

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20230004002

APPLICANT REQUESTS: in effect, amendment of National Guard Bureau (NGB) Special Orders (SO) Number 108 AR, dated 14 April 2020, by amending his date of rank (DOR) for promotion to captain (CPT) from 1 February 2020 to a date in September 2018.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 1559 (Inspector General (IG) Action Request
- Secretary of the Army Memorandum
- Two DA Forms 268 (Report to Suspend Favorable Personnel Actions (Flag))
- Email correspondence
- DA Form 67-10-1 (Company Grade Plate (O1 – O3; WO1 – CW2) Officer Evaluation Report (OER))
- U.S. Army Human Resources Command (HRC) Memorandum

FACTS:

1. The applicant states on 16 August 2018, the Army flagged him for a post review board (PRB) following his selection to CPT. On 1 October 2019, at the conclusion of the PRB, the Secretary of the Army directed the applicant's retention on the Fiscal Year 2018 (FY18) CPT Army National Guard of the United States (ARNGUS) Army Promotion List (APL) Competitive Categories (CC). The Army then removed the flag 2 years after its initiation but failed to backdate his DOR to 2018 (when he would have originally been promoted). He has made several unsuccessful attempts to correct his DOR; no one has provided a definitive reason as to why his DOR was not adjusted. The applicant declares that his career progression in the ARNG has been hindered by this injustice.

2. The applicant provides:

a. DA Form 67-10-1, for rating period 20171102 through 20181112, evaluating the applicant for the duty position of Division Transportation Officer; at the time, the Army had ordered the applicant to active duty in support of Operation Inherent Resolve, and

deployed him to Kuwait and Qatar. The applicant's rater gave the applicant a rating of "Excels" (i.e., his performance exceeded the majority of the officers in the rater's rating population) and the rater's comments lauded the applicant's superb execution of his duties. The senior rater indicated the applicant was "Most Qualified" (duty performance exceeded the majority of officers in the senior rater's population), and the rater opined that the applicant "has the potential to be a top performer."

b. Two DA Forms 268:

- Effective 16 August 2018, Headquarters, Department of the Army (HQDA) initiated a flag due to the delay of or removal from a promotion selection list
- On 6 May 2020, HQDA removed the flag, effective 16 August 2018, because the applicant's case was favorably closed

c. HRC Memorandum, subject: "Delay of Promotion and Referral to a PRB" and dated 1 April 2019. The memorandum advised the applicant he had been recommended for promotion to CPT; however, his promotion was being delayed, in accordance with paragraph 3-18 (Removal from a Promotion List), Army Regulation (AR) 135-155 (Promotion of Commissioned Officers and Warrant Officers other than General Officers). This paragraph permitted promotions to be delayed when there was cause to believe an officer was "mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he or she was selected for promotion."

(1) The memorandum additionally stated, "The Deputy Chief of Staff, G-1, has approved a post selection screening process for promotions, command selectees, and those selected for project/product managers. All Criminal Investigation Division (CID), Department of the Army Inspector General (DAIG), and the restricted portion of the Army Military Human Resource Record (AMHRR) files are screened to isolate any case in which the selectee is/was the subject of substantive derogatory information."

(2) "You received a Military Police Report Number 02xxx-2012-MPCxxx, dated 23 September 2012, and a Referred Officer Evaluation Report (OER) for the period 20130110 thru 20130724, with supporting documents, which were identified in the post selection screening."

(3) "Your records will be referred to a PRB which will recommend to the Secretary of the Army one of the following:"

- "That you be retained on the promotion list"
- "That your name be removed from the promotion list"
- "That you show cause for retention on active duty"

d. Secretary of the Army memorandum dated 1 October 2019, which show the applicant retained on the promotion list.

e. DA Form 1559, submitted by the applicant, on 9 March 2023, wherein he asks the IG to change/backdate his CPT DOR.

f. In a 13 March 2023 email, the PAARNG IG reviewed the applicant's PAARNG service, noting the applicant transferred into the PAARNG, on 2 May 2016, and that his 1LT DOR was 12 November 2012.

