

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 January 2024

DOCKET NUMBER: AR20230003961

APPLICANT REQUESTS: adjustment of his Date of Rank (DOR) for promotion to the rank/grade of colonel (COL)/O-6 from 30 March 2022 to 28 February 2019, as well as corresponding backpay and allowances. A personal appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states, the Criminal Investigation Division (CID) titled him in regard to an investigation. CID has since corrected their error and notified him. He was unjustly titled by CID which delayed his promotion, and he would have been promoted 4-years earlier.

2. A review of the applicant's official record shows the following:

a. On 22 August 1994, Special Orders Number 67 issued by the National Guard Bureau (NGB) extended Federal Recognition (FEDREC) to the applicant for his initial appointment in the Army National Guard (ARNG).

b. On 8 November 1994, the applicant was appointed as a Reserve commissioned officer and executed an oath of office.

c. DA Form 1059 (Service School Academic Evaluation Report), dated 20 August 2010 shows the applicant attended and completed the Intermediate Level Education Course from 25 August 2009 through 19 August 2010.

d. On 20 June 2014, Memorandum, Subject: Selection for Retention under the Provisions of National Guard Regulation 635-102 (Officers and Warrant Officers Selective Retention) issued by the Massachusetts National Guard notified the applicant he was retained for retention in the rank/grade of lieutenant colonel (LTC)/O-5.

e. On 22 August 2018, Orders Number 234-032 issued by the Massachusetts National Guard promoted the applicant to the rank/grade of COL/O-6, effective on with a

DOR of 15 August 2018. These orders state the applicant would not be paid in the grade of COL and is not authorized to wear the insignia of the higher grade until FEDREC is confirmed. Effective date of promotion and DOR will be the date the Chief, NGB, extends FEDREC.

f. DA Form 1059 dated 27 July 2018 shows the applicant attended and completed the U.S. Army War College from 1 May 2016 through 27 July 2018.

g. On 7 April 2022, Special Orders Number IP-10264 issued by the NGB promoted the applicant to the rank/grade of COL/O-6, effective on with a DOR of 30 March 2022.

h. On 14 April 2022, the Massachusetts ARNG, Army Element Joint Force Headquarters, issued Orders Number 0001773049.00 which promoted the applicant to the rank/grade of COL/O-6, effective on with a DOR of 30 March 2022.

3. On 31 August 2023, in the processing of this case, the NGB, Chief, Special Actions Branch, in conjunction with the Massachusetts National Guard, provided advisory opinions which recommended approval and state:

a. The applicant was recommended for a unit vacancy promotion to COL and recommended by a Federal Recognition Board (FRB) in 2018 but was subsequently removed pending an investigation of allegations of wrongdoing in the Army Guard Recruiting Assistance Program (G-RAP). In November 2022, he was notified that he would not be titled or indexed into the law enforcement databases. He requests his DOR to COL be changed from 30 March 2022 to 28 February 2019, as well as backpay resulting from the date change.

b. The applicant's records show that he was promoted to LTC on 3 October 2013. The applicant was recommended for a Unit Vacancy Promotion (UVP) to COL/O-6 and recommended by a Federal Recognition Board (FRB) on 15 August 2018. The FRB recommendation was submitted to the NGB, and the applicant was subsequently assigned to promotion scroll number S01-19 on 17 October 2018. During suitability review, he was removed from scroll pending a Promotion Review Panel (PRP) because he was flagged for investigation of wrongdoing in the G-RAP). While awaiting PRP action and result, he was removed from Calendar Year (CY) 20 COL Army Promotion List (APL), CY21 COL APL, and CY22 COL APL Department of the Army (DA) Boards due to him being recommended for a UVP and pending PRP results. The PRP retained the applicant on 25 February 2020. NGB notified the MAARNG on 28 July 2020 that the applicant's promotion packet was at the White House. After inquiries regarding the status of his promotion packet, on 22 February 2021, the NGB informed MAARNG that he was removed from the UVP process due to reaching 18-months in the UVP process in accordance with Title 10 United States Code, section 14310. The MAARNG submitted a Special Selection Board (SSB) request to the U.S. Army Human Resources

