

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 October 2024

DOCKET NUMBER: AR20230005308

APPLICANT REQUESTS: in effect, adjustment of his date of rank (DOR) to colonel (COL/O-6) in [REDACTED] Army National Guard ([REDACTED] ARNG) from 30 March 2023 to 28 October 2022 with back pay.

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

- DD Form 149 (Application for Correction of Military Record) (online)
- Excerpt of Federal Recognition (FEDREC) Board Staffing and Approval Process
- Memorandum for Record (MFR): (Fiscal Year (FY) 2022, ARNG, Title 10 (T10), Active Guard Reserve (AGR) Major (MAJ), Lieutenant Colonel (LTC) and COL Second Round Promotion Recommendation, 31 August 2022
- Email FEDREC Process, 10 November 2022
- Special Orders Number 124 (Department of the Army and the Air Force, National Guard Bureau (NGB) Extract, 31 March 2023
- MFR: (DOR Adjustment Request), 4 April 2023
- Army Review Boards Agency (ARBA) Request for National Guard Bureau (NGB) Advisory Opinion, 20 October 2023
- NGB Advisory Opinion, 1 February 2024
- MFR: Applicant's Rebuttal to NGB Advisory Opinion, 5 February 2024

FACTS:

1. The applicant states, in effect, the inaccurate DOR was due to a delay in the FEDREC process and was not due to any action/inaction on his part. In accordance with Section 513 of the "James M. Inhofe National Defense Authorization Act (NDAA) for FY 2023" if FEDREC exceeds 100 days, the effective date of promotion may be adjusted to the date the application was submitted by the State to the NGB. In his case, the application was submitted to NGB on 28 October 2022, but the FEDREC was not granted until 30 March 2023. Therefore, he is requesting an adjusted DOR to COL with back-pay to 28 October 2022.

2. The applicant provides the following documents:

a. Excerpt of FEDREC Board Staffing and Approval Process, MFR, FY 2022, Title 10, ARNG AGR, COL, undated, paragraph 2 of section 14308(f) of Title 10 was amended to reflect the following, "If there is a delay in extending Federal recognition in the next higher grade in the ARNG 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".

b. MFR, Promotion Recommendation, 31 August 2022 shows the applicant was recommended for promotion to COL in the ARNG.

c. In an email from the Personnel Actions Branch Chief, regarding the FEDREC Process, 10 November 2022, it states:

(1) "We received your COL UVP packet on 28 October 2022. We started processing your packet on 1 November 2022, and it is currently with the AGR Control Grade Branch. Once validated, you will be placed on a Promotion Screening List (PSL) and submitted to HQDA G1, DMPM for adverse screening. Screenings typically take 30 days to clear [Department of the Army Inspector General/Criminal Investigative Division] (DA IG/CID).

(2) Once cleared, you will be placed on a Promotion scroll which is routed to Secretary of the Army, Office of the Secretary of Defense [SECDEF], White house, Senate. Based on the current timeline, we should be able to place you on a PSL by the end of the month (30-45 days at NGB). DMPM to SECDEF is about 90 days, and White House to the Senate is another 30-60 days.

(3) Once at the Senate, it just depends on their schedule. On average, a UVP to COL can take upwards of 180-210 days from NGB to Senate confirmation".

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

a. DA Form 71 (Oath of Office – Military Personnel) reflects on 7 August 2004, the applicant took his oath of office in the U.S. Army Reserve as a Reserve Commissioned Officer, as a second lieutenant.

b. NGB 337 (Oaths of Office) shows he took his oath of office in the [REDACTED] ARNG on 4 March 2009.

c. Orders 242-165, issued by the [REDACTED] ARNG, 30 August 2017, reflects he was promoted to LTC/O5, with an effective date of 13 April 2017.

d. Special Orders Number 124 (FEDREC of Promotion to COL), 31 March 2023 shows the applicant's effective date of promotion and DOR to COL in the ARNG is 20 March 2023.

