

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20230005151

APPLICANT REQUESTS: in effect, adjustment of his Date of Rank (DOR) to Colonel (COL/O-6) from 31 March 2023 to 10 May 2022 and authorize back pay.

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

- DD Form 149 (Application for Correction of Military Record)(online)
- Memorandum for Record (MFR) (Fiscal Year (FY) 2022, Title 10 (T10), Army National
- Guard (ARNG) Active Guard Reserve (AGR) COL, 16 March 2022
- Screen Shot Executive Summary
- Special Orders Number 125 (Federal Recognition (FEDREC) of Promotion to COL), 31 March 2023
- MFR ((DOR)Adjustment Request), 14 April 2023
- Applicant Email Rebuttal to National Guard Bureau (NGB) Advisory Opinion, 22 May 2024

FACTS:

1. The applicant states Section 513 of the "James M. Inhofe NDAA for FY 23," if there is a delay in extending FEDREC that exceeds 100 days from the date the NGB determines such officer's application for federal recognition to be completely submitted by the state and ready for review, and the delay was not attributable to the action or inaction of such officer, the effective date of promotion may be adjusted to the date the application was submitted by the state to NGB. He was recommended by the DARNG Who is this? for O-6 on 16 March 2022. UT (Utah?) sent his FEDREC on 10 May 22. He received FEDREC on 20 March 2023. This was a 293-day process.

2. The applicant provides:

a. NGB Promotion Recommendation letter, 16 March 2022, notified the applicant that he was recommended for promotion status on FY 2022 ARNG Title 10 (T10) AGR Major, Lieutenant Colonel, and COL promotion recommendation status on the ARNG T10 AGR order of merit list (OML).

b. A screen shoot displays an executive summary for a specific packet for the applicant. It shows a start date 10 May 2022 for the applicant's promotion packet.

c. Special Orders Number 125 (FEDREC of Promotion to COL), 31 March 2023, shows the NGB, extended FEDREC and appointed the applicant to the rank of COL/O-6 with an effective date and date of rank of 30 March 2023.

d. MFR ((DOR)Adjustment Request), 14 April 2023 shows the applicant requested the ABCMR adjust his date of rank to 10 May 2022 and authorized back pay due to delays in FEDREC. The NGB provided a memorandum to the Board providing facts regarding the applicant's DOR. The memorandum states:

(1) As described in Section 513 of the "James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023, "if there is a delay in extending Federal recognition that exceeds 100 days from the date the National Guard Bureau determines such officer's application for Federal recognition to be completely submitted by the State and ready for review, and the delay was not attributable to the action or inaction of such officer, the effective date of the promotion may be adjusted to the date the application was submitted by the State to NGB".

(2) On 16 March 2022 he was recommended for promotion on the Director, Army National Guard's (DARNG) Promotion Recommendation Review (PRR) memorandum.

(3) On 10 May 2022, the Utah Army National Guard (UTARNG) submitted his FEDREC packet to the ARNG Personnel Actions Branch.

(4) On 30 March 2023 he received Federal recognition to the rank of Colonel.

(5) The total time from packet submission to receipt of Federal recognition was 293 days (10 May 2022-30 March 2023).

(6) In accordance with (IAW) the FY23 NDAA, due to FEDREC exceeding 100 days, He is requesting an adjusted DOR with back-pay to 10 May 2022, the date Utah submitted his complete packet to NGB.

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

a. DA Form 71 (Oath of Office-Military Personnel) shows on 16 August 2001, having had prior enlisted service in the Regular Army and the U.S. Army Reserve (USAR), the applicant was appointed as a Reserve commissioned officer in the rank of second lieutenant and executed an oath of office.

b. His DA Form 2-1 (Personnel Qualification Record) shows in item 18 (Appointments and Reductions) his effective date for first lieutenant as 16 February 2004 and effective date for captain as 1 January 2005 in the Army National guard Component.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) period ending 14 July 2018 shows his rank as MAJ major in the UTARNG.

d. Special Orders Number 125 (FEDREC of Promotion to COL), 31 March 2023, shows the NGB, extended FEDREC and appointed the applicant to the rank of COL/O-6 with an effective date and date of rank of 30 March 2023.

e. His DD Form 214 shows was honorably released from active duty on 31 July 2024, and was transferred to the UTARNG by reason of completion of required active service. Item 4a (Grade, Rate, or Rank) reflects COL and item 4b (Pay Grade) reflects O-6.

