

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230004785

APPLICANT REQUESTS: in effect, reconsideration to have his effective date of grade (Date of Rank (DOR)) and Date of Rank Reserve (DOR-RES)/Promotion Eligibility Date (PED) to colonel (COL) be adjusted to 2 October 2017 and lieutenant colonel (LTC) be adjusted to 17 October 2011; entitling him to back pay and allowances due as a result of these corrections.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's statement
- LTC Promotions on Command Leadership and Staff Assignment Policy and Procedures (CLASP)
- COL Promotions on CLASP
- Memorandum, Subject Fiscal Year 2010 (FY10) Spring State Active Guard/Reserve (AGR) Officer Promotion Plan (SAOPP) for Promotion: Colonel, LTC and Major, 18 March 2010
- Memorandum, Subject: Army National Guard (ARNG) AGR Program and Military Technician (MT) CLASP and Procedures, 13 September 2011
- Memorandum, Subject Fiscal Year 2011 (FY11) State AGR Officer Promotion Plan (SAOPP) for Promotion: Colonel, LTC and Major, 28 September 2011
- Memorandum, Subject: Fall 2011 Command Review Council (CRC)/Assignment Council (AC) Selections
- DA Form 4856 (Developmental Counseling Form), 15 May 2012
- Memorandum, Subject: AGR Program and MT CLASP, 26 February 2013
- Memorandum, Subject: Fiscal Year 2017-2018 AGR Controlled Grade Officer Promotions for Colonel, LTC and Major, 10 August 2017
- Memorandum, Subject: Fiscal Year 2018-2019 AGR Controlled Grade Officer Promotions for Colonel, LTC and Major, 30 August 2018
- Orders Number 287-0029, 14 October 2021
- Officer Record Brief, 1 December 2021

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190000645 on 23 March 2021.

2. The applicant states, in pertinent part:

a. He requests reconsideration of ABCMR case based on the following new evidence provided. In the previous ABMCR decision, dated 12 January 2023, the Board unanimously recommended full relief of his request; however, the Deputy Assistant Secretary of the Army (Review Boards) found there was insufficient evidence to grant the requested relief.

b. What follows is a detailed depiction and analysis of PAARNG promoting AGR Officers on CLASP (Command Leadership and Staff Assignment Policy and Procedures) assignments. Enclosure 1 (LTC Promotions on CLASP) and Enclosure 2 (COL Promotions on CLASP) are introduced as new evidence and the personnel administrative data was provided by the PAARNG in support of his claim. He trusts this new information will provide sufficient evidence to grant full relief; thereby demonstrating how the PAARNG promoted AGR Officers on CLASP assignments in advance of him.

c. This injustice has greatly impacted his ability to compete with peers, losing time and opportunities for assignments, promotions and advanced schooling at the next higher grade; as well as pay and allowance entitlements for performing the duties and responsibilities in the higher graded position. Based on his calculations, is a loss of 11 months and 14 days as a LTC/O-5 and 1 year and 10 days as a COL/O-6; for a total loss of 1 year, 11 months and 24 days. Based upon the new evidence, he requests his COL/O-6 Effective Date of Grade (DOR) adjusted to 2 October 2017 and his LTC/O-5 Effective Date of Grade (DOR) adjusted to 17 October 2011; entitling him to back pay and allowances due as a result of these corrections.

d. The applicant's complete statement with new evidence and his previously submitted evidence can be reviewed in their entirety within the supporting documents.

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

a. With prior enlisted service, he was appointed as a Reserve commissioned officer of the PAARNG and executed an oath of office on 3 April 1992. He served in a variety of stateside and overseas assignments, including periods of mobilization.

b. Special Orders Number 364 AR published by the National Guard Bureau (NGB) extended Federal Recognition in the ARNG to the applicant and promoted him to the rank/grade of LTC/O-5, effective 1 October 2012, with a PED (promotion eligibility date)

of 17 January 2012. Subsequently Special Orders Number 229 dated 13 September 2013 changed his PED to 19 January 2011.

c. He transferred from the Armor Branch to the Adjutant General Branch, effective 20 January 2017.

