

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230006527

APPLICANT REQUESTS: reconsideration of his prior request for adjustment of his date of rank (DOR) to major (MAJ)/O-4 to reflect 1 October 2021 or in alignment with promotion scroll "P30-21."

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

- DD Form 149 (Application for Correction of Military Record)
- Email Correspondence with the National Guard Bureau (NGB), re: Promotion Packet
- Special Order (SO) #IP-10808, dated 27 April 2022 (Promotion)
- Orders 238-503, dated 26 April 2021 (Promotion)
- Federal Recognition Board (FRB) Improved Staffing and Approval Process Flowchart
- Memorandum, subject: Officer State Selection Board (OSSB) Fiscal Year (FY) 21 Results, dated 7 April 2021, with enclosure 1
- Integrated Personnel and Pay System-Army (IPPS-A) Help Center Case Details, re: Promotions and Selections
- Microsoft Teams Correspondence, re: Promotion

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 AR20210010327 on 27 April 2022.

2. The applicant states he is requesting an adjustment to his DOR for his promotion to MAJ/O-4 to 1 October 2021 or to align with scroll P30-21. He was selected for a Unit Vacancy Promotion (UVP) to MAJ on 7 April 2021 with a DOR of 26 August 2021. However, he was not assigned to a scroll until January 2022 (PL09-22).

a. The applicant believes per U.S. Code (USC) Title 10, Section 14308(f), the instances he outlines constitute "undue delay" in extending federal recognition. Furthermore, the delays were not "attributable to the action (or inaction)" of himself but

others throughout the process. There were multiple delays in processing his UVP packet at the State and NGB levels.

b. The implementation of IPPS-A resulted in confusion at the state and national level. Additionally, there were transitions that occurred in the Human Resources Officer (HRO) Active Guard/Reserve (AGR) position at the state level resulting in further delays, roughly 5 months (7 April 2021-1 September 2021) to submit the packet to the NGB. Once received by the NGB, it took an additional 3 months to create the scroll and submit it to Headquarters Department of the Army (HQDA). The total process took over 8 months before the scroll was initiated. Since April 2021, he has made numerous attempts to determine the cause for the delays with no result. The Federal recognition process map provided indicates that promotion packets should be accepted within 10 days and assigned to a scroll within 25 days.

c. As a matter of equity, he contents his DOR should be adjusted to correct the delay in processing timeline to approximately 6 months. None of the delays in processing were due to his own errors, mistakes, or failures. Had there been no delay at either level, the process should have resulted in NGB receiving his UVP packet on or around 13 May 2021 and beginning the scrolling process on or around 7 June 2021.

3. The applicant provides:

a. As new evidence, not previously considered by the Board, SO #IP-10808, dated 27 April 2022, announced the Federal recognition of the applicant's promotion to the rank of MAJ, effective 18 April 2022.

b. The below listed documents having been considered in ABCMR Decision AR20210010327:

- email communication from April to November 2021 – processing of the applicant's promotion packet to the rank of MAJ
- Orders #238-503, dated 26 August 2021 – [REDACTED] promotion to MAJ effective DOR of 26 August 2021
- FRB Improved Staffing and Approval Process Flowchart – timeline associated with UVP processing
- OSSB FY21 Results, dated 7 April 2021 with Enclosure 1 – selection criteria with list of individuals selected and enclosure identifies non-selection list
- IPPS-A Help case details – processing of the applicant's UVP to MAJ; inquiry referenced scroll (PL09-22) and tracking the Federal recognition process
- Microsoft Teams chat – request for scroll information, IPPS-A promotion uploaded 1 September 2021

4. A review of the applicant's service record shows:

a. Having had prior enlisted service, he was appointed as a Reserve commissioned officer and executed an oath of office on 29 April 2011.

b. On 26 October 2011, the NGB issued SO #268 AR announcing the Federal recognition of the applicant's initial appointment as a second lieutenant (2LT) within the [REDACTED] Army National Guard ([REDACTED] ARNG), effective 29 April 2011.

c. On 3 April 2013, the NGB issued SO #93 AR announcing the Federal recognition of the applicant's promotion to the rank/grade of first lieutenant (1LT), effective 29 October 2012.

d. Orders 191-514, dated 10 July 2015, appointed the applicant to the [REDACTED] ARNG ([REDACTED] ARNG) in the rank of 1LT as an executive officer.

e. On 15 July 2015, the NGB issued SO #152 announcing the Federal recognition of the applicant's transfer from the [REDACTED] ARNG to the [REDACTED] ARNG, effective 1 July 2015.

f. On 19 May 2017, the NGB issued SO #100 announcing the Federal recognition of the applicant's promotion to the rank of CPT, effective 2 May 2017.

g. The service record contains three DD Forms 214 (Certificate of Release or Discharge from Active Duty) which show the applicant served honorably for the periods:

- 3 April 2018 through 31 May 2020
- 1 June 2020 through 24 January 2023
- 25 January 2023 through 10 June 2023

h. Orders 238-503, dated 26 August 2021, promoted the applicant in the [REDACTED] ARNG to the rank of MAJ, effective 26 August 2021.

i. On 27 April 2022, the NGB issued SO #IP-10808 announcing the Federal recognition of the applicant's promotion to the rank of MAJ, effective 18 April 2022 with Order #0001798199.00, dated 29 April 2022, directing the promotion to MAJ, effective 18 April 2022.

j. On 12 July 2023, the NGB issued SO #230 pertaining to the extension of Federal recognition to MAJ, the applicant's DOR to CPT effective 2 May 2017 was amended to read "DOR as CPT 17 March 2017."

k. Permanent Order 111-006, dated 21 April 2023, ordered the applicant to full-time National Guard duty with a report date of 12 June 2023 for a period of 15 years, 10 months, and 19 days.