4. On 1 February 2024, the NGB provided an advisory opinion recommending disapproval to the applicant's request. The Chief, Special Actions Branch, states:

a. The applicant states that he was promoted to COL on 30 March 2023. [REDACTED] ARNG (sic) submitted his promotion packet to NGB on 28 October 2022. The applicant requests a change to his DOR based on the NDAA for Fiscal Year 2023, where it states that promotion dates could be adjusted if there is a delay in extending FEDREC that exceeds 100 days. He claims the delay was no fault of his own and should be backdated to match the date that [REDACTED] ARNG (sic) approved his promotion packet.

b. The applicant's promotion packet was approved and submitted by the [REDACTED] ARNG (sic) to NGB on 28 October 2022. On 1 November, NGB sent the packet back for corrections and received it from [REDACTED] ARNG (sic) on 2 November. The packet was then screened and sent to HRM (sic) for control grade verification on 3 November. HRM (sic) returned the approved packet on 20 November, and on 21 November, it was forwarded for scrolling in e-Tracker. On 3 January 2023, [the applicant's] promotion was assigned to a scroll. This scroll was signed and approved on 30 March 2023.

c. According to section 513 of the FY23 NDAA, now Public Law 117-263, if there is a delay in extending federal recognition in the next higher grade in the ARNG to a Reserve Commissioned Officer that exceeds 100 days from the date the NGB deems such Officer's application for FEDREC 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 concerned may be adjusted to a date determined by the Secretary concerned but not earlier than the effective date of the State promotion.

d. According to ARNG Personnel Policy Operational Memorandum (PPOM) 23-047 published on 2 November 2023, an officer's promotion packet is considered completely submitted when reviewed and cleared by the NGB and assigned to a Promotion Screening List (PSL). If the extension of FEDREC exceeds 100 days, an Officer's effective date of rank will be adjusted to equal 100 days following assignment to a PSL.

e. While it is true that the applicant's promotion packet took more than 100 days to be processed, the delay was not due to an injustice that occurred at any one particular department. From the receipt of the completed packet on 2 November 2022, it took 62 days until the packet was assigned to a scroll, which is well under 100 days. Additionally, by the Senate, not the Secretary of Defense. From the day the packet was sent to DMPM on 3 January 2023, it took 86 days until approval. Based on these

reasons, it is the record of a significant delay over 100 days from when FEDREC considers the promotion packet completely submitted according to PPOM 23-047.

f. The ARNG FEDREC Branch concurs with this recommendation.

g. The [REDACTED] ARNG (sic) neither agrees nor disagrees with this recommendation”.

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

6. On 5 February 2024, the applicant responded to the NGB Advisory Opinion and states:

(1) “The information presented in the NGB Advisory Opinion does adequately justify the “disapprove” recommendation. In fact, the information provided in the NGB Advisory Opinion confirms the two specified criteria required by the FY23 NDAA, now Public Law 117-263, to adjust the date of rank:

- As per the NGB Advisory Memo, ‘it is true that the applicant’s promotion packet took more than 100 days to be processed.’
- The delay was not due to any action or inaction of the officer in question.

(2) While the NGB Advisory Opinion states that ‘the delay was not due to an injustice that occurred at any one particular department,’ this is NOT a stipulation of the FY23 NDAA (Public Law 117-263). Despite there not being an injustice in one particular department does not negate the fact that the packet took more than 100 days to be processed and that there was no fault (due to action or inaction) of the officer in question.

(3) On a final, administrative note, the officer in question is not a member of [REDACTED] Army National Guard ([REDACTED] ARNG). The correct State affiliation is [REDACTED] Army National Guard ([REDACTED] ARNG).

(4) Since the NGB Advisory Opinion confirmed that packet approval exceeded 100 days, and that the delay was not due to officer action/inaction, I request approval of the DOR adjustment with back pay as initially submitted”.

7. The applicant is currently serving in the ARNG.




BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, the military record, and applicable law and regulatory guidance. The Board considered the applicant's specific request for change in DOR and back pay, his record of service and the date of his promotion. The Board considered the review and conclusions of the NGB advising official to include the detailed timelines for processing each sequential action that led to his promotion. The Board also considered the applicant's rebuttal to the advisory opinion. The Board concurred with the advising official's conclusion that while the total process from the acceptance of the completed FEDREC packet to the approval of the scroll exceeded 100 days, there was no evidence of an unjust delay in any of the individual processes that were required to complete the promotion action. Based on a preponderance of evidence, the Board determined that the applicant's date of promotion was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
--------------	--------------	--------------	--

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

4/28/2025

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. 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. 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.

5. 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.

7. AR 37-104-4 (Military Pay and Allowances Policy) states, only the Director, the Defense Finance and Accounting Service - Indiana 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//