

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230003792

APPLICANT REQUESTS: amendment of his date of rank (DOR) to colonel (COL)/O-6 to reflect 26 May 2022 vice 18 October 2022.

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

- DD Form 149 (Application for Correction of Military Record)
- Tab B – Wrong DOR on Federal Recognition Order (Special Orders Number 94 AR), 31 October 2022
- Tab C – Lieutenant Colonel (LTC) promotable (P) [REDACTED] to COL [REDACTED]
  - Enclosure 1: LTC(P) [REDACTED] Promotion to COL, 17 October 2022
  - Enclosure 2: LTC [REDACTED] Separation Order for Title 10 Army National Guard (ARNG), Active Guard Reserve (AGR) Program, 14 October 2022
  - Enclosure 3: DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 17 October 2022
  - Enclosure 4: PN2027 – 250 Nominees for Army, 117th Congress (2021-2022), 26 May 2022
  - Enclosure 5: Officer Record Brief (ORB), 26 August 2022
  - Enclosure 6: Federal Recognition to LTC, Special Orders Number 44, 3 March 2016
- Tab D – Email Chain
- Tab E – References

APPLICANT PROVIDES THE FOLLOWING ADDITIONAL DOCUMENTS WITH HIS REBUTTAL:

- Exhibit A – Memorandum, subject: Support for the Review of the Request for DOR Adjustment for COL [REDACTED] 28 December 2023
- Exhibit B – Memorandum, subject: Selection for Promotion as a Reserve Commissioned Officer, 27 April 2022
- Exhibit C – Email Chain (Close Hold: 28 April 2022, Fiscal Year (FY) 2022 COL Board Results), 3 May 2022
- Exhibit D – Memorandum, subject: Notification of Involuntary Delay, undated

- Exhibit E – Memorandum, subject: Notification of Involuntary Delay, 28 June 2022
- Exhibit F – Email Response, 28 June 2022
- Exhibit G – Email, Resignation from the AGR Title 10 Program, 26 September 2022
- Exhibit H – Voluntary Separation Statement of Understanding, 29 September 2022
- Exhibit I – Order Number 287-05, 14 October 2022
- Enclosures - Statutes and Regulations

FACTS:

1. The applicant states:

a. His DOR is incorrect and should be adjusted to 26 May 2022, the date of Senate confirmation. He left the AGR program, and his DOR should be established pursuant to Title 10, U.S. Code (USC), section 14311(e)(4). His effective date is correct. The National Guard Bureau (NGB) established a DOR that matched the effective date, citing that he changed his status to M-Day; this point is irrelevant, as he requested that the [REDACTED] Army National Guard (ARNG) promote him upon release or that they move him to the Individual Ready Reserve (IRR) to be promoted. The [REDACTED] ARNG retained and promoted. At no time did he request nor was he granted a voluntary delay of promotion.

b. He was selected for promotion by the FY2022 Reserve Component (RC) COL Army Promotion List (APL), Competitive Category (CC), Promotion Selection Board (PSB). Pursuant to Title 10, USC, section 14311(e), he had an approved release from the AGR program for the "Completion of Required Service," requested that the VAARNG either promote him upon release from the AGR program or move him to the IRR so he could be promoted.

c. He had achieved the maximum time in grade (TIG)/promotion eligibility date (PED) as of 11 February 2022 (6 years TIG) and confirmed by the Senate to the rank of COL on 26 May 2022. He did not request, nor did he receive any voluntary delay of promotion, pursuant to Title 10, USC, section 14312.

2. The applicant provides:

a. Special Orders Number 94 AR, issued by the NGB, Washington, DC, dated 31 October 2022, which shows the applicant was promoted to COL, effective 18 October 2022, with a DOR of 18 October 2022.

b. A memorandum dated 17 October 2022, from the applicant to The Adjutant General [REDACTED] ARNG, which states he requested that if a position was not available in the [REDACTED] ARNG, that a transfer to the USAR, IRR be executed.

c. Orders Number 287-05, issued by the NGB, Arlington, VA, dated 14 October 2022, and shows the applicant was reassigned to the U.S. Army transition point at Fort Belvoir, VA, with a report date and release date from active duty on 17 October 2022. In the additional instructions, it states the applicant signed a Statement of Understanding that he was not guaranteed re-entry to the Title 10 AGR program.

