

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20230003809

APPLICANT REQUESTS: correction to her date of rank (DOR) to captain (CPT)/O3 in the Arkansas Army National Guard (ARARNG) to reflect 21 October 2018.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 187-800, effective 6 July 2015
- Special Orders Number 4, effective 11 October 2016
- Memorandum subject: The Adjutant General's Policy 2017-01, 1 February 2017
- Orders 044-808, 13 February 2017
- Three email conversations
- Orders 226-023, effective 11 August 2019
- Special Orders Number 18, effective 9 January 2020
- Memorandum subject: The Adjutant General's Policy 2021-03, 20 November 2020
- Officer Record Brief (ORB)

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, she is requesting correction of her DOR to CPT/O3 in the ARARNG to reflect 21 October 2018. Upon her return from the Physician's Assistant school in June 2018, she met with the battalion senior human resources (HR) noncommissioned officer (NCO) in order to provide appropriate documentation that she completed PA school and to address any outstanding issues. During this time, she also ensured to inform HR of her upcoming eligibility date for promotion to CPT/O3, in October 2018. In September 2018, she returned to Inactive Duty Training (IDT) status and addressed the issue with the senior human resource NCO and leadership in her chain of command. She was reassured by everyone that her promotion packet contained all required documents for submission. On 3 November 2018 she contacted

them again, by email to ensure her packet had been processed. While on IDT, during April 2019, she followed up with the senior human resources NCO to inquire about the status of her promotion. It was then she discovered, it was returned without action. She was not notified, due to the Arkansas Adjutant General's current policy of requiring three years' time in grade (TIG) as a first lieutenant 1LT/O2 instead of two. She provided a copy of the policy to the senior resources NCO, and further explained that the Army Medical Department (AMEDD) specialty branch officers were exempt from the policy. It was sometime after that conversation that her promotion packet was processed. She inquired if the promotion would be based on submission or eligibility and the response she received was "it depends on how they submitted it". Once federal recognition was received, she inquired once again but was not provided any paths to remedy. In October 2022, she asked the HR officer in charge how to resolve this issue, he then transferred her documents to the brigade senior human resource NCO for assistance. Her promotion to CPT/O3 was published via federal recognition in January 2020, almost 15 months late. This caused a delay in her promotion to Major (MAJ)/O4.

3. The applicant provides:

a. Memorandum subject: The Adjutant General's Policy 2017-01, Minimum TIG Requirements for Unit Vacancy Promotion to colonel (COL)/O6 and below, 1 February 2017. This document shows:

(1) The policy is applicable to all AMEDD, Judge Advocate General's Corps (JAG), Chaplain and Basic Branch commissioned officers in the ARARNG, serving in any status except Title 10 Active Guard Reserve.

(2) Effective immediately, commissioned officers in the ARARNG who meet all other published promotion criteria, must also meet the minimum TIG requirements as outlined below, prior to consideration for a unit vacancy promotion to the next higher grade. This policy supersedes all previously published TIG requirements established by the Officer Career Management Board for field-grade consideration.

- Minimum Required TIG for promotion from 1LT/O2 to CPT/O3 is three years
- Minimum Required TIG for promotion from CPT/O3 to MAJ/O4 is five years

b. Orders 044-808, 13 February 2017, reflect the amendment to the effective date of her promotion to the grade of 1LT/O2, from 11 October 2016 to 21 October 2016.

c. Special Orders Number 18, 21 January 2020, reflect she was promoted to the grade of CPT/O3, effective date and DOR of 9 January 2020.

d. Memorandum subject: The Adjutant General's Policy 2021-03, Minimum TIG Requirements for Unit Vacancy Promotion to COL/O6 and below, 20 November 2020. This document shows:

(1) Effective immediately, commissioned officers in the ARARNG who meet all other published promotion criteria will meet the minimum TIG requirements for promotion to the next grade in accordance with the National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions). The policy rescinds the previous published TIG requirements in The Adjutant General's policy 2018-01 and will now adhere to the following TIG requirements as outlined below.