(1) For some reason, the applicant did not go before HQDA's FY17 CPT promotion selection board, despite meeting DOR eligibility requirements; however, according to NGB's Federal Recognition (FEDREC) section, 1LTs could be promoted to CPT when they reached the maximum time-in-grade (MAX TIG), regardless of the position they held.

(2) "With a DOR of 12 Nov 2012, [applicant] would have been eligible to be promoted at MAX TIG of 20171112, but because he didn't go through a DA Board yet, the earliest he could be promoted was 30 August 2018, which is what his adjusted DOR should be." (According to the current version of National Guard Regulation (NGR) 600-100 (Commissioned Officers – FEDREC and Related Personnel Actions), the MAX TIG for CPT is 5 years).

(3) The PAARNG IG recommended the applicant apply for relief to the Army Board for Correction of Military Records (ABCMR).

3. A review of the applicant's service records show:

a. On 30 April 2011, after completing 10 months of qualifying service in the U.S. Army Reserve (USAR), the applicant executed his oath of office as a U.S. Army Reserve commissioned officer. On 12 May 2011, the applicant entered active duty. Effective 12 November 2012, the Army promoted him to 1LT; on an unknown subsequent date, the Army accepted the applicant as a Regular Army commissioned officer.

b. In or around July 2013, the applicant's rating chain issued him a referred, relief for cause OER, covering the rating period 20130110 through 20130724; the applicant's duty position was Distribution Platoon Leader.

(1) In Part IV (Performance and Potential Evaluation), the applicant's rater checked the box for "Other," and stated, "[Applicant's] performance during this rating period was lacking in following the United States Army's model of good order and discipline. [Applicant] violated the United States Army's policy regarding social media by

writing unprofessional comments about his Soldiers on social media websites."  
"[Applicant] has the tactical and technical knowledge to succeed but stumbled in maintaining professionalism. Relief for cause of [applicant] was directed by the squadron commander and I concurred due to the offense."

(2) Under Part VII (Senior Rater), the applicant senior rater rated him "Fully Qualified" and reflected the applicant as being "Below Center of Mass – Retain." The senior rater commented, "I directed the relief for cause for [applicant] because of the inappropriate social media comments he posted about the Soldiers he was charged to lead. His actions showed extremely poor judgement and violated the Army values. [Applicant] does display potential, yet his lack of maturity is currently hindering his ability to grow and develop as a leader and officer."

c. On 3 October 2013, the applicant submitted his comments about his relief for cause OER. He wrote that he sincerely apologized for his online actions and confirmed he had permanently deleted one social media account, deleted or privatized the remaining accounts, and apologized to several Soldiers. Additionally, the applicant stated:

(1) "...although it is no defense for my comments, an explanation of what happened online may shed some light on this situation. On (social media application), the communications are first and foremost meant for the few people who 'follow' my account. This circle, usually comprised of friends and family, can all hear and respond to your posts. This fact makes (social media application) a unique combination of private communication but with a public potential."

(2) "When I made the comments at issue on (social media application) (which, again, I never should have made, and were unfair to my soldiers) I was intending that they be private communications, just for my friends who 'followed' my account. I never intended them to be public statements. As this case has shown, they became public, but that was not my intention."

d. On 23 October 2013, the applicant's brigade commander provided a supplemental review, in which he affirmed the applicant's posts had been meant to be private, and that the applicant was "inappropriately venting due frustrations to what he though was family and friends only. The officer has greatly matured from this event."

e. On 30 October 2015, based on his non-selection for promotion to CPT by the FY15 CPT ACC (Army Competitive Category) Promotion Selection Board, HRC directed the applicant's command to involuntarily separate him, on 1 May 2016. In February 2016, the applicant requested reassignment to the PAARNG upon his release from active duty. On 1 May 2016, the Army honorably released the applicant from active duty and transferred him to the PAARNG.

f. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 11 months, and 20 days of active duty service. On 2 May 2016, the applicant executed his oath of office as a commissioned officer in the PAARNG and the Army of the Reserve.

g. On 10 April 2017, NGB issued a memorandum, subject: "Request for Civil Conviction Waiver – [Applicant]" and addressed to The Adjutant General, PAARNG. The memorandum stated:

(1) "Under the provisions of NGR (National Guard Regulation) 600-100 (Commissioned Officer FEDREC and Related Personnel Actions), paragraph 2-9b (Person's Ineligible for FEDREC unless Waiver Granted), your request for a civil conviction waiver for [applicant] to be appointed as a commissioned officer is approved. This waiver is granted for a 2nd Degree Harassment Violation – Physical Contact in Watertown, NY, on 23 September 2012."