5. On 28 July 2023, the NGB Chief, Special Actions Branch rendered an advisory opinion in the processing of this case. He opined:

a. It appears that [the applicant's] promotion process underwent significant delay due to no fault of his own. Notwithstanding his State selection for promotion on 7 April 2021, his packet was not submitted until 1 September 2021. Upon receipt, NGB FEDREC began the review process of the packet followed by the scrolling process, eventually resulting in his FEDREC promotion orders on 18 April 2022. Although the exact causes of the promotion hindrance are uncertain, an undue delay is to be noted in the submission of the UVP packet by the State.

b. After consultation with the ARNG FEDREC Office about the matter, it explained that the staffing and approval process of packets for ranks of lieutenant colonel (LTC) and below take approximately 120 days upon receipt. It further noted that it is unable to account for the delay observed in receiving [the applicant's] packet. Nonetheless, based on the timeline, it determined that his DOR and effective date should be adjusted to 7 February 2022. The State, on the other hand, did not provide any justification concerning this delay, but concurs with [the applicant's] DOR adjustment.

c. In conclusion, while some delay can be noted in the staffing and approval process, the hindrance in [the applicant's] promotion is however largely attributable to the late UVP submission by the State. Considering the packet processing timeframe aforementioned, the office deemed that as a matter of equity, his DOR and effective should be adjusted to 7 February 2022.

6. On 8 August 2023, the advisory opinion was forwarded to the applicant for his acknowledgment and/or response. The applicant provided a memorandum for record (MFR) from the Brigade S-1, MAJ NJZ, which indicated due to the NGB's transition from eTracker to IPPS-A, the implementation of IPPS-A for administrative actions, and transitions of AGRs in Joint Forces Headquarters, the applicant's packet submission to NGB was delayed for reasons that cannot be attributable to his actions (or inaction). Given normal circumstances, the applicant's packet would have been submitted by the state to NGB for UVB process within 30 days of 7 April 2021 which would have projected completion of the Federal recognition process on or about 1 October 2021.

7. The applicant further noted in his email rebuttal, dated 8 August 2023, there was an error in the NGB advisory indicating his promotion to the rank of MAJ was 18 May 2022; however, that error was clarified further in the advisory opinion which identified his promotion orders with a DOR effective 18 April 2022. The applicant also indicated the MFR served as evidence for further consideration to the proposed DOR of 1 October 2021 vice the 7 February 2022 date recommended.

8. On 27 April 2022, the ABCMR rendered a decision in Docket Number AR20210010327. Although the applicant requested an adjustment to his DOR for rank/grade of MAJ, the service record did not contain a Federal recognition order; therefore, until the order was published, the Board could not determine if an adjustment in the rank was required. The Board found, based on the average processing times and the proceeding scroll approval, and as a matter of equity, the applicant's DOR to CPT should be adjusted to 17 March 2017. Based on this, the Board granted partial relief.

9. By regulation (NGR 600-100), MAJs will be considered for promotion at 4 years' time in grade and must have completed the Captains Career Course or any Officer Advanced Course. Chapter 10 (Federal Recognition Boards for Other Than General Officers) provides that commissioned officers of the ARNG are appointed and promoted by the State. In order for an officer to be concurrently promoted as a Reserve commission officer, the State action must be Federal recognized.

10. By law, 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 date of rank to be adjusted.

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 National Guard Bureau -Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation of partial relief finding in the case history that on 1 January 2022, the UVP packet status was changed from NGB FEDREC review to being added to scroll PL09-22 with an effective date of 18 May 2022. As noted by the opine the applicant was extended permanent federal recognition for his promotion to the rank of MAJ. The Board determined based on the opine, there is sufficient evidence to support correction of the applicant's date of rank as 7 February 2022. Therefore, the Board granted partial relief.

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 to adjustment the applicant's date of rank (DOR) to major (MAJ)/O-4 to reflect 7 February 2022.

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 his date of rank (DOR) to major (MAJ)/O-4 to reflect 1 October 2021.

2/12/2024

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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. National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions) provides that CPTs will be considered for promotion at 2 years' time in grade; majors (MAJ) at 4 years. To be eligible for promotion to captain, first lieutenants must have completed the Basic Officer Leaders Course (BOLC) and have a baccalaureate degree from a qualifying educational institution; MAJs the

Captains Career Course or any Officer Advanced Course. Chapter 10 (Federal Recognition Boards for Other Than General Officers) provides that commissioned officers of the ARNG are appointed and promoted by the State. In order for an officer to be concurrently promoted as a Reserve commission officer, the State action must be Federal recognized.

2. Title 10, United States Code (USC), Section 14308(f) (Effective Date of Promotion after Federal Recognition) provides that the effective date of a promotion of a Reserve commissioned officer of the Army who is extended Federal recognition in the next higher grade in the Army National Guard 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 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 may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion.

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 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 date of rank to be adjusted.

//NOTHING FOLLOWS//