- Minimum Required TIG for promotion from 1LT/O2 to CPT/O3 is two years
- Minimum Required TIG for promotion from CPT/O3 to MAJ/O4 is four years

c. The applicant's ORB provides the following in Section III- Service Data (DOR):

- Second lieutenant (2LT)/O1: 11 April 2015
- 1LT/O2: 11 October 2016
- CPT/O3: 9 January 2020

4. The applicant's service record shows:

a. Orders 182-867, 1 July 2015, reflect the applicant has prior enlisted service in the and in the ARNG. She was honorably discharged on 10 April 2015, to accept appointment as a commissioned officer. Her grade at the time of discharge was staff sergeant (SSG) E6.

b. Orders 187-800, 6 July 2015, reflect she was appointed as a commissioned officer in the ARNG, at the rank/grade of 2LT/O1, with an effective date of 11 April 2015.

c. Special Orders Number 4, reflect she was promoted to the grade of 1LT/O2, effective date and DOR of 11 October 2016. The effective date and DOR of her promotion were subsequently amended from 11 October 2016 to 21 October 2016.

d. Orders 226-023, 14 August 2019, reflect she was promoted to the grade of CPT/O3, effective date and DOR of 11 August 2019.

e. In an action memorandum subject: Promotion, issued by the ARARNG and pursuant to NGR 600-100, 29 April 2024, she was promoted to the grade of MAJ/O4, with a rank and grade entry date of 20 March 2024.

5. On 29 May 2024, the ARARNG, ARNG Federal Recognition Team, and the Office of the Chief Surgeon AMEDD Personnel Program Manager, provided an advisory opinion, and recommended approval. The applicant had numerous process errors when transitioning to Army Health Services Administration (70B) and Physician Assistant Officer (65D). This along with the erroneous application of an outdated TAG policy memo caused for inaccurate special services core DOR for 1LT/O2 and a delay in promotion to CPT/O3 and MAJ/O4. This office recommends the applicant's DOR adjustment be granted.

a. The 30 April 2015 reappointment order should be removed, and a reclassification action should change the service member's Areas of Concentration (AOC) to Army PA (00E65) during the duration the servicemember was in Interservice Physician Assistants Program (IPAP).

b. The 11 October 2016 1LT promotion order should be amended to show as medical service order and not special service core order.

c. An amended 1LT/O2 initial appointment order should be published to show the servicemember was appointed to Specialty Corps special service core as a 1LT/O2, with a DOR of 13 December 2017.

d. An amended CPT/O3 order should show an adjusted DOR of 13 December 2019 [applicant's request asked for a DOR to CPT for 13 December 2018] and an amended MAJ/O4 order should show an adjusted DOR of 13 December 2023.

6. On 4 June 2024, the applicant was provided a copy of the advisory opinion for an opportunity to respond. She did not.

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 the National Guard Bureau – Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for approval finding numerous process errors when transitioning to Army Health Services Administration (70B) and Physician Assistant Officer (65D).

2. The Board determined the erroneous application of an outdated TAG policy memo caused for inaccurate special services core date of rank (DOR) for 1LT/O2 and a delay in promotion to CPT/O3 and MAJ/O4. The Board agreed there is sufficient evidence based on the advisory opine to amend the applicant's 1LT initial appointment order to show she was appointed to Specialty Corps special service core as a 1LT, with a DOR of 13 December 2017 and adjust the applicant's date of rank for captain to reflect an effective date of 13 December 2019 as well as amended the her rank to MAJ/O4 order to show an adjusted DOR of 13 December 2023. Bases on this, the Board granted partial relief.

BOARD VOTE

Mbr1 Mbr2 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 amending the applicant's 1LT initial appointment order to show she was appointed to Specialty Corps special service core as a 1LT, with a DOR of 13 December 2017 and adjust the applicant's date of rank for captain to reflect an effective date of 13 December 2019 as well as amended the her rank to MAJ/O4 order to show an adjusted DOR of 13 December 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 correction to the applicant's date of rank (DOR) to captain (CPT)/O3 in the Arkansas Army National Guard (ARARNG) to reflect 21 October 2018.

