

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230007910

APPLICANT REQUESTS: in effect,

- adjustment in Date of Rank (DOR) for first lieutenant (1LT)/O-2 to 24 August 2010
- adjustment in DOR for captain (CPT)/O-3 to May 2013
- adjustment in DOR for major (MAJ)/O-4
- Special Selection Board (SSB) for lieutenant colonel (LTC)/O-5
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- DA Form 71 (Oath of Office – Military Personnel)
- National Guard Bureau (NGB) Form 337 (Oaths of Office)
- [REDACTED] Department of Military and Veteran Affairs Orders Number 236-1002
- [REDACTED] Department of Military and Veteran Affairs Orders Number 263-1002
- [REDACTED] Department of Military and Veteran Affairs Orders Number 263-1005
- [REDACTED] Department of Military and Veteran Affairs Orders Number 147-1001
- NGB Memorandum, Subject: Promotion as a Reserve Commissioned Officer of the Army, 3 June 2011
- [REDACTED] Department of Military and Veteran Affairs Orders Number 232-1046
- NGB Memorandum, Subject: Promotion as a Reserve Commissioned Officer of the Army, 29 December 2014
- [REDACTED] Army National Guard ([REDACTED] ARNG) Orders Number 22318
- Investigation and Adjudication History

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 after he completed his degree and certification as a Physician Assistant, he requested a direct commission in the [REDACTED] ARNG which was approved and was appointed in the rank/grade of 1LT/O-2 on 24 August 2010 but he was reduced in rank/grade to second lieutenant (2LT)/O-1 a month later due to an error made by the Army Medical Department (AMEDD) recruiter in the calculation of his constructive credit. He then completed the Basic Officer Leader Course in May 2011 and was promoted back to the rank/grade of 1LT/O-2 effective 16 May 2011. He became eligible for promotion to the rank/grade of CPT/O-3 but was not due to a lapse in his security clearance which was not completed until March of 2014. By this time his Department of the Army photograph was out of date which he updated and submitted in mid-2014 and he was finally promoted to the rank/grade of CPT/O-3 on 23 December 2014 and then finally promoted to the rank/grade of MAJ/O-4 on 31 July 2019.

The initial error in the constructive credit that caused the reduction to 2LT created a domino effect of delays in his promotions and led to over 3 years of time in grade lost that resulted in his peers and junior officers being promoted ahead of him and also delayed any progression in the completion of leadership positions and an effect on his potential retirement as a LTC.

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

a. The applicant's investigation and adjudication history shows an investigation was closed on 19 May 2003 and he was granted eligibility for a secret clearance on 11 June 2003.

b. On 8 August 2009, the applicant was awarded a Bachelor of Science in Physician Assistant from [REDACTED] College of Technology.

c. On 19 November 2009, the applicant was issued the National Commission on Certification of Physician Assistants.

d. On 24 November 2009, the [REDACTED] Department of State Bureau of Professional and Occupational Affairs licensed the applicant as a Medical Physician Assistant.

e. On 12 July 2010, having had prior Regular Army and ARNG enlisted service, the applicant applied for a Federal Recognition (FEDREC) in the rank/grade of 1LT/O-2 in the Specialist Corps and appointment as a Reserve officer of the Army of the ARNG which was endorsed by the Senior Army Advisor. The [REDACTED] Adjutant General requested a FEDREC be extended to the applicant in the rank/grade of 1LT/O-2 per the Adjutant General [REDACTED] Orders Number 236-1002 dated 24 August 2010.

f. On 17 August 2010, the FEDREC examining board determined the applicant met the qualification for a FEDREC in the rank/grade of 1LT/O-2.

g. A National Guard Bureau (NGB) Form 89 (Proceedings of a Federal Recognition Examining Board) document was generated with the same board date of 17 August 2010 with determined the applicant met the qualification for a FEDREC in the rank/grade of 2LT/O-1.

h. On 17 August 2010, the applicant executed his oath of office and was appointed as a Reserve commissioned officer in the rank/grade of 1LT/O-2.

i. On 24 August 2010, Orders Number 236-1002, issued by the [REDACTED] Department of Military and Veterans Affairs, appointed the applicant in the ARNG in the rank/grade of 1LT/O-2, effective 17 August 2010 with a DOR of 17 August 2009.

j. The applicant's service record is void of his DA Form 5074 (Record of Award of Entry Grade Credit (Health Service Officers)).

k. On 20 September 2010, Orders Number 263-1002, issued by the [REDACTED] Department of Military and Veterans Affairs revoked orders number 236-1002 pertaining to the applicant's appointment in the ARNG.