Command through the NGB on 12 April 2021. The MAARNG G-1 was then notified that the 18-month rule did not apply and therefore his promotion packet was forwarded back to the White House in June 2021.

c. In July 2022, the DA CID began a thorough review of investigations previously initiated and conducted into allegations of criminal wrongdoing in various Army Recruiting Assistance Programs (RAP). The review determined that based upon the information available to CID, there was insufficient evidence to title or index the applicant in law enforcement databases. Therefore, CID removed his name from all law enforcement systems, to include Defense Clearance and Investigations Index (DCII) and the Federal Bureau of Investigation's Interstate Identification Index (III).

d. Based on the applicant's claims and the State's response, it is the recommendation of this office that the applicant's request for the change to his DOR and effective date to COL and backpay be approved. The applicant was retained by the PRP on 25 February 2020 and was assigned to scroll number Senate List (SL) 01-19 which was confirmed by the Senate on 28 February 2019. Administrative errors and delays resulted in delay of his promotion and not being considered by three (3) DA boards. Had the applicant's packet not been removed from the UVP process, his promotion would have returned favorably from Senate confirmation in 2019.

e. The ARNG Federal Recognition branch concurs with this recommendation. The MAARNG concurs with this recommendation.

4. On 8 September 2023, the applicant, by email, responded to the advisory opinion concurring with the recommendation.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant was recommended for a unit vacancy promotion to COL and recommended by a Federal Recognition Board in 2018 but was subsequently removed pending an investigation of allegations of wrongdoing in the Army G-RAP. Upon being recommended for unit vacancy promotion, he was removed from the scroll pending a Promotion Review Panel (PRP) because he was flagged for investigation of wrongdoing in the G-RAP. While awaiting PRP action and result, he was also removed from CY20, CY21, and CY22 promotion boards consideration for a vacancy promotion pending the PRP results. The PRP retained the applicant on the promotion list in February 2020, for a maximum of 18 months, which was later determined to not apply in his case. In July 2022, the CID review determined there was

insufficient evidence to title or index the applicant in law enforcement databases and CID removed his name from all law enforcement systems, to include DCII. The applicant was promoted to COL on 30 March 2022.

b. The Board reviewed and agreed with the NGB advisory official's finding that administrative errors and delays resulted in delay of his promotion and not being considered by three promotion boards. Had the applicant's packet not been removed from the UVP process, his promotion would have returned favorably from Senate confirmation in 2019. As such, the Board determined an injustice occurred and that his effective date of promotion to COL and date of rank should be adjusted from 30 March 2022 to 28 February 2019, the date scroll number Senate List (SL) 01-19 was confirmed by the Senate.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for 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 amending Special Orders Number IP-10264 issued by the NGB on 7 April 2022 to show the applicant was promoted to colonel/O-6, effective on with a DOR of 28 February 2019 vice 30 March 2022.

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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. National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions) states, 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 FEDREC in the higher grade, the officer must have satisfied the requirements prescribed herein. b. National Guard officers may be considered and found qualified for FEDREC of their state promotion using two distinct processes: State federal recognition Boards and 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. Selection for promotion does not automatically constitute an approved promotion action. Those that are eligible for promotion must be recommended by Commanders and approved by The Adjutant General (TAG). The promotion packet should include TAG memo and the state promotion order. (1) State FRB. Officers may be FEDREC through State FRB which are often referred to as "State vacancy promotion boards" or "unit vacancy boards" as part of the UVP process under Title 32, United States Code (USC), section 307. LTC to COL promotion requires 3 years time in grade as a LTC.

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.

3. The Army Board for Correction of Military Records (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.

4. Title 10, USC, section 1552 states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

5. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//