X

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 (Armed Forces), 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. Title 10 (Armed Forces), U.S. Code, section 14308(f), provides that 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. If there is a 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 that exceeds 100

days from the date the National Guard Bureau deems such officer's application for Federal recognition to be completely submitted by the State and ready for review at the National Guard Bureau, and the delay was not attributable to the action or inaction of such officer:

a. In the event of State promotion with an effective date before January 1, 2024, the effective date of the promotion concerned under paragraph (1) may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion; and

b. In the event of State promotion with an effective date on or after January 1, 2024, the effective date of the promotion concerned under paragraph (1) shall be adjusted by the Secretary concerned to the later of the date the National Guard Bureau deems such officer's application for Federal recognition to be completely submitted by the State and ready for review at the National Guard Bureau; and the date on which the officer occupies a billet in the next higher grade.

3. National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), in effect at the time, 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. Chapter 8 provides guidance for promotion for other than general officers:

a. The promotion of officers in the ARNG is a function of the State. As in original appointments, a commissioned officer promoted by State authorities has a state status in the higher grade under which to function. However, to be extended Federal Recognition in the higher grade, the officer must have satisfied the requirements prescribed in this regulation. National Guard officers may be considered and found qualified for Federal Recognition of their State promotion using two distinct processes: State Federal Recognition Boards and Department of the Army (DA) Mandatory Boards. Under either process, the precedent for an actual promotion in the Army National Guard is State assignment and appointment to the next higher grade.

(1) State Federal Recognition Boards (FRB). Officers may be federally recognized through State FRB which are often referred to as "State vacancy promotion boards" or "unit vacancy boards" as part the Unit Vacancy Promotion (UVP) process under 32 USC 307.

(2) DA Mandatory Boards. The second way to federally recognize the State promotion is through the DA Mandatory Promotion Selection Boards process. Mandatory promotion selection boards are convened by the Secretary of the Army

pursuant to 10 USC 14101(a). Those National Guard officers selected ("DA Select") by a DA mandatory board who are then appointed by the State in that higher grade to fill a vacancy in the Army National Guard are extended Federal Recognition in that grade, without the examination prescribed by 32 USC 307.

b. Minimum years of time in grade (TIMIG) for promotion eligibility a commissioned officer must complete prior to being considered for promotion and Federal Recognition in the higher grade from 1LT/O2 to CPT/O3 is two years, and from CPT/O3 to MAJ/O4 in four years.

c. TIMIG for mandatory consideration for promotion Maximum TIMIG in years for mandatory promotion consideration from 1LT/O2 to CPT/O3 is five years, and from CPT/O3 to MAJ/O4 is also five years.

d. Consideration for promotion by a mandatory selection board. A commissioned officer will be considered for promotion by a DA mandatory selection board, in their competitive category as a Reserve commissioned officer of the Army when the officer meets minimum TIMIG requirements prescribed for the zone of consideration. Consideration for promotion by a DA mandatory selection board will occur during the year prior to the year the officer reaches maximum TIMIG. The provisions of AR135-155 will apply.

e. Promotion of ARNG of the United States officers on active duty during promotion consideration. ARNG officers ordered to active duty under a Presidential Reserve Call-up or partial mobilization will remain under the provisions of this chapter and processed for promotion as follows: An officer ordered to active duty in a vacancy requiring a higher grade may be promoted if selected by a Federal Recognition Board (FRB) or mandatory selection board at any time before or after being ordered to AD. Due to assignment and controlled grade restrictions in the Active Guard Reserve (AGR) program, States will not be authorized additional controlled grades solely for the purpose of reassessing into the AGR program Soldiers who were promoted while mobilized.

f. Procedures. Upon selection for assignment and promotion to a position requiring a higher grade, the ARNG, Human Capital Management Division will forward correspondence inviting the State to promote the officer to the next higher grade effective on a specific date. If acceptable, the State will issue orders promoting the officer citing this regulation. The State will then forward a request for Federal Recognition of the officer to ARNG Personnel Division (ARNG-HRP), in accordance with such procedures as ARNG-HRP prescribes. If the State does not desire to promote the officer, the ARNG, Human Capital Management Division will be notified, and the promotion procedure will be terminated. States are only authorized to promote Title

10 AGR officers and continue them on active duty when the following conditions have been met:

(1) The officer is eligible and qualified for promotion in accordance with all other provisions of this regulation (FRB is required unless the officer has been selected for promotion by the DA Mandatory Selection Board).