d. DD Form 214, which shows he was honorably discharged on 17 October 2022, by reason of completion of required active service. He had 11 years, 3 months, and 2 days of net active service during the covered period.

e. A document from the Library of Congress, which shows on 26 May 2022, the 117th Congress confirmed the applicant for appointment to COL in the Reserve of the Army under Title 10, USC, section 12203.

f. A copy of his ORB, wherein the applicant highlights that he was promoted to LTC on 11 February 2016.

g. Special Orders Number 44, issued by the NGB, Washington, DC, dated 3 March 2016, and states he was promoted to LTC effective 11 February 2016, with a DOR of 11 February 2016.

h. Emails from November 2022 to January 2023, wherein the applicant is requesting that his DOR be corrected. On 18 January 2023, Mr. [REDACTED] NGB, stated in an email that he reached out to the policy division, and they said that if the applicant was a T10/32 he could have the Senate confirmation date as his DOR. The applicant was promoted with no control grade, and policy said that they would have to give all M-Day officers a back date to the Senate confirmation date as their DOR. He was informed that he could submit application to the Army Board for Correction of Military Records (ABCMR).

3. A review of the applicant's service record shows:

a. On 10 May 1996, he took his oath of office as a Reserve Commissioned Officer as a second lieutenant (2LT).

b. On 17 August 1996, he took his oath of office in the Pennsylvania ARNG.

c. Orders Number 175-14, issued by the NGB, Arlington, VA, dated 24 June 2011, shows he was ordered to active duty in Active Guard/Reserve status, with a reporting date of 16 July 2011, for a period (active-duty commitment) voluntary.

d. He was promoted to:

- first lieutenant (1LT) on 14 January 1990
- captain (CPT) on 4 June 2003
- major (MAJ) on 12 July 2010
- LTC on 11 February 2016

e. Orders Number 071-04, issued by the NGB, Arlington, VA, dated 11 March 2020, show he was ordered to active duty in Active Guard or Reserve status to serve in the Department of the Army (DA) G1 as the ARNG Promotions Officer, from 20 July 2020 to 31 August 2023.

f. A memorandum, dated 27 April 2022, shows he was selected for promotion by the FY2022 DA COL APL, Mandatory PSB. The Secretary of Defense approved the results of the board on 18 April 2022. The memorandum stated that his response to the correspondence was not optional, as the G1, [REDACTED] ARNG is required to forward his election to the NGB no later than 27 July 2022. His failure to respond by 27 May 2022 would be considered a declination of promotion and would subject him to be considered by the next scheduled DA Mandatory Board. As a result of his selection, by regulation he was required to elect one of the following options:

(1) Acceptance – If you are assigned to or selected for assignment to a higher graded position, meet standard eligibility requirements (not flagged, qualified, valid security clearance, etc.), and are strongly recommended by your commander, you may accept promotion with continued assignment in the [REDACTED] ARNG.

(2) Delay (Traditional Officers and Military Technicians) – If you are not currently assigned a higher graded position, but desire to continue in the [REDACTED] ARNG at your present rank; you may request to delay promotion. The period may be extended, in 1-year increments from the approval date of the board (17 April 2023). This action preserves your promotion eligibility up to a maximum of 3 years, pending assignment to a higher graded position. If not promoted by the end of the delay period, you will be subject to consideration by the next scheduled DA Mandatory Board.

(3) Transfer – You may request transfer to the Individual Ready Reserve in order to accept your promotion. If you are fully eligible, your promotion in the IRR will be effective upon transfer, or on your Promotion Eligibility Date (PED), whichever is later.

g. Orders Number HR-2287-00031, issued by U.S. Army Human Resources Command (AHRC), Fort Knox, KY, dated 14 October 2022, ordered the applicant to active duty for operational support at HQDA to serve as Chief, Mobilization Division, Pentagon, under provision of Title 10, USC, section 12301(d), with a reporting date of 18 October 2022, for 365 days.

h. He was discharged on 17 October 2022, upon completion of his AGR required active service.

i. Special Orders Number 94 AR, dated 31 October 2022, announced his Federal recognition to COL in the ARNG, effective 18 October 2022, and his DOR as 18 October 2022.

j. Orders Number HR-3284-00005, issued by AHRC, dated 11 October 2023, show he was ordered to active duty for the purpose of obtaining 20 years of active federal service in accordance with Title 10, USC, section 12686. His report date was 18 October 2023, for a period of 622 days. The applicant is currently serving as the Deputy Chief of Staff, G-1, Pentagon, Arlington, VA.