d. Special Orders Number 287 published by the NGB extended Federal Recognition in the ARNG to the applicant and promoted him to the rank/grade of COL/O-6, effective 12 October 2018, with a DOR of 25 May 2017.

e. On 23 March 2021, ABCMR Record of Proceedings Docket Number AR20190000645 shows the Board majority found that relief was warranted. The Board considered the applicant's request, supporting documentation, regulatory guidance and evidence in the record to include an NGB advisory. Notwithstanding the advisory opinion, the Board majority found sufficient evidence that the applicant's DOR, through no fault of his own, had been unduly delayed and, as a result, negatively impacted the applicant. The dissenting member found insufficient evidence of an error or injustice and concurred with the advisory. The Board determined his effective DOR and DOR RES PED to COL/O-6 should be adjusted to 11 June 2016 and his effective date of grade to LTC/O-5 should be adjusted to 1 December 2009 with entitlement to all back pay and allowances.

f. On 30 April 2022, the applicant was retired and transferred to the U.S. Army Reserve (USAR) Control Group (Retired). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 4a (Grade, Rate or Rank) – COL
- item 12i (Effective Date of Pay Grade) – 12 October 2018
- item 25 (Separation Authority) – National Guard Regulation (NGR) 600-5 (The AGR Program, Title 32, Full Time National Guard Duty (FTNGD) Management), paragraph 6-4 and 6-6, and AR 600-8-24 (Officer Transfers and Discharges)
- item 28 (Narrative Reason for Separation) – Sufficient Service for Retirement

g. His NGB Form 22 (Report of Separation and Record of Service) shows he was released from the PAARNG and transferred to the USAR Control Group (Army of the United States Retired) effective 30 April 2022. In pertinent part it shows in:

- item 5a (Rank) – COL
- item 6 (DOR) – 25 May 2017
- item 23 (Authority and Reason) – NGR 635-100 (Termination of Appointment and Withdrawal of Federal Recognition), paragraph 5a(2)(a)(2) "Completion Maximum Years of Service"

h. On 10 January 2023, the Army Review Boards Agency (ARBA), Deputy Assistant Secretary of the Army (DASA) reviewed the evidence presented, findings, conclusions, and Board member recommendations. The ARBA DASA also reviewed the NGB advisory opinion and found it persuasive that the applicant's promotions to LTC and COL occurred in accordance with the National Guard's officer promotion procedures. Based on a preponderance of evidence, the DASA found that there was insufficient evidence to grant the applicant's requested corrections. Therefore, under the authority of Title 10, United States Code, section 1552, he directed that the applicant's request be denied.

4. In support of his reconsideration, the applicant provided the following new evidence that was not previously considered by the Board:

a. LTC Promotions on CLASP (provided by PAARNG), which references FY10 Control Grade Promotions, dated 18 March 2010 and indicates the PAARNG promoted AGR Officers on CLASP assignments in advance of him. He also provides extensive details and analysis to support his claim.

b. COL Promotions CLASP (provided by PAARNG), which references FY17-18 Control Grade Promotions, dated 10 August 2017 and indicates the PAARNG promoted AGR Officers on CLASP assignments in advance of him. He also provides extensive details and analysis to support his claim.

c. Orders Number 287-0029 published by the PAARNG Adjutant General, which retired the applicant, effective 30 April 2022, and placed him on the retired list in the rank of COL, effective 1 May 2022.

d. His Officer Record Brief dated 1 December 2021, which shows his assignments, DOR(s), awards and decorations, military and civilian education, training, and other pertinent personnel data.