(2) The officer is serving in a higher-grade tables of distribution and allowances/ modified tables of organization and equipment (MTOE/TDA) position, and an appropriate grade authorization has been provided to the respective State by the ARNG, Human Capital Management Division.

4. Army Regulation 135–15 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers), in effect at the time, provides policy for selecting and promoting commissioned officers of both the Army National Guard of the United States (ARNGUS) and the U.S. Army Reserve (USAR), and warrant officers of the USAR.

a. Officers and warrant officers who have either failed of selection for promotion, or who were erroneously not considered for promotion through administrative error may be reconsidered for promotion by either a promotion advisory board or a special selection board, as appropriate.

(1) Promotion advisory boards are non-statutory boards, and are convened to reconsider all warrant officers, to include commissioned warrant officers. These boards will also reconsider commissioned officers (other than commissioned warrant officers) who were either non-selected or were erroneously not considered for promotion by a mandatory promotion board convened before 1 October 1996.

(2) Special selection boards, convened under the Reserve Officer Personnel Management Act (ROPMA) on and after 1 October 1996, will reconsider commissioned officers, (other than commissioned warrant officers) who were wrongly not considered and reconsider commissioned officers (other than commissioned warrant officers) who were considered but not selected by mandatory promotion boards that convened on or after 1 October 1996. These boards do not reconsider officers who were not considered or not selected by mandatory promotion boards that convened before 1 October 1996.

b. Promotion advisory boards/special selection boards will convene as needed' basis, to reconsider officers who were either improperly omitted from consideration due to administrative error, or who were non-selected for mandatory promotion as a result of material error. Special selection boards are conducted as an additional duty of regularly scheduled mandatory Reserve of the Army selection boards for the same competitive category. These boards are convened to correct/prevent an injustice to an officer or former officer who was eligible for promotion but whose records:

- Through error, were not submitted to a mandatory promotion selection board for consideration
- Contained a material error when reviewed by the mandatory selection board

c. Records of officers or former officers will be referred for special selection board action when the Office of Promotions (RC) determines if an officer was eligible for promotion consideration; however, the officer's records were, through error, not submitted to a mandatory promotion selection board.

d. The Army Board for Correction of Military Records (ABCMR) requests such a referral.

e. Correction of military records as a result of a special selection board action. If the report of a special selection board, approved by the President, recommends for promotion to the next higher grade an officer not currently eligible for promotion, or a former officer whose name was referred to it, the SA may act through the Army Board for Correction of Military Records (ABCMR) to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer.

5. Wright Memorandum, dated 8 January 2015, states. The Under Secretary of Defense issued guidance on Limitations on the Authority of Military Department Correction Boards. This guidance affirms that Military Department Correction Boards do not have the authority to appoint military officers. The President may appoint Regular officers above the grade of O-3 and Reserve officers above the grade of O-5 following Senate confirmation. Only the Secretary of Defense may appoint all officers in the grade of O3 and below because Congress, has vested such appointment authority in the President alone, and the President has assigned that function to the Secretary of Defense. This decision affirms that Military Department Correction Boards do not have the authority to remedy perceived errors or injustices by correcting records to show that an officer has been appointed to a certain grade when the officer has not been appointed to that grade by the President or the Secretary of Defense. Boards may only make such a correction to reflect that a proper appointment has occurred. They may also adjust the date of rank (DOR) of an officer who has been properly appointed.

//NOTHING FOLLOWS//