 August 2021
- Promotion Orders to LTC/O-5
- Permanent Change of Station (PCS) Orders, 15 November 2023

FACTS:

1. The applicant states his date of rank to LTC should be backdated to 22 July 2021. He was assigned as the Deputy Commander of the 279th AFSB in Huntsville, AL on this date. His promotion was delayed significantly due to an erroneous Guard Recruiting Assistance Program (GRAP) investigation. CID mailed him a letter in December 2022 clearing his record and he was able to promote on 17 February 2023.
2. With prior enlisted service, the applicant was appointed as second lieutenant (2LT) in the Alabama Army National Guard (ALARNG) on 16 June 2004.
3. On 13 May 2021, the selections from the fiscal year 2021 Officer Career Management Board Order of Merit List were announced. The applicant's name is reflected on this list from major (MAJ)/O-4 to LTC/O-5.
4. On 22 July 2021, the applicant was assigned to the 279th AFSB in the position of the Secretary General Staff.
5. On 1 December 2022, by letter to the applicant from CID, he was notified of the results of the Law Enforcement Report (LER) 00xxx-CID083-035xxx.

a. In July 2022, the Department of the Army CID began a thorough review of investigations previously initiated and conducted into allegations of criminal wrongdoing in various GRAPs.

b. This review has determined that, based upon the information available to CID in relevant files, there is an insufficient basis upon which to title or index the applicant in law enforcement databases for any offense related to GRAP. As relates to subject LER, CID has removed his name and identifying information from law enforcement systems, to include the Defense Clearance and Investigations Index (DCII) and the Federal Bureau of Investigation's Interstate Identification Index (III).

6. On 24 February 2023, by memorandum from the National Guard Bureau, the applicant was promoted to LTC/O-5 with a date of rank of 17 February 2023.

7. On 4 June 2024, Special Orders Number 225 AR reassigned the applicant to the New Mexico ARNG, with an effective date of 16 August 2023.

8. In the processing of this case, a staff advisory opinion was obtained from the National Guard Bureau (NGB), dated 6 March 2024. The NGB recommended he be granted only partial approval. In their review it was noted that:

a. The applicant was assigned as Deputy Commander of the 279th AFSB in Huntsville, AL on 22 July 2021. The applicant stated the CID mailed a letter in December 2022 clearing his record. Afterwards, the applicant's promotion was published for 17 February 2023.

b. The applicant provided permanent change of station order, promotion order, and review of law enforcement report (LER) as supporting documents.

c. ALARNG Officer Personnel Management (OPM) NCOIC states on 13 May 2021 the FY-21 Officer Career Management Board (OCMB) Order of Merit List (OML) selection memorandum form was published on 22 July 2021, the applicant was assigned to the Brigade and 19 August 2021 his packet was boarded for promotion. On 25 August 2021, the applicant's packet was uploaded in IPSAA CRM until it was closed on 4 April 2023 by NGB.

d. ALARNG OPM NCOIC states 1 December 2022 the CID sent a letter to the applicant stating there was insufficient basis to title or index the applicant in law enforcement databases for any offense related to GRAP. On 1 March 2023 the applicant's promotion order for LTC was published with a 17 February 2023 effective date.

e. A review by the Army National Guard Federal (ARNG) Recognition Team shows the applicant was originally placed on Promotion Screening List (PSL) 22-15 and subsequently removed by DMPM for adverse pertaining to GRAP. The applicant was cleared on 1 December 2022 and placed on Unit Vacancy Promotion (UVP) scroll Public Law (PL) 04-23. The PL 04-23 scroll was approved and signed by the Secretary of Defense on 17 February 2023. The applicant is eligible for date of rank adjustment given original scroll PL 22-15, the applicant was removed from Scroll PL 22-15 turned into UVP scroll PL 09-22 and that scroll was approved and signed by the SECDEF on 8 June 2022.

f. The applicant cannot have the date of rank of 22 July 2021 since his FEDREC board was 19 August 2021. If he had not been removed for the PL for adverse action, he would have been given the effective date and date of rank of 8 June 2022.

g. After further review of the applicant's documents provided and discussions with the ALARNG and ARNG Federal Recognition Team, it is the conclusion of this office, that the applicant was delayed a promotion due to a CID investigation that resulted in insufficient findings.

h. They recommend the applicant's date of rank and effective date adjustment request be partially granted and adjusted to 8 June 2022.

i. ARNG Recognition concurred with this recommendation and the ALARNG recommends date of rank adjustment to 22 July 2021.

9. A copy of the advisory opinion was forwarded to the applicant and he provided additional supporting documentation in the form of a time line of events with supporting documentation.

#### BOARD DISCUSSION:

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 review based on law, policy, and regulation. The Board reviewed and concurred with the National Guard Bureau's advisory finding that the applicant's promotion was delayed due to a CID investigation that resulted in insufficient findings. Therefore, due to the delay, the Board recommends that the applicant's date of rank and effective date of promotion be adjusted to 8 June 2022; however, noted the applicant's request that his date of rank be backdated to 22 July 2021, which is the date he was placed on the order of merit list; however, his scroll would have been approved on 8 June 2022; had he not been removed.

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 issuing the applicant a Special Order extending her Federal recognition for promotion to LTC/O-5 with an effective date and date of rank as 8 June 2022, with entitlement to back pay and allowances (if applicable) as a result of this correction.
  
2. The Board further determined that 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 amending his date of rank and effective date of rank to 22 July 2021.

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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. 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.
2. 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."
3. 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.
4. 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.
5. 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.

6. 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.

7. 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//