(2) "Undisclosed or future incidents resulting in a conviction prior to the date of appointment as an officer will result in the revocation of this waiver." "This approval is based upon the recommendations of the PAARNG. All civil convictions are approved on a case by case basis and this approval is not considered precedent."

h. On 25 January 2018, a PAARNG memorandum announced the applicant would be considered for promotion to CPT by the FY18 Reserve Component CPT APL PSB. The memorandum advised the applicant that his board file would consist of the performance section of his Interactive Personnel Electronic Records Management System (iPERMS) file, his official DA Photo, and an automated Officer Record Brief.

i. On 12 September 2018, the PAARNG informed the applicant that, on 30 August 2018, the FY18 Reserve Component CPT APL Mandatory Board was approved, and the board had selected the applicant for promotion.

j. As provided by the applicant, a 1 April 2019 memorandum from HRC announced the applicant's referral to a PRB, and, on 1 October 2019, the Secretary of the Army directed the applicant's retention on the FY18, CPT ARNGUS, APL CC, promotion list.

k. NGB SO Number 108 AR, dated 14 April 2020, Federally recognized the applicant's promotion to CPT, effective 1 February 2020. PAARNG Orders, dated 20 May 2020, promoted the applicant to CPT in the duty position of commander. The orders show the applicant's promotion rank entry date as 13 February 2020, and his promotion grade entry date as 1 February 2020. The applicant continues his service in the PAARNG.

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 determined the applicant was selected for promotion on 30 August 2018; however, his post-board review was not completed and approved by the Secretary of the Army until 1 October 2019; therefore, the Board concluded partial relief was appropriate to amend his date of rank to 1 October 2019.

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 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 him Federal recognition for promotion to CPT with an effective date and date of rank as 1 October 2019, with entitlement to back pay and allowances, if applicable, as a result of this correction.

[REDACTED]

[REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

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 (AR) 135-155 (Promotion of Commissioned Officers and Warrant Officers other than General Officers), paragraph 3-18 (Removal from a Promotion List), in effect at the time, stated an officer's name will not be removed from a promotion list except as authorized by this paragraph.

a. Authority. The authority for the removal of a name from a promotion list rests with the President for commissioned officers.

(1) Before the mandatory or position vacancy promotion board report is approved by the President or their designee, the name of an officer in a grade above second lieutenant, recommended for promotion, may be removed from the report of the board only by the President. A report of a selection board exists after the promotion board issues a signed board report. The board report becomes a promotion list after being approved by the President or their designee. The President or their designee may remove the name of an officer in a grade above second lieutenant from a promotion list.

(2) If the Secretary of the Army recommends removal of the name of an officer from a selection board's report and the recommendation includes information that was not presented to the selection board, the information will be made available to the officer. The officer will be allowed a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. If the officer cannot be given access to the information for reasons of National security, the officer will, to the maximum extent practicable, be provided with an appropriate summary of the information. An officer who has been provided with 14 days from the date of receipt of such information to submit comments is considered to have been provided a reasonable opportunity, unless good cause is shown. Proof of notification will be included in the file.

(3) Promotion advisory boards will be convened to consider the promotion status of officers who are recommended for removal from a promotion list based on physical, personal or professional disqualification. The board's recommendation for removal will be forwarded through the Deputy Chief of Staff, G-1 and the Secretary of the Army to the Secretary of Defense. The Office of Promotions (Reserve Component (RC)) will terminate requests for removal not supported by the promotion advisory board.

(4) If an officer is determined to be ineligible for consideration HRC, Office of Promotions (RC) will verify the officer's ineligibility, explain the basis for the officer's ineligibility to the Secretary of the Army, and advise the Secretary of the Army to request that the President approve removal or administrative deletion of the officer's name from the promotion board report or the promotion list.