4. The Chief, Personnel Policy Division, NGB, provided an advisory opinion in this case on 13 December 2023. It is the opinion of the NGB, in coordination with the ■■■ARNG, the ARNG Federal Recognition section, and the ARNG Officer Policy Branch, that COL ■■■ [Applicant] request to have his DOR adjusted to senate confirmation date be disapproved. The advisory opinion states, in pertinent part:

a. The Soldier's [Applicant] promotion was involuntarily delayed due to lack of controlled grade, and therefore, his DOR falls in line with National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), section 8-3.

b. The ■■■ARNG did notify the Soldier of his selection for promotion to the rank of COL, and provided regulatory guidance to accept a promotion, delay promotion, or transfer to the IRR for promotion provided he met the criteria. The Soldier did not provide a selection to transfer to the IRR per AR135-155 (Promotion of Commissioned Officers and Warrant Officers), chapter 3 (Managing Promotion), section 3-2.

c. His military records show that he completed his AGR service on 17 October 2022, and entered Title 10 active duty for operational support orders on 18 October 2022 while on M-Day status. Based on the Soldier's status under orders number HR-2287-00031 his DOR falls within regulatory guidance of NGR 600-100 and Personnel Policy Operational Memorandum (PPOM) 18-003.

d. A review of the Soldier's claim by the ■■■ARNG concluded that he was notified of his selection for promotion by the FY22 DA COL APL mandatory PSB on 27 April 2022. The notification of promotion also included regulatory guidance that required the applicant to accept a promotion, delay promotion, or transfer to the IRR for promotion provided he met the promotion criteria.

e. On 28 June 2022, the applicant responded to the VAARNG's notification memo by stating that as an AGR officer, he did not need to respond or select delay. His memo did not provide any guidance on how he wanted to proceed, only that he was an AGR and that he did not need to respond because he would be automatically involuntarily delayed.

f. AR 135-155, section 3-2(b) states that a USAR AGR officer considered and selected by a mandatory promotion board, but who cannot be promoted due to strength limitation of Title 10 USC, section 12011, will be forwarded a memorandum from HRC that will give the officer two options:

(1) The officer can voluntarily leave the AGR program and accept promotion in the higher grade as a non-AGR USAR officer.

(2) The officer can remain in the current grade in the AGR program. Officers remaining in the USAR AGR program will be considered in an indefinite involuntary delay status per Title 10 USC, section 14311e and will remain on the promotion list.

g. NGR 600-100, section 8-17(f), states that an officer who elects to transfer to the USAR IRR for purposes of promotion should notify HRC office of promotions by memorandum to facilitate the action. The promotion will be processed in accordance with AR 135-155 after the officer has been accessed into the USAR IRR.

h. NGR 600-100, section 8-3, states an officer's effective date and DOR as a Reserve of the Army will be determined by their duty status, type of selection board which selected the officer, and delay status.

(1) DA Select M-Day commissioned officers selected to the rank of COL will use the senate confirmation date as their effective date and DOR if the Officer was assigned to a position in the next higher grade. If the Officer was not assigned to a position in the next higher grade, the effective date and DOR will be the date of assignment to the next higher-grade position.

(2) DA select AGR commissioned officers promoted upon DA selection to the rank of COL will have the senate confirmation date as their effective date and DOR.

i. NGR 600-100, section 8-3, states that if a DA select AGR officer is involuntarily delayed due to lack of controlled grade and not assigned to the next higher-grade position, the DOR will be the date the officer is subsequently assigned to the position of higher grade or the maximum time in grade, whichever is earlier. The effective date will be the date the controlled grade authorization is available. Backdated effective dates due to AGR controlled grade limitations in previous fiscal years are not authorized.

j. PPOM 18-003 states, if a DA select AGR officer is involuntarily delayed and not assigned to the next higher-grade position, the DOR will be the date the officer is subsequently assigned to the position of higher grade or the maximum TIG...whichever is earlier.

