

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20230005424

APPLICANT REQUESTS: in effect, correction of his date of rank (DOR) for his promotion to chief warrant officer four (CW4), from 25 April 2000 to his promotion eligibility date (PED)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Emails

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he is requesting correction to his DOR for his promotion to CW4, from 25 April 2000 to his PED. In accordance with Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers), Active Guard and Reserve (AGR) officers and warrant officers who are attached or assigned to a position in the higher grade, will be promoted immediately. In 1999, he was selected for promotion to CW4, while also assigned to a CW4 position. Since he had previously met all other perquisites, he is now requesting assistance in correcting this oversight, by adjusting his DOR.
3. The applicant's service record reflects the following:
 - a. The applicant has prior enlisted service time of 6 years, 9 months, and 18 days.
 - b. DA Form 71 (Oath of Office), 25 June 1986, reflects he was appointed as a Reserve Warrant Officer in the U. S. Army Reserves (USAR), in the rank/grade of warrant officer one (WO1).

c. On 25 June 1994, the applicant was promoted to the rank/grade of chief warrant officer three (CW3).

d. DA Form 1059 (Service School Academic Evaluation Report), 20 September 1996, shows he completed the property accounting technician warrant officer course.

e. Orders R-11-006258, 25 November 1998, show the applicant was reassigned to Headquarters and Headquarters Company, 1st Brigade, 87th Division, with an effective date of 12 July 1999.

f. DA Forms 67-9 (Officer Evaluation Report), reflect the following:

(1) From 30 June 1998 to 26 March 1999, the applicant's principal duty title was Senior Training, Advising, and Counseling (TAC) Officer.

(2) 27 March 1999 to 26 March 2000, the applicant's principal duty title was Property Book Officer.

g. On 25 June 2000, the applicant was promoted to the rank/grade of chief warrant officer four (CW4).

h. Orders B-01-600047, 5 January 2006, show the applicant was promoted to the rank/grade of chief warrant officer five (CW5), with an effective date of 4 January 2006.

i. His DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he honorably retired due to sufficient service for retirement on 30 June 2020. He completed 24 years, 10 months, 25 days of active service and 3 years, and 1 day of foreign service. His rank at the time of release was CW5.

4. On 2 April 2024 the U. S. Army Human Resources Command (HRC), Officer Promotions Branch, provided an advisory opinion. Based on the information provided, HRC records, laws, regulations, policies, and the systems available to HRC Officer Promotions, they found that the applicants request to adjust his CW4 DOR to an earlier date does have merit.

a. The applicant was able to prove by the documents he submitted, beyond a reasonable doubt that he was assigned to a CW4 position at the time the CW4 USAR 1999 Promotion Selection Board results were approved and released.

b. They recommend the applicant be granted full relief for the difference in pay and any other associated allied entitlements by amending his CW4 DOR and effective to 8 July 1999, under Title 10, United States Code, section 1552.

c. The final adjustment will be determined upon receipt of an approved ABCMR directive. In addition, they recommend language or sorts (in the forthcoming directive) be included for HRC Officer Promotions Branch, in order to determine if a subsequent Promotion Advisory Board is warranted based on the directive DOR adjustment to include but not limited to adjusting his CW5 (P) DOR.

5. On 4 April 2024, the applicant was provided a copy of the advisory opinion with the opportunity to respond.

6. On 16 April 2024, the applicant concurred with the advisory opinion provided by HRC.

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.

a. The applicant contends his DOR to CW4 should be adjusted to an earlier date. The applicant was promoted to CW4 on 25 June 2000. He states that in accordance with AR 135-155 AGR officers and warrant officers who are attached or assigned to a position in the higher grade, will be promoted immediately. In 1999, he was selected for promotion to CW4, while also assigned to a CW4 position. Since he had previously met all other perquisites, he is now requesting adjustment to his DOR.

b. The applicant provides evidence he was assigned to a CW4 position at the time the CW4 RC 1999 PSB results were approved and released. There is also more than reasonable chance that had the command been abreast and comfortable in following the information within AR 135-155 without (inadvertent) confusion from different instructions from HRC, the applicant would have been promoted at the earliest possible date.

c. Therefore, the Board agreed with the advisory official's determination that as a matter of fairness and justice, the applicant's date of rank and effective date of promotion to CW4 should be adjusted to 8 July 1999 with the difference in pay and any other associated entitlements. Additionally, had his DOR to CW4 been correct, it is likely he would have been considered for promotion to CW5 by an earlier board. Therefore, the Board also determined a Promotion Advisory Boards is warranted based on the directive CW4 DOR adjustment to include but not limited to adjusting his CW5 DOR.