4. On 8 May 2024, an advisory opinion was requested from the NGB regarding the applicant's the applicant requested DOR adjustment to COL to 10 May 2022 vice 30 March 2023 and back pay due to a 293-day processing time. On 21 May 2024 the Chief of Special Actions Branch states:

a. The recommendation was partial approval.

b. The discussion shows:

(1) The applicant was recommended by the UTARNG for promotion to Colonel and submitted packet to the NGB on 10 May 2022. His promotion order was published 293 days later with a DOR of 30 March 2023. He cites FY 23 NDAA section 513, "if there is a delay in extending Federal recognition that exceeds 100 days from the date the National Guard Bureau determines such officer's application for Federal recognition to be completely submitted by the State and ready for review, and the delay was not attributable to the action or inaction of such officer, the effective date of the promotion may be adjusted to the date the application was submitted by the State to NGB".

(2) After review of his submission and coordination with the NGBs FEDREC the applicant's packet was received by the UTARNG, 10 May 2022. He was placed on scroll PSL 04-22. Scroll was sent to DMPM on 10 August 2022. He was unassigned from scroll PSL 04-22 at DMPM due to potential adverse action in August 2022. He was cleared by DMPM on 21 November 2022 and considered eligible for FEDREC and added to PSL 02-23. PSL 02-23. Was published with a DOR 30 March 2023, his current DOR.

(3) It is the recommendation of this office that the applicant's request be partially approved. He was cleared of potential adverse action and should have been placed back on the original scroll, PSL 04-22 which was published 30 November 2022. His DOR and effective DOR should be backdated to 30 November 2022.

(4) This advisory opinion was coordinated with the NGBs FEDREC Branch.

5. The applicant was provided with a copy of the advisory opinion with an opportunity to respond.

6. On 22 May 2024, the applicant responded in an email, which reflects that he reviewed the documents and though not 100 percent happy with the recommendation, he understands the thought process for the adjustment.

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 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 partial approval finding the applicant was cleared of potential adverse action and should have been placed back on the original scroll, PSL 04-22, which was published 30 November 2022. Based on the advising opine, the Board granted partial relief to correct the applicant's DOR to reflect 30 November 2022.

BOARD VOTE:

Mbr 1 Mbr 2 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 by showing the applicant's date of rank (DOR) to the grade/rank of colonel (COL/O-6) with an effective date of 30 November 2022 and all back pay and applicable allowances.
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 adjustment of the applicant's Date of Rank (DOR) to Colonel (COL/O-6) from 31 March 2023 to 10 May 2022 and authorize back pay.

[REDACTED]

[REDACTED] [REDACTED]

[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. Title 10, USC, section 14308 addresses promotions for Reserve Component commissioned officers.
 - a. Subparagraph (f) (Effective Date of Promotion after Federal Recognition) states, "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 (Federal Recognition of Officers: Examination; Certificate of Eligibility) or 310 (Federal Recognition of National Guard Officers) of Title 32 (National Guard) shall be the date on which such Federal recognition in that grade is so extended."
 - b. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 amended subparagraph (f), section 14308 by placing "(1)" in front of the existing subparagraph and adding the following as "(2)": "If the Secretary concerned determines that there was an undue 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, and the delay was not attributable to the action (or inaction) of such officer, 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."

c. The NDAA for FY 2023 further amended subparagraph (f), section 14308 by incorporating the following into the previously added paragraph (2):

"(2) 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 – "

"(i) 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"

"(ii) the date on which the officer occupies a billet in the next higher grade."

2. National Guard Regulation (NGR) 600-100 (Commissioned Officer Federal Recognition and Related Personnel Activities) states that a commissioned officer who has been promoted by the State and extended Federal Recognition in the higher grade will be concurrently promoted to the higher grade in the Reserve of the Army with assignment to the Army National Guard. Federal recognition will be extended by the Chief, NGB to those officers found qualified by the board and approved by the Secretary of the Army after Senate confirmation of appointment. The effective date of Federal recognition will be the date of Senate confirmation if vacancies exist within the statutory limitation prescribed by Title 10, USC, section 3218, or, if no vacancies exist at that time, on the date such vacancies occur.

3. National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions) states the promotion of officers in the

ARNG is a function of the State. A commissioned officer who has been promoted by the State and extended Federal Recognition in the higher grade will be concurrently promoted to the higher grade in the Reserve of the Army with assignment to the ARNGUS.

4. Department of Defense Instructions 1310.01 (Rank and Seniority of Commissioned Officers) states service secretaries have authority to adjust effective DOR for officers properly confirmed and appointed. A service secretary may adjust the DOR of an officer appointed to a higher grade under Title 10 USC, section 14308 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.

5. Scrolling is a function of the Secretary of Defense, and it is not within the purview of this Board. The scroll is issued monthly. Scrolls take about 90 to 120 days to be approved by the Secretary of Defense due to the fact that the lists are processed through multiple offices before being approved by the Secretary of Defense.

6. Title 10, United States Code, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

7. AR 37-104-4 (Military Pay and Allowances Policy) states, only the Director, DFAS-IN may make settlement actions affecting the military pay accounts of Soldiers as a result of correction of records by the ABCMR per provisions of AR 15-185.

//NOTHING FOLLOWS//