5. The applicant provided a response to the advisory opinion on 28 December 2023. He stated, in pertinent part, the key point of why the DOR should be adjusted to 26 May 2022, as an operation of laws, pursuant to Title 10, USC, section 14311(e)(4), is that he went from an involuntary delay status, with an approved release from active duty (terminating his AGR status), to accept promotion. He requested transfer to the IRR (intent was to go to an IMA position within the Pentagon) in the event the [REDACTED] ARNG did not have the ability to promote him to COL, and at no time did he request, nor did he receive an approved voluntary delay upon departure from the AGR program.

a. Approved release from Active Duty to accept promotion: National Guard policy is in alignment with the Statute and supports his position. There are three key places that describe why the DOR needs to be adjusted to 26 May 2022:

(1) NGR 600-100, para 8-3b(5): "DA Select AGR Commissioned Officers who are involuntarily delayed due to lack of controlled grade (10 USC 14311). If a DA Select AGR Officer is involuntarily delayed and not assigned to the next higher-grade position, the DOR will be the date the Officer is subsequently assigned to the position of higher grade or the Maximum TIG per AR 135-155 (Table 2-1), whichever is earlier." The maximum six years' TIG requirement was met on 11 February 2022.

(2) NGR 600-100, para 8-3b(7): "If an officer selected by a DA mandatory promotion board has a maximum TIG date that is before the approval date of the board, the officer's promotion date and effective date will be no earlier than the date of approval of the mandatory board or the date of Senate confirmation, as applicable." Senate confirmation was 26 May 2022. Although his TIG was earlier, it cannot be adjusted to 11 February 2022.

(3) NGR 600-100, para 8-18a: "An officer serving on an AGR tour, Title 10 or Title 32, who is selected for promotion by a mandatory selection board, but cannot be promoted because of strength in grade limitations or because they are not in a position requiring the higher grade, is not required to decline promotion. The promotion of an AGR officer is delayed, and the officer will remain on the promotion list per AR 135-155, until:" ... (3) Promoted to the higher grade following release from the AGR program." I requested release from the AGR program to be promoted as a colonel, with the Va NG indicating they could do so in a M-day status. There was no break in service or delay from the termination as an AGR tour to acceptance of promotion as a M-day colonel.

b. No Voluntary Delay Requested nor Granted: He states, to be clear, 10 USC 14312 (Delay of Promotion: Voluntary), AR 135-155, chapter 3, section III, and NGR 600-100, paras 8-3b(3) and 8-17, all indicate that an officer must request a voluntary delay and that the delay must be approved by the approval authority, which for NG officers means an approved State Adjutant General request for the voluntary delay. Additionally, NGR 600-100, para 8-18b states: "An officer in a delay status who is released from the AGR program and remains in an ARNG unit will be subject to the provisions of paragraph 8-17, as appropriate. Approved delays, after release, will be from the date that would have otherwise been the officer's delay period start on the date had they not been in the AGR program." He states this paragraph is not appropriate in his circumstance, as he obtained an approved release from the AGR program to immediately accept promotion as a colonel.

#### 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board reviewed and concurred with the Chief of the Personnel Policy Division of the National Guard Bureau (NGB) finding the applicant's promotion was involuntarily delayed due to lack of controlled grade and his date of rank is within regulatory guidance. The applicant was notified of his selection for promotion to the rank of colonel (COL)/O-6 and provided the guidance on accepting the promotion and the applicant did not provide a selection to transfer to the individual ready reserve. The applicant's records show he completed his active guard reserve service on 17 August 2022 and entered operational support orders on 18 October 2022. Based on his status, the applicant's date of rank is appropriate. The Board concluded there was no error or injustice and denied relief.



BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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.

10/28/2024

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. National Guard Bureau Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), prescribes policies and procedures governing the appointment, assignment, temporary Federal Recognition, Federal Recognition, reassignment, transfers between States, branch transfers, area of concentration designation, utilization, branch detail, and attachment of commissioned officers of the Army National Guard (ARNG). Exceptions to this regulation will be considered on an individual basis; they will neither be considered as a precedent for changes in policy, nor blanket approval for future requests.

a. Paragraph 8-3. Promotion for other than General Officers. A commissioned officer who has been promoted by the State and extended Federal Recognition in the higher grade will be concurrently promoted to the higher grade in the Reserves of the Army with assignment to the ARNGUS.

