

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 January 2024

DOCKET NUMBER: AR20230003692

APPLICANT REQUESTS: correction of his date of rank (DOR) to captain (CPT)/O-3 from 26 January 2023 to at least 1 January 2020 or to a date in 2018 or 2019.

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

- DD Form 149 (Application for Correction of Military Record)
- Action Memo from the Secretary of the Army

FACTS:

1. The applicant states, in effect:

a. He is requesting his DOR to CPT to be corrected from 26 January 2023 to at least 1 January 2020, but in reality to 2018 through 2019.

b. He is submitting his application to the Board based off the original promotion time. Unit Vacancy Promotion was boarded on Federal Recognition Board (FRB) and approved on 17 October 2019.

c. He was on the FRB Fiscal Year (FY) 20 Army National Guard (ARNG) PL 05-22 scroll. The Personnel Reliability Program (PRP) was dated 10 January 2020. He was going through the PRP from a Unit Vacancy Promotion and was not considered for the FY 21 or FY 22 Department of the Army (DA) boards.

d. He received final notification of promotion on 26 January 2023 that endorsed the Criminal Investigation Division's (CID) review determining there was an insufficient basis to title him.

e. He requests his DOR to be equivalent to those on the FY 20 ARNG CPT PL 05-22.

f. His promotion from second lieutenant (2LT)/O-1 to first lieutenant (1LT)/O-2 was held for at least a year due to the same investigation. His timeline would have been as follows: He was commissioned on 1 January 2014; he was eligible for promotion to 1LT

on 1 July 2015; this would have made him eligible for promotion to CPT on 1 July 2017. Initial delays were based on the same incident.

2. The applicant's service record contains the following documents:

a. DA Form 71 (Oath of Office - Military Personnel), dated 3 January 2014, shows the applicant completed the oath of office and was appointed as a Reserve commissioned officer in the rank/grade of 2LT/O-1.

b. Special Orders Number 237 published by the National Guard Bureau (NGB), dated 22 August 2014, extended Federal Recognition (FEDREC) to the applicant for his initial appointment in the Army National Guard, effective 3 January 2014.

c. Special Orders Number 15, published by the NGB, dated 25 January 2017, extended FEDREC to the applicant for his promotion to the rank/grade of 1LT/O-2, effective on with a DOR of 1 January 2016.

d. Special Orders Number 81, published by the NGB, dated 28 February 2023, extended FEDREC to the applicant for his promotion to the rank/grade of CPT/O-3, effective on with a DOR of 26 January 2023.

3. The applicant provides an Action Memo from the Secretary of the Army, dated 11 January 2023, Subject: Amendment of Previous Nomination and Endorsement for the applicant, FRB FY 20, ARNG, CPT PL 05-22 Scroll, which states:

a. The Secretary of the Army hereby amended the previous nomination on 15 February 2022 for the applicant. The previous nomination determined the applicant would be retained on the FRB FY 20 ARNG CP PL 05-22 scroll and contained adverse information related to the Guard Recruiting Assistant Program (G-RAP), whereby it was required the Department of the Army (DA) provide a reasonable explanation as to how the applicant met the exemplary conduct standard. However, given the Army Criminal Investigation Division's (CID) review of the applicant's Law Enforcement Report (LER), it had been determined that a correction to the applicant's record was required.

b. The Secretary of the Army hereby endorsed the current nomination of the applicant's promotion to the grade of CPT. This further endorsement was based on the Army's CID review of the G-RAP LER that determined there was an insufficient basis upon which to title or index the applicant in law enforcement databases for any offense related to G-RAP. The applicant was qualified for appointment in the next higher grade and met the exemplary conduct standards for promotions.

c. As relates to the LER for the applicant, Army CID had removed his name and identifying information from law enforcement systems, to include the Defense Clearance

and Investigation Index and the Federal Bureau of Investigation's Interstate Identification Index. Therefore, the applicant had no adverse information to report.

d. The Secretary of the Army's office was able to determine with a reasonable degree of certainty the applicant was not identified as a subject in on-going investigation; was not pending adjudication of substantiated adverse information; or had been found to have any substantial allegations or formal charges filed against him regarding detainee abuse; was not a subject in an on-going investigation or inquiry into conduct relating to or associated with the events of 6 January 2021 and had not been determined to have been in violation of law or regulation regarding the same.

e. The Secretary of the Army's recommendation was to appoint the applicant to the rank of CPT.