(5) Commanders and HRC, Office of Promotions (RC) were to continuously review promotion lists to ensure no officer was promoted who had become mentally, physically, morally, or professionally disqualified after being selected. Commanders and HRC, Chief, Office of Promotions (RC) could recommend officers for removal based on the officer's receipt of a referred evaluation or academic report.

b. In the current version of the regulation, dated 13 December 2022, paragraph 7-12 (Effect of Retention) states, "An officer or warrant officer retained on the promotion list by the Secretary of the Army shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the Reserve Active Status List as he or she would have had if no delay had intervened, unless the Secretary of the Army determines that the officer was unqualified for promotion for any part of the delay. If the Secretary of the Army makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances."

2. Army Directive 2010-10 (Enhancement of the Promotion Review Board (PRB) Process), in effect at the time, stated the following:

a. "Officers must meet statutory requirements for exemplary conduct, set forth in Title 10 (Armed Forces), U.S. Code, section 3583 (Requirement of Exemplary Conduct). To this end, Department of the Army policy mandates the review of promotion lists to ensure that no officer is promoted when there is cause to believe that he or she is mentally, physically, morally or professionally unqualified or unsuited to perform the duties of the next higher grade to which he or she was selected for promotion. The PRB process is a critical element of the Army's officer promotion program."

b. "Notwithstanding any provision of extant regulation, pamphlet, policy, standard operating procedure or common practice, the following shall apply to all PRBs convened under provisions of AR 600-8-29 (Officer Promotions), chapter 8 (PRB); AR 135-155, paragraph 3-18; and AR 135-156 (Reserve Component General Officer Personnel Management), paragraph 5-4 (PRB)."

(1) "Information to be Provided to the Officer and the PRB. In all cases referred to a PRB on the basis of adverse information set forth in an inquiry or investigation by U.S. Army Criminal Investigation Command (CID) or the Department of the Army Inspector General (DAIG), CID and DAIG shall provide to the Office of the Deputy Chief of Staff, G-1 (ODCS, G-1) or the General Officer Management Office (GOMO), as appropriate, a complete copy of the base report of the inquiry or investigation from which the adverse information is drawn, redacted in accordance with the Freedom of Information and Privacy Acts to ensure maximum disclosure while protecting witness identities as authorized by law and regulation. The Office of the Deputy Chief of Staff,

G-1 or General Officer Management Office, as applicable, shall forward the report to the officer at issue for review in advance of the PRB."

(2) "Except as set forth below with regard to general officers, the Director of Military Personnel Management shall ensure that officers referred to a PRB are the subject of a suspension of favorable personnel action in accordance with AR 600-8-2 (Suspension of Favorable Personnel Actions (FLAGS)), from the time the officer is referred to a PRB until the appropriate official takes final action to retain the officer on, or remove the officer from, the promotion list. The Director of Military Personnel Management will ensure that the officer's 'flagged' status and the basis for the imposition of the FLAG are communicated to the 'flagged' officer and to appropriate officials and organizations within the Army and the Department of Defense."

3. National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition (FEDREC) and Related Personnel Actions), currently in effect, states the following in chapter 8 (Promotion for Other than General Officers):

a. Paragraph 8-7 (Eligibility for Promotion). To be considered for FEDREC following State promotion to fill a unit vacancy, an ARNG commissioned officer must:

- Be in an active status
- Be medically fit and meet the height and weight standards
- Have completed the minimum years of TIG; for captain (CPT), the minimum time-in-grade is 2 years
- Have completed the minimum military education requirements; for CPT, the officer is required to have completed officer basic course
- Have completed the minimum civilian education requirements
- Have passed a physical fitness test

b. Section III (Mandatory Consideration for Promotion).

(1) Paragraph 8-14 (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 TIG requirements prescribed for the zone of consideration.

(2) Paragraph 8-15 (Time in Grade for Mandatory Consideration for Promotion). The maximum time-in-grade for CPT is 5 years.

(3) Paragraph 8-16 (FEDREC for Promotion after Department of the Army Mandatory Board Selection). An ARNG commissioned officer selected for promotion as a Reserve commissioned officer of the Army resulting from mandatory consideration

may be extended FEDREC in the higher grade, provided they meet the promotion criteria as outlined in chapter 8.

//NOTHING FOLLOWS//