5. On 16 November 2023, the NGB, Chief, Special Actions Branch, provided an advisory opinion for this case and recommended partial approval. The advisory official stated:

a. The applicant states that he was promoted to LTC/O-5 on 1 October 2012 and to COL/O-6 on 12 October 2018. These dates are significantly delayed from when he assumed the AGR/Full-time Support (FTS) position of the rank. He claims that the PAARNG erroneously promoted AGR officers on CLASP (Command, Leadership and Staff Assignment Policy) assignments. He requests his DOR and effective date for both LTC and COL be adjusted to 2 October 2017 and 17 October 2011, respectively, with back pay and allowances, because the delay was no fault of his own.

b. The NGR 600-5 (The Active Guard Reserve (AGR) Program Title 32, Full Time National Guard Duty (FTNGD) Management), paragraph 4-6d(3) states that AGR Soldiers may not exceed their FTS authorized grade position. Promotions based on CLASP assignments are not authorized.

c. In 2010, another major (MAJ)/O-4 in the PAARNG was militarily assigned as the 2-104 Cavalry Battalion Commander, and as the 2-104 Cavalry Battalion AO as an O-5/LTC for his FTS/AGR position. This countered the guidelines provided in NGR 600-5 by exceeding the FTS authorized grade for BN AO, which was O-4/MAJ. The same is true for a different MAJ/O-4 who was assigned militarily as the 1-107 Field Artillery Battalion Commander (O-5) and as the 1-107 Field Artillery Battalion AO (O-4) for his FTS/AGR position. Based on availability of AGR Control Grades, if the two MAJs were removed from the allocation of control grades, the rest of the officers on the MAJ to LTC Control Grade order of merit list (OML) would move up two positions and assume the effective DOR that was given to each respective position on the OML. Therefore, the next MAJ on the OML would have moved up to the number one position and had the effective DOR for LTC of 17 October 2011; the next MAJ would have moved up to the number two position and had the effective DOR for LTC of 17 October 2011; and the applicant would have moved up to the third position and had the effective DOR for LTC of 19 December 2011.

d. The same issue arose when the applicant was assigned to an O-6 position and placed on the AGR Control Grade OML. For example, LTC 'T' in the PAARNG was assigned militarily as the 166 RTI Commander, an O-6 position, but was assigned as the Deputy G3/5/7 for his FTS/AGR assignment, which was an O-5 position. He was listed on the FY17 AGR Control Grade OML. On the FY18 AGR Control Grade OML, another LTC 'L' was listed as the number one position for an O-6 control grade, but he was militarily assigned as the 28 ECAB Commander (O-6) and as the 28 ECAB AO (O-5) for his FTS/AGR position. Based on availability of AGR Control Grades, if they were both removed from the FY17 AGR Control Grade OML and from the FY18 AGR Control Grade OML, the officers following in sequence would have been moved up to occupy a higher position on each respective OML. On the FY17 OML, a LTC 'P' would have moved from number three to number two, assuming the AGR CG availability of 2 October 2017, which was COL 'T's effective DOR. We can assume that as a result, LTC 'U' would then move up to the number three position on the FY17 OML and have the effective DOR of 27 February 2018, which would then move the applicant up to the number one position on the FY18 OML and give him the effective date of rank of 13 September 2018.

e. NGR 600-100 provides the additional requirement for control grades to fund positions at the grade of LTC and COL. Although officers may be assigned to higher

graded positions, not every position is allocated a control grade for promotion to the higher grade. Since this is the case, officers are not fully eligible to be federally recognized in the recommended grade until such determination has been made to fund the position at the higher grade.

f. The applicant was already assigned to an O-5/O-6 position (respectively) when selected by each (O-5/O-6) board but could not be promoted immediately due to strength limitations by grade (Title 10, USC, section 12011, i.e., controlled grades unavailable). Army Regulation (AR) 135-155, 4-21b(2) and PPOM 18-003, 5e. are applied when determining DOR for an officer who is assigned to a higher graded position prior to selection by a Department of the Army (DA) board, then involuntarily delayed due to strength in grade limitations.

g. "For these reasons, it is the recommendation of this office [NGB] that the applicant's request be approved." Based on the applicant's records, there are records of erroneous promotion sequencing/OML regarding AGR officers on CLASP assignments. It is recommended that the applicant's request for DOR adjustments of both his LTC and COL promotions should be approved. PAARNG acknowledges that AGR officers on CLASP assignments were promoted in advance of the applicant.

h. This recommendation has been coordinated with the Army National Guard AGR Reserve Policy Branch and Officer Policy Branch. The PAARNG concurs with this recommendation.