(1) An officer's effective date and date of rank (DOR) as a Reserve of the Army will be determined by their duty status, type of selection board which selected the officer, and delay status (if applicable), and will be as defined below, unless otherwise provided by law. CNGB will extend Federal Recognition in the higher grade to an ARNG commissioned officer using NGB Form 0122E series orders (NGB Special Federal Recognition Orders).

(2) The Effective Date determines the officer Federal pay and allowances in the next higher grade. The Effective Date is determined when CNGB in conjunction with the Secretary of Defense approval or the Senate confirmation date (COLs only). The Effective Date is displayed as the "A" Date on the Promotion as a Reserve Commissioned Officer of the Army Memorandum for Commissioned Officers.

(3) The DOR is the date the Officer actually or constructively was appointed or promoted to a specific grade. The DOR is used in calculating time in grade toward promotion consideration in the next higher grade. It is the date used to determine the relative seniority for Officers holding the same grade. The DOR is displayed as the "B" Date on the Promotion as a Reserve Commissioned Officer of the Army Memorandum for Commissioned Officers. If the Officer is recommended for promotion via the FRB/UVP process, the "B" Date will match the "A" Date.

(4) Unit Vacancy Promotion (UVP). Effective Date and DOR are the same date and are established when the scroll is either approved by the SECDEF (LTCs and below) or the Senate confirmation date (COLs only).

(5) Department of the Army (DA) Select M-Day Commissioned Officers. Effective Date and DOR will be the DA Board approval (LTCs and below) or Senate

confirmation date (COLs only) if the Officer was assigned to position in the next higher grade. If the Officer was not assigned to a position in the next higher grade, the Effective Date and DOR will be the date of assignment to the next higher-grade position. If a DA Select M-Day Officer requests a voluntary delay, the Effective Date and DOR will be established after the delay when Federal Recognition is extended after the Officer is assigned to a position in the next higher grade.

(6) DA Select AGR Commissioned Officers promoted upon DA Selection. If an AGR Officer is recommended for promotion by a DA Board to the grade of LTC or below, is already assigned to the next higher-grade position on the day the board report is approved and AGR controlled grade is available, the Officer's Effective Date and DOR will be the date the board report is approved by the SECDEF. The Effective Date and DOR of an Officer in a COL position who is promoted to the rank of COL is the date of Senate confirmation.

(7) DA Select AGR Commissioned Officer who are involuntarily delayed due to lack of controlled grade. If a DA Select AGR Officer is involuntarily delayed and not assigned to the next higher-grade position, the DOR will be the date the Officer is subsequently assigned to the position of higher grade or the Maximum Time in Grade, whichever is earlier. The Effective Date will be the date the controlled grade authorization is available per ARNG-HRA. Backdated Effective Dates due to AGR controlled grade limitations in previous fiscal years are not authorized.

(8) Maximum TIG. Officers may attain maximum TIG as described in paragraph 8-15, however, the Department of the Army Promotion Selection Boards schedule and zones of consideration usually result in an officer being considered at approximately one year before attaining their Maximum TIG. If an officer selected by a DA mandatory board has a maximum TIG date that is before the approval date of the board, the officer's promotion date and effective date will be no earlier than the date of approval or the mandatory board or the date of Senate confirmation, as applicable.

b. Paragraph 8-17. Delay of promotion as a Reserve of the Army. The State TAG or their designated representative is the approval authority for delay of promotion for officers in the rank of LTC and below per AR 135-155.

(1) Paragraph 8-17b, states an officer below the rank of COL that has been selected to the next higher grade by a mandatory selection board may request to voluntarily delay the promotion. The one-time delay period may be granted by TAG or their designated representative in any increment up to a maximum of three years from the release date of the board or the date of eligibility for promotion, whichever is later. If the delay is approved, the officer will remain on the promotion list until the promotion is accepted, declined or the officer is separated, but no longer than three years from the authorized start date of delay. At the end of the approved delay period, if not yet

promoted, the officer must either accept promotion, transfer to the USAR (IRR), and be promoted, or decline the promotion. An officer who elects transfer to the USAR to accept promotion may be separated from the ARNG at any time but not later than the day after the expiration date of the delay.