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:

- Amending the applicant's date of rank and effective date of promotion to CW4 from 1 June 2000 to 8 July 1999 with entitlement to back pay and allowances
- Submitting the applicant's promotion file before the earliest Promotion Advisory Board he would have qualified, for consideration for promotion to CW5 based on his adjusted DOR of 8 July 1999

11/18/2024

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. Title 10 (Armed Forces), U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 15-185 (ABCMR), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. National Guard Regulation 600-101 (Warrant Officers Federal Recognition and Related Personnel Actions), prescribes policies and procedures governing the appointment assignment, and management of Warrant Officers in the Army National Guard (ARNG). Provides eligibility requirements, administrative procedures, application processing, and other related Warrant Officer personnel actions to include Military Occupational Specialty Code (MOSC) redesignation, promotion, civilian education, and federal recognition.

a. Federal Recognition Boards. Warrant Officers of the ARNG are appointed and promoted by the States under Article 1, Section 8 of the U.S. Constitution. In order for a Warrant Officer to be concurrently appointed, promoted, or receive a Military Occupational Specialty (MOS) redesignation as a Reserve Warrant Officer of the Army, the State's action must be federally recognized. Federal Recognition is the process, which ensures that an officer appointed, promoted, or redesignated to an authorized grade and position vacancy in the ARNG, meets the prescribed laws and regulations. This chapter outlines the personnel actions requiring examination for Federal Recognition and for the conduct of an FRB. The Federal Recognition Section (ARNG-HRP) is the functional DA MOS Proponent for e-packets and holds the approving authority to grant individuals access to the program at the State level.

b. Promotions. The promotion of Warrant Officers in the ARNG is a function of the State. As in original appointments, a Warrant Officer promoted by State authority has a state status in which to function in the higher grade. However, to be extended Federal Recognition in the higher grade the officer must satisfy the requirements prescribed herein and the President of the United States (POTUS), or the Secretary of Defense acting on behalf of the POTUS, must first approve the promotion as a Reserve Warrant Officer of the Army. When the State promotion is Federally recognized, the ARNG Warrant Officer is concurrently promoted as a Reserve Warrant Officer of the Army.

c. Promotion as a Reserve Warrant Officer of the Army. A Warrant Officer who is 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 of the United States (ARNGUS).

d. Minimum time-in-grade for promotion grade years in lower grade:

- WO1 to CW2 is 2-years
- CW2 to CW3 is 5-years
- CW3 to CW4 is 6-years
- CW4 to CW5 is 5-years

e. When considered for promotion to CW3 or CW4, Warrant Officers in grade positions coded higher than their current grade may be considered for promotion one (1) year earlier.

4. Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers), prescribes policy and procedures used in the selection and promotion of commissioned officers of the ARNGUS. This regulation also applies to commissioned and warrant officers of the U.S. Army Reserve (USAR). Exceptions will be made by Headquarters, Department of the Army (HQDA).

a. Promotion eligibility date (PED) is the date the officer meets the eligibility criteria for promotion to the next higher grade. Officer must meet the mandatory service requirements and promotion eligibility requirements. Officers selected to the grade of colonel whose PED is prior to the adjourning date of the board will have the PED advanced to the adjourning date of the board. The PED may be advanced to the earliest date eligible for promotion in the USAR.

b. Date of Rank (DOR) is the date the member 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. The officer's PED will become the officer's DOR upon promotion. The DOR will be used to establish the PED to the next grade.

c. Effective date is the date the officer is eligible for pay and allowances in the higher grade. An officer is promoted after selection if all qualifications for promotion are met. When an officer does not meet the qualification for promotion the effective date of promotion may be advanced to the date qualifications are met.

d. Unit officers selected by a mandatory board will be promoted on their PED provided they are assigned to a position vacancy in the higher grade. If an officer is recommended on a second mandatory board, the PED is one year later than the original date established. The effective date of assignment to the higher grade will be

the effective date of promotion for officers whose PED is prior to the date of assignment. The PED will then become the DOR. If the officer declines promotion and later accepts the promotion prior to expiration of declination, the effective date and DOR become the date of assignment to the higher graded position.

e. Promotion of Active Guard and Reserve (AGR) officers. AGR officers will be promoted effective on their PED provided they are attached to a position in the higher grade. If the officer is recommended on a second mandatory board, the PED is one year later than the original date established. An AGR officer who is not attached to a position in the higher grade will be promoted effective on the date of reattachment to a higher graded position or the day after release from AGR status. The PED will then become the DOR.

5. Wright Memorandum, dated 8 January 2015, states. The Under Secretary of Defense issued guidance on Limitations on the Authority of Military Department Correction Boards. This guidance affirms an important limitation on the authority of Military Department Correction Boards: they do not have the authority to appoint military officers. Only the Secretary of Defense may appoint all officers in the grade of O3 and below because Congress, has vested such appointment authority in the President of the United States (POTUS) alone, and the POTUS has assigned that function to the Secretary of Defense. This decision affirms that Military Department Correction Boards do not have the authority to remedy perceived errors or injustices by correcting records to show that an officer has been appointed to a certain grade when the officer has not been appointed to that grade by the POTUS or the Secretary of Defense. Boards may only make such a correction to reflect that a proper appointment has occurred. They may also adjust the date of rank of an officer who has been properly appointed.

//NOTHING FOLLOWS//