6. On 29 November 2023, the applicant responded to the NGB advisory opinion and stated:

a. He partially concurs with ARNG-HRH [NGB] and PAARNG on their analysis of sequencing control board panel results to determine effective date of grade (date of rank, DOR). He concurs with LTC/O-5 effective date of grade (DOR) of 19 December 2011 based on ARNG-HRH and PAARNG analysis and sequencing of control grade panel results.

b. He non-concurs with COL/O-6 effective date of grade (DOR) of 13 September 2018 based on ARNG-HRH and PAARNG analysis and sequencing of control grade panel results.

(1) ARNG-HRH and PAARNG did not account for AR 135-155, para 4-21d, nor the injustice of PAARNG sequencing Officers on the control grade panels without regard to date assigned to the higher graded position. Both LTC P_ and LTC T_ were considered by the FY17-18 Control Grade Panel conducted on 10 August 2017 having not been assigned to the higher COL/O-6 position prior to the conduct of the panel. LTC P_ was assigned to a COL/O-6 position on 15 August 2017; which was 1 year and 2

months after his assignment as G-1 on 11 June 2016. And LTC T_ was assigned to a COL/O-6 position on 8 September 2017; which was 1 year and 3 months after his assignment as G-1 on 11 June 2016.

(2) AR 135-155, para 4-21d. states: "AGR officers selected by a mandatory board will be promoted provided they are assigned/attached to a position in the higher grade." He was assigned to the higher graded position and selected by the O-6 DA mandatory promotion board prior to the conduct of the FY17-18 Control Grade Panel. Therefore, following strength in grade limitations and if PAARNG's Controlled Grade Panel adhered to the intent of AR 135-155, paragraph 4-21d, assigning controlled grades in the order that officers were assigned to higher graded positions, he should have been promoted prior to both LTC P_ and LTC T_, resulting in a COL/O-6 effective date of grade (DOR) of 2 October 2017.

(3) Additionally, ARNG-HRH and PAARG did not account for the LTC/O-5 effective date of grade (DOR) adjustment to 19 December 2011 in consideration of sequencing of COL/O-6 Control Grade Panel results. This would have given him an additional 9.5 months' time in grade and impacted board sequencing during both FY17-18 and FY18-19 Control Grade Panels; greatly enhancing his record for consideration over LTC P_ and LTC T_.

c. In conclusion, this demonstrates how this injustice has greatly impacted his ability to compete with peers, losing time and opportunities for assignments, promotions and advanced schooling at the next higher grade; as well as pay and allowance entitlements for performing the duties and responsibilities in the higher graded position. Additionally, this injustice impacted his ability to retire/achieve High 3 earlier; as well as additional time as COL/O-6 and missed opportunities to compete for GO certificate/assignments with continued service beyond Mandatory Removal Date.

c. In summary, he requests his COL/O-6 effective date of grade (DOR) adjusted to 2 October 2017 and his LTC/O-5 effective date of grade (DOR) adjusted to 19 December 2011; entitling back pay and allowances due as a result of these corrections.

7. On 15 February 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion for this case and recommended approval. The new advisory opinion reiterates the information provided in the advisory opinion dated 16 November 2023.

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. The

applicant requests his promotion eligibility date (PED) to COL/O6 be adjusted to 2 October 2017 and LTC/O5 be adjusted to 17 October 2011; entitling him back pay and allowances due as a result of these corrections.

a. The Board addressed the PED, which is the date an officer meets the eligibility criteria for promotion to the next higher grade. It is the "earliest date on which an officer who is recommended and selected may be promoted to the next higher grade." The DOR is the date the officer actually or constructively as appointed or promoted to a specific grade. It is the date used to determine the relative seniority for officers holding the same grade. A DOR will be used to establish the PED to the next grade and will be used to establish TIG (time in grade) requirements to the next grade.

b. The Board also noted that NGR 600-100 provides the additional requirement for control grades to fund positions at the grade of LTC and COL. Although officers may be assigned to higher graded positions, not every position is allocated a control grade for promotion to the higher grade. Since this is the case, officers are not fully eligible to be federally recognized in the recommended grade until such determination has been made to fund the position at the higher grade.

