

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20230007844

APPLICANT REQUESTS: in effect, adjustment of his Date of Rank (DOR) to Lieutenant Colonel (LTC/O-5) from 9 January 2023 to May of 2022 and to be authorized back pay.

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

- DD Form 149 (Application for Correction of Military Record) (online)
- Memorandum, Subject: Notice of Remand of Military Equal Opportunity Complaint of Anonymous complainant, 23 May 2023
- Memorandum, Subject: Request extension on final advisory options, 24 May 2024
- Orders 005138762, 22 June 2023

FACTS:

1. The applicant states he was selected for the 84th CST Commander (O5 Position Para 001/01), 1 January 2022. His federal recognition packet was sent to National Guard Bureau (NGB) 25 January 2022 via IPPSA. An e-Tracker case was created on 20 July 2022 placing him in the scroll process. He was then placed on PSL 26-22. He was flagged for an investigation 1 November 2022. The investigation was unfounded, and the flag was removed 24 February 2023. The state OPM reinitiated his packet in e-Tracker 6 March 23. He received his orders appointing him as an O5 (LTC) 9 January 2023. The original PSL he was placed on PSL 26-22 took an absurd amount of time to process, over nine months. He was cleared of all accusations from the 15-6 investigation and placed in the promotion process again. The second time he was placed on a PSL it only took four months to get promoted. He is asking the Army Board for Correction of Military Records (ABCMR) to backdate his date of rank to May 2022, four months after the initial federal recognition process for PSL 26-22 began.

2. The applicant provides:

a. Memorandum, Subject: Notice of Remand of Military Equal Opportunity Complaint of Anonymous complainant, 23 May 2023 shows the after reviewing the subject's complaint file, this office concludes that the matter must be remanded for

further processing. The state did not comply with CNGBM 9601.01 or Department of Defense (DOD) policy when processing this complaint.

b. Memorandum, Subject: Request extension on final advisory options, 24 May 2024, shows the applicant's request for extension and that he originally filled this ABCMR request in 2023. He was not aware of derogatory findings to the Army Regulation 15-6 (Investigations). He then filled an inquiry with the NGB Inspector General, requesting the process in which the investigation was conducted be reviewed.

3. A review of the applicant's records show:

a. Having had prior enlisted service in the Army National Guard (ARNG). Orders 213-002, 1 August 2007 shows the applicant was appointed in the Army National Guard (ARNG) on 29 July 2007 in the rank of second lieutenant/2LT and executed an oath of office.

b. Orders 237-021, 25 August 2009 shows the applicant was promoted to first lieutenant/1LT with an effective date and date of rank (DOR) of 24 August 2009.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 15 May 2010 shows his rank as 1LT in the Wyoming ARNG.

d. Orders 137-004, 16 May 2012 shows the applicant was promoted to captain/(CPT) with an effective date of 15 May 2012.

e. Orders 044-015, 13 February 2017 shows the applicant was promoted to major/(MAJ) with an effective date of 9 February 2017.

f. Memorandum, Subject: Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years), 5 April 2021 shows the applicant had completed the required years of service and will be eligible for retire pay upon his application at age 60.

g. The ARNG Annual Statement, 21 December 2023 shows the applicant has 23 years creditable service for retired pay.

h. Orders 0005138762, 22 June 2023 shows the applicant was promoted to LTC with an effective date of 9 June 2023.

i. Orders 0005138762.01, 31 July 2023 shows the above order was revoked.

j. Special Orders Number 252, 3 August 2023, shows the NGBs Special Order 214, 20 June 2023 pertaining to change of Federal Recognition Status of the applicant was revoked.

k. The applicant is currently serving in the Active Guard Reserve.

4. On 20 October 2023, an advisory opinion was requested from the NGB regarding the applicant's requested DOR adjustment to LTC from 9 January 2023 to May of 2022. On 26 April 2024 the Chief of Special Actions Branch states:

a. Recommendation: Denial

b. Discussion:

(1) The applicant states that on 1 January 2022, he was selected for 84th CST Commander, an O-5 Para 001/01 position. On 25 January 2022 his federal recognition packet was sent to NGB through IPPSA. On 20 July 2022 an e-tracker case was created, and he was placed on scroll PSL 26-22. He states the administration process for this scroll took nine months.

(2) On 1 November 2022, the applicant was flagged for a 15-6 investigation. The flag was removed on 24 February 2023. On 6 March 23, the State Office of Personnel Management (OPM) initiated his packet in e-Tracker and promotion orders were published for 9 January 2023. This process took four months. The applicant is requesting a DOR adjustment to four months after the initial federal recognition process for PSL 26-22 began.

(3) He provides LTC promotion orders as the supporting document.

(4) WYARNG OPM states the applicant's Unit Vacancy Promotion (UVP) was submitted to NGB via IPPS-A on 25 January 2022. His packet was moved from IPPS-A to e-Tracker post conversion on 20 July 2022. He was flagged for a Commanders Investigation on 16 September 2022. The promotion packet was returned to the State via e-Tracker on 4 November 2022.

(5) WYARNG OPM states on 24 February 2023 an email was sent confirming the suspension of favorable personnel actions (SFPA) was lifted with a final favorable report pursuant to the Chief of Staff. His promotion was returned to NGB through e-Tracker on 6 March 2023 and approved on 20 June 2023 with an effective date of 9 June 2023.

(6) WYARNG OPM states the applicant's promotion was revoked effective 3 August 2023 due to a notification to G1 OPM on 7 July 2023 from the State Senior Legal Advisor stating the promotion for the applicant to LTC was erroneous. The Commanders Investigation was finalized with substantiated findings on 23 June 2023. Adverse information was entered in the Army Adverse Information Program on 6 July 2023.

(7) A review of his request conducted by the ARNG Federal Recognition team shows the servicemember was assigned to a scroll but removed due to a 15-6 investigation. The applicant was later cleared of any wrongdoing and a second promotion packet was submitted and approved. The state later submitted for the promotion to be revoked due to final substantiating findings.

(8) After further review of the applicant's documents provided and discussions with ARNG Federal Recognition Team, it is the conclusion of this office that he was assigned to a scroll but was removed due to a 15-6 investigation which resulted in substantiated findings and promotion revocation approval. This office recommends the applicant's DOR adjustment request be denied.

(9) The ARNG Federal Recognition concurs with this recommendation.

(10) The WYARNG concurs with this recommendation.

5. The applicant was provided with a copy of the advisory opinion with an opportunity to respond. He responded by providing the same documents in his original application.

#### 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. The Board carefully considered through counsel 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 request, available military records and National Guard Bureau (NGB), - Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for denial, finding the applicant was assigned to a scroll but was removed due to a 15-6 investigation which resulted in substantiated findings and promotion revocation approval.

2. The Board determined there is insufficient evidence to support the applicant's contentions for adjustment of his Date of Rank (DOR) to Lieutenant Colonel (LTC/O-5) from 9 January 2023 to May of 2022 and to be authorized back pay. The Board agreed based on the advising official recommendation and substantiating findings from a 15-6 investigation, the Board denied relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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.



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. 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.

6. 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.

//NOTHING FOLLOWS//