

IN THE CASE OF:

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230004129

APPLICANT REQUESTS: correction of his Regular Army date of rank (DOR) for promotion to the rank/grade of first lieutenant (1LT)/O-2.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 7 February 2022
- DA Form 4836 (Developmental Counseling Form), 7 February 2022
- DA Form 5500 (Body Fat Content Worksheet (Male)), 7 February 2022
- DA Form 268, 3 March 2022
- DA Form 5500, 28 March 2022
- DA Form 268, 1 December 2022
- DA Form 5500, 1 December 2022
- Orders Number 003998189.00, 9 February 2023

FACTS:

1. The applicant states, in pertinent part, he believes his DOR to be incorrect. According to Army Regulation (AR) 600-8-29 (Officer Promotions), page 22-23, it states that he should be promoted to 1LT if either he has served 18 months of active duty service as a second lieutenant (2LT), which would have been 5 August 2022, or the day before the second anniversary of the 2LT DOR, which would have been 11 May 2022. On both of these dates he was not flagged. The U.S. Army Human Resources Command (HRC) incorrectly listed his promotion date to 1LT as 1 December 2022, which was the day he was removed from the Army Body Composition Program (ABCP). According to the regulation, he should have been promoted 4 months prior to his initial flag.

2. A review of the applicant's available service records reflects the following:

- a. On 6 November 2014, he enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG).

b. On 9 October 2018, he signed a DA Form 597 (Army Senior Reserve Officers' Training Corps (ROTC) Non-Scholarship Cadet Contract) for enrollment into the ROTC program.

c. On 11 May 2020, the [REDACTED] ARNG issued voluntary separation orders honorably separating him at the rank/grade of sergeant (SGT)/E-5.

d. On 12 May 2020:

(1) He accepted a Reserve commission at the rank/grade of 2LT/O-1, and executed an oath of office.

(2) The ROTC, [REDACTED] University issued a Memorandum for Appointment as a Reserve Commissioned Officer of the Army at the rank/grade of 2LT/O-1.

e. On 5 February 2021, he entered active duty. He is currently serving on active duty.

f. DA Form 268, dated 7 February 2022, shows he was flagged for the Army Body Composition Program, flag code (K). In conjunction a DA Form 4856 was completed notifying him of the initiation of his flag for body fat composition failure and a DA Form 5500 showing his body fat at 28 percent. The remarks show his actual body fat as 31 percent.

g. DA Form 268, dated 3 March 2022, shows removal of his flag for body composition failure for erroneous (Z) reason.

h. DA Form 5500, dated 28 March 2022, shows his body fat content at 21 percent.

i. DA Form 268, dated 1 December 2022, shows favorable removal of his flag for the Army Body Composition Program. In conjunction the DD Form 5500 was completed showing his body fat content at 19 percent.

j. On 9 February 2023, the Department of the Army issued Orders Number 0003998189.00 promoting him to the rank/grade of 1LT/O-02 with a retroactive effective date of 1 December 2022.

3. On 27 October 2023, the HRC, Chief, Officer Promotions Board Announcements, Support and Promotion Orders, provided an advisory recommending disapproval of the applicant's request stating, in effect:

a. Based on a review of the information provided and the DA Forms 268 included

within his request, they do not find that it has merit. The information from DA Forms 268 submitted is as follows:

(1) Flag code – KA (Army Body Composition Program (K), Adverse Action (A)), signed 9 February 2022, effective 7 February 2022.

(2) Flag code – KA, effective 30 September 2022, date closed 1 December 2021, date signed 1 December 2022.

(3) Flag code – KA, date signed 3 March 2022, effective date 9 February 2022, date closed 3 March 2022.

b. The initial signed wet signature date as indicated on the DA Form 268 reflects flag closure as 1 December 2022, the effective date and DOR of his 1LT promotion orders. Understand that the flag was closed (Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions (FLAGS))) as a Final Action Favorable C (incorrectly), KA flag closures must be closed final as final action specified (E) or erroneous (Z). They cannot affirm the validity of the DA Form 268 flag closure without being date stamped as a true date, and without being closed as a true Z, erroneous flag. Given the history of the K flags, there is more than a reasonable chance that it was not an erroneous flag.

c. Given the amount of time that has elapsed and the flag documents in question for an earlier DOR, they recommend that his request include a memorandum signed by his first line Colonel (COL)/O-6 or higher, clarifying if the flag initiated was erroneous and to grant him full relief.

4. On 31 October 2023, the applicant was provided with a copy of the advisory opinion to provide a response. As of 14 November 2023, he did not respond.

#### BOARD DISCUSSION:

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

2. A majority of the Board did not concur with the advisory official's conclusions, finding that a preponderance of the evidence shows the applicant was erroneously flagged, which prevented his timely promotion to 1LT/O-2. A majority of the Board determined the applicant should be assigned a date of rank for 1LT/O-2 of 5 August 2022, which was 18 months after he entered active duty.

3. The member in the minority concurred with the advisory official's conclusion that the applicant has not provided sufficient evidence of an error that prevented his promotion

to 1LT/O-2 with a date of rank prior to 1 December 2022. The member in the minority determined the current date of rank for 1LT/O-2 is not in error or unjust.

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 records of the individual concerned be corrected by showing the effective date of his promotion to 1LT/O-2 is 5 August 2022. The applicant should be paid any additional pay and allowances he is due as a result of this correction.

4/15/2024

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. AR 600-8-29 (Officer Promotions) paragraph 3-15, states, promotion eligibility to 1LT is computed according to the following rules listed below and based upon which rule occurs first:

a. Eighteen months of active duty service as a 2LT on the Active Duty List. If the officer's source of commission is ROTC, active duty service commences on the year,

month, and day the officer enters active duty based on the computation of travel in accordance with the Joint Federal Travel Regulation. An exception to this is an ROTC graduate who is appointed and enters active duty in the month of May or June of the same year. The PED for officers entering in May or June is 18 months from the date the graduating class of the United States Military Academy (USMA) entered active duty. The following will also count as active duty service:

b. The day before the second anniversary of the 2LT Active DOR.

2. AR 600-8-2 (Suspension of Favorable Personnel Actions (FLAGS)), paragraph 2-3(c) states, c. Flag code K "Noncompliance with Army Body Composition Program." The effective date of the Flag is the date that the Soldier was found to be in noncompliance with AR 600 – 9. The use of certain medication to treat an underlying medical disorder or the inability to perform all aerobic events may contribute to weight gain but are not considered sufficient justification for noncompliance with AR 600 – 9 and the Soldier will be flagged. Soldiers will not be exempt because of chronic medical conditions unless an exception to enrollment in the ABCP is granted by the DCS, G – 1. In the case of a pregnant Soldier, if a physician determines that the Soldier became pregnant prior to being entered into the ABCP, the commander will close the Flag using codes KZ, not KE. If the Flag was initiated before pregnancy (as determined by her physician) the Flag will remain in effect until the Soldier complies with AR 600 – 9. Remove the Flag (code E) on date of compliance.

//NOTHING FOLLOWS//