

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 April 2024

DOCKET NUMBER: AR20230007741

APPLICANT REQUESTS: change his date of rank to captain in the Army National Guard from 23 January 2023 to 17 February 2022 and back pay associated with the change.

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

- DD Form 149 (Application for Correction of Military Record)
- Special Orders Number 46 AR, 3 February 2023, promotion to captain effective 23 January 2023
- Email Exchange
- Printout of timelines and/or tasks

FACTS:

1. The applicant states he contends that an undue delay transpired in the Federal Recognition process to promote him to captain (CPT). This delay caused approximately \$23,600 in unreceived Base Pay, Basic Allowance for Housing, and Continuation Pay. He requests his Federal Recognition date and Date of Rank be backdated to 17 February 2022 to match his State Federal Recognition orders. The State Promotion orders show his date of rank as 17 February 2022, and the Federal Recognition order established his date of rank as 23 January 2023, 341 days is an unacceptable delay between State and Federal orders. H.R. 7776 James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year 2023, Section 513, allows for the backdating of effective date of rank for reserve officers in the National Guard due to undue delay in Federal recognition.

2. Review of the applicant's service records shows:

a. Having had prior enlisted service, the applicant executed an oath of office and was appointed a Reserve commissioned officer of the Ohio Army National Guard (OHARNG) on 11 August 2018.

b. The applicant completed the Field Artillery Basic Officer Leader Course from October 2018 to March 2019 and was promoted to first lieutenant (1LT) on 11 February

2020. He also entered active duty on 1 May 2019, and he was honorably released from active duty on 30 June 2021.

c. On 3 February 2023, the National Guard Bureau (NGB) published Special Orders Number 46 AR extending him Federal recognition for promotion to CPT with an effective date and date of rank as 23 January 2023,

3. On 30 January 2024, the NGB provided an advisory opinion in the processing of this case. The NGB recommended partial approval:

a. The applicant states that his promotion to CPT was approved by the State on 17 February 2022, but his Federal Recognition order states his date of rank to CPT as 23 January 2023. The applicant requests a change to his DOR based on the James M. Inhofe NDAA for Fiscal Year 2023, where it states that promotion dates could be adjusted if there is a delay in extending federal Recognition that exceeds 100 days. He claims the delay was no fault of his own and should be backdated to match the date that OHARNG approved his promotion packet.

b. The applicant was eligible for promotion to CPT on 11 February 2022. On 17 February, his packet was examined by the Federal Recognition board and recommended for federal recognition. His promotion packet was then sent to the G1 for G1 endorsement, which was needed at the time, on 17 February. On 28 March, his promotion packet was forwarded to NGB via IPPS-A. On 5 April, NGB analyst reviewed the promotion packet and forwarded it to the next level of review. However, during this time, NGB transitioned from IPPS-A CRM to eTracker to process federal recognition actions. During this time of transition, there was a significant delay that caused the applicant's promotion packet to not be reviewed until 1 August 2022. On 1 August, NGB analyst updated CRM case notes and moved the applicant's promotion packet to eTracker. On 16 August, the promotion packet was assigned to Scroll P28-22. On 3 February 2023, federal recognition orders were published with an effective date of rank of 23 January 2023.

c. According to Section 513 of the James M. Inhofe NDAA for Fiscal Year 2023, 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 exceed 100 days from the date the NGB deems 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 concerned may be adjusted to a date determined by the Secretary concerned but not earlier than the effective date of the State promotion.

c. According to Policy Memorandum (PPOM) 23-047 published on 2 November 2023, an officer's promotion packet is considered completely submitted when reviewed

and cleared by 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.

d. Based on the evidence and documents provided by the applicant, there was a delay caused by the transition from IPPS-A to eTracker. The promotion packet was initially reviewed on 5 April 2022, but was not uploaded to eTracker for further processing until 1 August. From 16 August when the packet was assigned to a scroll, it took 160 days until his promotion was effective on 23 January 2023. While there were significant delays in processing his promotion, it is not the guidance of the James M. Inhofe NDAA nor of PPOM 23-047 to backdate his promotion back to 17 February 2022 when it was approved by the State. It is the recommendation of this office that the applicant's date of rank be backdated to the appropriate date outlined in PPOM 23-047 and received back pay associated with the change.

e. The Army National Guard Federal Recognition Branch concurs with this recommendation. The OHARNG concurs this recommendation.