(2) Paragraph 8-17e, states an officer who has been selected for promotion by a mandatory selection board who fails to make an election to be promoted or declines a promotion on or before the end of the maximum allowable delay period will be transferred to the IRR.

(3) Paragraph 8-17f, states an officer who elects transfer to the USAR (IRR) for purposes of promotion should notify HRC Office of Promotions, Reserve Components, Fort Knox, KY by memorandum to facilitate the action. The promotion will be processed in accordance with AR 135-155 after the officer has been accessed into the USAR (IRR).

c. Paragraph 8-18. Delay of promotion for Active Guard Reserve officers. An officer serving on an AGR tour, Title 10 or Title 32, who is selected for promotion by a mandatory selection board but cannot be promoted because of strength in grade limitations or because they are not in a position requiring the higher grade, is not required to decline promotion.

(1) The promotion of an AGR officer is delayed and the officer will remain on the promotion list per AR 135-55, until:

- Removed from the promotion list.
- Removed to the higher-grade following grade authorization availability.
- Promoted to the higher-grade following release from the AGR program.

(2) An officer in a delay status who is released from the AGR program and remains in an ARNG unit will be subject to the provisions of paragraph 8-17, as appropriate. Approved delays, after release, will be from the date that would have otherwise been the officer's delay period start on the date had they not been in the AGR program.

2. Army Regulation 135-155 (Army National Guard and Reserve – Promotion of Commissioned Officers and Warrant Officers), prescribes policies, operating rules, and steps governing promotion of Army officers on Reserve active status list and U.S. Army Reserve warrant officers. It incorporates provisions of the Reserve Officer Personnel Management Act as specified in 10 USC 1401, 1403, 1405, 1407, 1409, and 1411.

a. Table 2-1 (Time in grade and military education requirements for officer promotion consideration (statutory)), states, the Grade from LTC to COL the minimum TIG in lower grade is 4 years and the maximum TIG in lower grade is 6 years.

b. Chapter 3 (Managing Promotions):

(1) Paragraph 3-2b states a USAR AGR officer considered and selected by a mandatory promotion board, but who cannot be promoted due to strength limitations of 10 USC 12011, will be forwarded a memorandum form HRC (AHRC-OPL-R) that will give the officer two options. The officer can either: voluntarily leave the AGR Program and accept promotion in the higher grade as a non-AGR USAR officer; or the officer can remain in the current grade in the AGR Program. Officers who remain in the USAR AGR Program will be considered to be in an indefinite involuntary delay status per 10 USC 14311(e) and will remain on the promotion list. When the strength limitation no longer exists, the DOR and position on the Reserve active status list (RASL) of an AGR officer whose promotion to or Federal recognition in the next higher grade was delayed solely of the strength limitations of 10 USC 12011 will be the date on which the officer would have been promoted to or recognized in the higher grade had such limitations not existed.

(2) Paragraph 3-6 states unless an officer declines a promotion in writing under the provisions of this regulation, absent other circumstances such as a PRB, he or she is considered to have accepted the promotion on the effective date announced in the promotion order.

3. Title 10, U.S. Code, section 14311(e)(4), provides that if an officer whose promotion is delayed under paragraph 1 or 2 completes the period of active duty or full time National Guard duty that the officer is required by law or regulation to perform as a member of a reserve component the officer may request release from active duty or full-time National Guard duty. If the request is granted, the officer's promotion shall be effective upon the officer's release from such duty. The date of rank and position on the reserve active-status list of the officer shall be the date the officer would have been promoted to or recognized in the higher grade had the limitations imposed under regulations prescribed by the Secretary of Defense contained in section 12011 of this title not existed.

4. Title 10, U.S. Code, section 14312, provides that the Secretary of the military department concerned may, by regulation, permit delays of a promotion of an officer who is recommended for promotion by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title at the request of the officer concerned. Such delays, in the case of any promotion, may extend for any period not to exceed three years from the date on which the officer would otherwise be promoted. A request for such a delay of promotion must be

submitted by the officer concerned before the delay may be approved; and denial of such a request shall not be considered to be a failure of selection for promotion unless the officer declines to accept a promotion under circumstances set forth in subsection (c).

//NOTHING FOLLOWS//