

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20230006161

APPLICANT REQUESTS: correction of his date of rank (DOR) for his promotion to chief warrant officer three (CW3) from 2 June 2021 to an earlier date.

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

- DD Form 149 (Application for Correction of Military Record)
- Fiscal Year 2018 (FY18) Chief Warrant Officer Promotion Board Results, 27 September 2018
- Orders 312-0004, Installation Management Command, Directorate of Human Resources, Military Personnel Division, 8 November 2019 (Reassignment Orders)
- Order 0001240236.00, Minnesota Army National Guard (MNARNG), Augoe Army Element Joint Force Headquarters, 21 June 2021 (Promotion to CW3)

FACTS:

1. The applicant states he was selected for promotion to CW3 on the FY18 Chief Warrant Officer Promotion Board; however, he elected to transition into the ARNG/ U.S. Army Reserve (USAR) vice accepting the promotion in the Regular Army. He believed the effective date of his promotion would be valid and/or would carry over when he switched components. Due to Federal Recognition (FEDREC) promotion board complications and delays, he was not promoted until 2 June 2021. While he continues to serve on active duty as an active reservist, he is requesting for a review of his DOR, so he may be eligible to compete with his peers for chief warrant officer four (CW4).
2. The applicant provides the FY18 Chief Warrant Officer Promotion Board results, which was released on 27 September 2018 that shows his sequence number for promotion to CW3 as 274.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 24 May 2011.

b. On 27 September 2011, he was honorably discharged to accept commission or warrant in the Army. He completed 4 months and 4 days of active service.

c. DA Form 71 (Oath of Office), 28 September 2011, reflects he was appointed as a Reserve Warrant Officer in the USAR, in the rank/grade of warrant officer one (WO1).

d. Order Number 234-052, 22 August 2013, shows the applicant was selected for promotion chief warrant officer two (CW2), with an effective date of 28 September 2013.

e. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged from active duty on 1 February 2020, due to miscellaneous/general reasons. He completed 8 years, 4 months, 4 days of active service and 3 months, 29 days of foreign service. His rank at the time of release was CW2.

f. Permanent Change of Assignment action, 26 February 2020, shows he was assigned to the MNARNG, with an effective date of 2 February 2020.

g. Order 0001240236.00, MNARNG, Augoe Army Element Joint Force Headquarters, 21 June 2021, shows the applicant was promoted to the rank of CW3, with an effective date of 2 June 2021.

h. NGB Form 22 (National Guard Report of Separation and Record of Service), shows he was honorably released due to his resignation from the MNARNG on 28 October 2021. He was transferred to the USAR Control Group, Individual Ready Reserve (IRR), with an effective date of 29 October 2021. He completed 1 year, 8 months, and 27 days of service. His rank at the time of release was CW3.

4. On 3 June 2024, the National Guard Bureau provided an advisory opinion. They recommended disapproval.

a. In accordance with the MNARNG, the applicant could not assess with a DOR of 1 February 2020, as he was still on active duty. Effective 2 February 2020, when he was appointed in the MNARNG, he could not be appointed to a higher grade without a promotion order previously published. This error does not allow the ARNG to override the regulations and processes in place.

b. In accordance with the ARNG, the applicant's DOR should not be changed. He was discharged 1 February 2020 from the Regular Army and did not join the ARNG until 2 June 2021. There is no proof of a Regular Army promotion order in his application, nor is there written promise of promotion once he transitioned into the MNARNG.

5. On 5 June 2024, a representative with the Case Management Division of the Army Review Boards Agency provided the applicant with a copy of the advisory opinion for review and/or comment. He did not respond.

**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 Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board reviewed and concurred with the National Guard Bureau's advisory, specifically scenario 1 finding that the applicant's promotion was delayed due to a eTracker document submission. Therefore, due to the delay, the Board recommends that the applicant's date of rank and effective date of promotion to chief warrant officer 3 (CW3) be adjusted to 8 February 2021.

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 and Army National Guard records of the individual concerned be corrected by issuing the applicant a Special Order extending him Federal recognition for promotion to CW3 with an effective date and date or rank as 8 February 2021, with entitlement to back pay and allowances, if applicable, as a result of this correction.

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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. Title 10 (Armed Forces), U.S. Code, section 14308(f), provides that 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 (ARNG) or the Air National Guard under section 307 or 310 of title 32 shall be the date on which such Federal recognition in that grade is so extended. 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:

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 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 date on which the officer occupies a billet in the next higher grade.

2. Title 10 (Armed Forces), U.S. Code, section 12301(d), provides that at any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the ARNG of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.

3. 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.

4. 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 ARNG. Provides eligibility requirements, administrative procedures, application processing, and other related Warrant Officer personnel actions to include Military Occupational Specialty Code (MOSC) re-designation, 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 an 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 re-designated 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 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

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.

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 alone, and the President 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 President 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.

6. 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.

//NOTHING FOLLOWS//