4. The applicant responded to the advisory opinion in disagreement:

a. He disagrees with the partial approval of backdating his date of rank. He finds Section 513 of the James M. Inhofe NDAA, now Public Law 117-263, is erroneously interpreted and PPOM 23-047 is erroneously applied.

b. Erroneous interpretation of Section 513 of the James M. Inhofe NDAA:

(1) NGB cites Paragraph 2(B)(i), section 14308(f), Title 10, which is only a portion of the legal text. This citation does not apply because Paragraph 2(B) reads, "in the event of State promotion with an effective date on or after January 1, 2024...". His state promotion effective date was 17 February 2023, and the current date of rank is 23 January 2023. Therefore, this section of the law does not apply to his case.

(2) Instead, he finds Paragraph 2(A) is to be applied to his case. It reads, "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...".

(3) It is within the guidance of the James M. Inhofe NDAA that a backdate of his promotion is authorized to as far back as the date of the state promotion (in his case, 17 February 2023).

c. Erroneous application of PPOM 23-047.

(1) PPOM 23-047 is dated for 02 November 2023, well after the timeline of events regarding his case. PPOM 23-047, paragraph 3 states, "Purpose. This policy establishes a baseline date for which NGB considers an officer's application for Federal Recognition (FEDREC) to be completely submitted by the state..." and furthermore states in paragraph 4, "Policy, Upon publication of this PPOM..." The fact that this policy establishes the baseline for considering when a FEDREC packet is completely submitted by the state logically implies no such baseline existed before it's publication and its policy can only be applied for actions dated on or after 2 November 2023. PPOM 23-047 does not include any guidance or policy on retroactive enforcement.

(2) The guidance set forth in PPOM 23-047 is irrelevant to his case.

d. Given these findings, he requests full approval of his original request as it meets the legal and regulatory guidance in effect at the time these events occurred.

5. According to the NGB Policy Memorandum (PPOM) 23-047, 2 November 2023, an officer's promotion packet is considered completely submitted when reviewed and cleared by NGB and assigned to a Promotion Screening List. 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.

#### 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 and standard review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the National Guard Bureau's advisory opinion, the Board concurred with the advising official's recommendation for approval of the applicant's request to adjust his date of rank to captain in the Army National Guard from 23 January 2023 to 17 February 2022 and back pay associated with the change.

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 and Army National Guard records of the individual concerned be adjusted to show his DOR to CPT17 February 2022. Recommend DFAS-IN determine exact arrears payment.

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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, U.S. Code, section 14308, Promotion, How Made:

a. Sub-paragraph (a) Promotion List.— When the report of a selection board convened under section 14101(a) or 14502 of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers selected for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of seniority of those officers on the reserve active-status list or based on particular merit, as determined by the promotion board. A promotion list is considered to be established under this section as of the date of the approval of the report of the selection board under the preceding sentence.

## b. Sub-paragraph (f) Effective Date of Promotion After Federal Recognition.—

(1) 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 or 310 of title 32 shall be the date on which such Federal recognition in that grade is so extended.

(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) (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) (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 Bureau Memorandum, 2 November 2023, to The Adjutants General of all States, Territories, and the Commanding General of the District of Columbia,

Subject: Federal Recognition - National Guard Bureau Clarification of Fully Submitted Officer/Warrant Officer Promotion Packets (PPOM 23-047) states:

a. (1) References: National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), 22 November 2022; NGR 600-101 (Warrant Officers Federal Recognition and Related Personnel Actions), 10 September 2018; and Title 10, U.S. Code, section 14308 - Promotions: How Made

b. (2) Background. The National Guard Bureau (NGB) completed a field study and established promotion packet processing timelines to comply with the law outlined in Section 513 of the FY23 National Defense Authorization Act (NDAA).

c. (3) Purpose. This policy establishes a baseline date for which NGB considers an officer's application for Federal Recognition (FEDREC) to be completely submitted by the state. The application is eligible for backdating of effective date of rank by the Secretary of the Army if there is a delay greater than 100 days when extending FEDREC.

d. (4) Policy. Upon publication of this PPOM, an officer's promotion packet is considered completely submitted when reviewed and cleared by 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. Warrant officers being promoted to CW3, CW4 and CW5 are eligible to submit packets 120 days prior to the Promotion Eligibility Date (PED), however the date of rank will not be prior to the PED regardless of when a scroll is approved.

//NOTHING FOLLOWS//