c. The Board reviewed and agreed with the NGB's advisory opinion's finding the applicant was already assigned to an O5/O6 position (respectively) when selected by each (O5/O6) board but could not be promoted immediately due to strength limitations by grade (10 USC 12011, i.e., controlled grades unavailable). AR 135-155, the regulation that governs promotions of commissioned officers, paragraph 4- 21b(2) and PPOM 18-003, 5e. are applied when determining DOR for an officer who is assigned to a higher graded position prior to selection by a DA board, then involuntarily delayed due to strength in grade limitations.

d. Based on the applicant's records and the NGB's advisory opinion, the Board agreed that there are records of erroneous promotion sequencing/OML regarding AGR officers on CLASP assignments. The Board recommended that the applicant's request for DOR adjustments of both his LTC and COL promotions should be approved.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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 and Army National Guard records of the individual concerned be corrected by:

- amending Special Orders Number 364 AR published by the National Guard Bureau (NGB) on 16 October 2012 to show the applicant’s effective date and date of rank to LTC as 17 October 2011
- amending Special Orders Number 287 published by the NGB on 2 November 2018 to show his effective date and date of rank to COL as 2 October 2017

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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. Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers) provides policy for selecting and promoting commissioned officers of both the Army National Guard of the United States (ARNGUS) and the USAR, and warrant officers of the USAR. It defines PED and DOR:

a. PED. The date an officer meets the eligibility criteria for promotion to the next higher grade. It is the "earliest date on which an officer who is recommended and selected may be promoted to the next higher grade."

b. Date of rank (DOR). The DOR is the date the officer actually or constructively was appointed or promoted to a specific grade. It is the date used to determine the relative seniority for officers holding the same grade. A DOR will be used to establish the PED to the next grade and will be used to establish TIG (time in grade) requirements to the next grade.

c. Paragraph 4–21, effective dates state, except as provided elsewhere in this regulation, the effective date of promotion may not precede the date of the promotion memorandum. An officer is promoted after selection if all qualifications for promotion are met (chapter 2 and paragraph 4-11). When an officer does not meet the qualifications for promotion (paragraph 4-11), the effective date of promotion will not be earlier than the later date all qualifications are met. In no case, will the DOR, or effective date of promotion be earlier than the date the board is approved, or, if required, the date of Senate confirmation.

2. National Guard Regulation 600-5 (The Active Guard Reserve (AGR) Program Title 32, Full Time National Guard Duty (FTNGD) Management), in effect at the time, sets policy and procedures for the management of ARNG Soldiers serving on FTNGD in the AGR Program. Paragraph 4-6d(3) states in pertinent part, AGR Soldiers may not exceed their FTS authorized grade position. Promotions based on CLASP assignments are not authorized. Commander assignments require an AGR Soldier to be assigned to an equal graded FTS position at the Joint Forces Headquarters (JFHQ)/Table of Distribution and Allowances (TDA) or higher headquarters in the chain of command.

a. Brigade Commander (COL) assigned as G-1, Human Resource(s) Officer, G-4, etc., at JFHQ.

b. Battalion Commander (LTC) assigned to a LTC AGR position at JFHQ or a LTC position in the brigade headquarters. Battalion Commanders will not be assigned as the Battalion Administrative Officer (AO), which is a Major graded requirement.

3. Title 10, United States Code (USC), section 12011, Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard states, in pertinent part, of the total number of members of a Reserve Component who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members who may be serving in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table (The table breaks down control grades by service (Army, Marines, Air Force, Navy) and by component (Reserve, National Guard).
4. Title 10, USC, section 14311, Delay of promotion: involuntary states, in pertinent part, once a control grade is available and federal recognition is processed for promotion to the higher grade, the Date of Rank is established by the date on which the officer would have been promoted to the higher graded position.
5. Title 31, USC, section 3702, also known as the Barring Statute, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, USC, is relieving the Government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.
6. Department of Defense Instructions 1310.01 (Rank and Seniority of Commissioned Officers) states the Secretary of the Military Department concerned may adjust the date of rank (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.

//NOTHING FOLLOWS//