4. On 1 December 2023, the NGB, Chief, Special Actions Branch, provided an advisory opinion, which states, in effect:

a. The applicant requests this DOR and effective date of promotion to CPT be adjusted from 26 January 2023 to 1 January 2020. NGB recommended partial approval of the applicant's request.

b. The applicant states his promotion was boarded on an FRB and approved on 17 October 2019. He further states he was on the FRB FY 20 ARNG CPT PL 05-22 scroll. PRP notification was dated 10 January 2020 and the officer was going through the PRP from a Unit Vacancy Promotion and was not considered for the FY 21 or FY 22 DA Boards. He received final notification of promotion on 26 January 2023 that endorsed CID's review determining there was insufficient basis. He requests his DOR to be equivalent to those on the FY 20 ARNG CPT PL 05-22.

c. In accordance with the [REDACTED] ARNG ([REDACTED] ARNG), the applicant filed an application requesting that his DOR be backdated due to the prolonged nature of an erroneous investigation. The applicant was promoted on 26 January 2023; however, NGB finds merit in his request to have his DOR adjusted. The applicant was fully qualified for promotion, at that time. He lost considerable time undergoing an unfounded investigation process for 2 years. Favorable consideration should be given to backdate his DOR.

d. Contained with NGB's correspondence is an Action Memo from the Office of the Secretary of the Army indicating that an amendment to the previous nomination submitted on 15 February 2022. There was adverse information present when the original determination was rendered. Subsequently the CID concluded that there was insufficient basis to index the applicant's name in the CID database for any offense related to G-RAP. Therefore, his name was removed from their database, making him

eligible to be promoted to CPT. NGB included the Memorandum of Instruction (MOI) pertaining to the FY 20 Reserve Component (RC) CPT Army Promotion List (APL). Paragraph 2 of the MOI indicates the date the APL was approved.

e. For those reasons, NGB recommended the applicant's DOR be adjusted to the date the FY 20 RC CPT APL was approved, which was 28 September 2020.

f. The ARNG Federal Recognition Branch and [REDACTED] ARNG concurred with the opinion.

5. The advisory opinion included the [REDACTED] ARNG response, FY 20 RC CPT memorandum, the Secretary of the Army Action Memo, Special Orders Number 81, and Special Orders Number 15 for the Board's consideration.

6. On 5 December 2023, the advisory opinion and supporting documents were provided to the applicant to allow him the opportunity to respond.

7. On 20 December 2023, by memorandum, the applicant responded to the advisory opinion, and stated:

a. He initially submitted the ABCMR based off the original promotion time. The Unit Vacancy Promotion (UVP) was boarded on Fed Rec Board and approved on 17 October 2019. He was on the FRB FY 20 ARNG CPT PL 05-22 scroll PRP notification was dated 10 Jan 2020 and he was going through the PRP from a UVP and was not considered for the FY 21 or 22 DA Board.

b. He received final notification of promotion on 26 January 2023 that endorsed CID's review determining there was insufficient basis. He requested his DOR to be equivalent to those on the FY 20 ARNG CPT PL 05-22.

c. His point of contention is his promotion from 2LT to 1LT was held for at least a year due to the same investigation which placed him at least one scroll promotion cycle behind. His timeline would have been as follows: Commissioned 1 January 2014; Eligible for 1LT 1 July 2015. This would have made be eligible for CPT 1 July 2017. Initial delays were based on the same incident. He is submitting that his DOR should be further back or at least 1 January 2020, and not 30 September 2020.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted.

2. The Board concurred with the conclusion of the advisory official that, while the evidence does not support the applicant's requested DOR for CPT, it does support a DOR equivalent to the approval date of the FY 20 RC CPT APL. Based on a preponderance of the evidence, the Board determined the applicant's DOR for CPT should be changed to 28 September 2020.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 and Army National Guard records of the individual concerned be corrected by showing his effective date of rank for CPT/O-3 is 28 September 2020. He should receive any additional pay and allowances he is due as a result of this correction.

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 any relief in excess of that described above.

3/20/2024

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. Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers other than General Officers) table 2-1 shows the time in grade (TIG) minimum requirements for promotion to the next rank. The TIG requirements for promotion are:

- to 1LT, 18 months
- to CPT, 2 years

2. 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) 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.

a. 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."

b. What constitutes "unusual circumstances" will, generally, be for the Board to determine based on the available evidence, which often includes an advisory opinion.

c. 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.

3. The ABCMR may correct an officer's date of rank/effective date of rank when a proper appointment has already occurred. 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.

//NOTHING FOLLOWS//