l. On 20 September 2010, Orders Number 263-1005, issued by the [REDACTED] Department Military and Veterans Affairs, appointed the applicant in the ARNG in the rank/grade of 2LT/O-1, effective 17 August 2010 with the DOR of 17 August 2009.

m. On 28 January 2011, Special Orders Number 17, issued by the NGB, extended FEDREC and appointed the applicant in the rank/grade of 2LT/O-1, effective 17 August 2010 with the DOR of 3 April 2009.

n. DA Form 1059 (Service School Academic Evaluation Report) shows the applicant achieved course standards for the Basic Officer Leader Course during the period 22 April through 16 May 2011.

o. On 27 May 2011, Orders Number 147-1001, issued by the [REDACTED] Department of Military and Veterans Affairs, promoted the applicant to the rank/grade of 1LT/O-2, effective on with a DOR of 16 May 2011. The additional instructions stated the effective date of the promotion in the ARNG of the United States would be the date permanent FEDREC orders were published.

p. On 3 June 2011, the NGB issued Memorandum, Subject: Promotion as a Reserve Commissioned Officer of the Army which informed the applicant he was promoted to the rank/grade of 1LT/O-2, effective on with a DOR of 16 May 2011.

q. On 3 June 2011, Special Orders Number 127, issued by the NGB, extended FEDREC and promoted the applicant to the rank/grade of 1LT/O-2, effective 16 May 2011.

r. An investigation and adjudication history shows an adjudication was opened on 31 January 2014 and closed on 12 March 2014 and the applicant was granted a secret clearance.

s. DA Form 1059 shows the applicant achieved course standards for the CPT Career Course during the period of 8 through 21 June 2014.

t. On 15 August 2014, the FEDREC examining board determined the applicant met the FEDREC qualification for the rank/grade of CPT/O-3 and recommended he be promoted.

u. On 20 August 2014, Orders Number 232-1046, issued by the [REDACTED] Department of Military and Veterans Affairs, promoted the applicant to the rank/grade of CPT/O-3, effective on with a DOR of 15 August 2014. The additional instructions stated the effective date of the promotion in the ARNG of the United States would be the date permanent FEDREC orders were published.

v. On 29 December 2014, Special Orders Number 378. Issued by the NGB, extended FEDREC and promoted the applicant to the rank/grade of CPT/O-3, effective on with a DOR of 23 December 2014.

w. On 21 August 2018, the Department of Military and Veterans Affairs Office of the Adjutant General [REDACTED] verified the applicant's secret clearance as adjudicated on 18 March 2014.

x. On 13 March 2019, [REDACTED] Medical Center verified the applicant was awarded a Master of Physician Assistant Studies on 20 December 2013.

y. On 29 April 2019, the FEDREC examination board determined the applicant met the FEDREC qualifications for the rank/grade of MAJ/O-4 and recommended he be promoted.

z. On 8 August 2019, Special Orders Number 226, issued by the NGB, extended FEDREC and promoted the applicant to the rank/grade of MAJ/O-4, effective on with a DOR of 30 July 2019.

aa. On 21 September 2019, the applicant entered active duty.

bb. The applicant was honorably release from active duty on 5 February 2020. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 4-months and 15-days of active service.

4. On 30 January 2024, in the processing of this case, the Chief, Special Actions Branch, NGB, provided an advisory opinion regarding the applicant's request for correction of his appointment in the [REDACTED] ARNG to the rank of 1LT effective August 2010 due to the error by the AMEDD recruiter which would make him eligible for promotion to the rank of CPT in May 2013 which caused a delay in his promotion to the rank of MAJ. The advisory official recommended disapproval of the applicant's request.

a. NGB Special Orders Number 17 shows the applicant was appointed to the rank/grade of 2LT/O-1, effective 17 August 2010 with the DOR of 17 August 2009 per the [REDACTED] Orders Number 263-1005. His oath of office and the DA Form 89 incorrectly stated his rank/grade of 1LT/O-2 and he was correctly appointed in the rank/grade of 2LT/O-1 based on the U.S. Army Recruiting Command results which awarded him credit for a 2LT with 1-year, 4-months, and 14-days of time in grade. He was never granted credit towards an appointment as a 1LT which would require a master's degree. The initial appointment paperwork in the rank/grade of 1LT/O-2 caused confusion. However, the applicant was only Federally recognized as a 2LT on the appointment orders and his data was entered correctly in the authoritative data system.

b. The minimum Time in Grade (TIG) for eligibility for promotion to 1LT was 18-months or the completion of the Basic Officer Leader Course whichever was later. He completed the course on 16 May 2011 and was subsequently promoted to the rank/grade of 1LT/O-2 with the effective date of 16 May 2011 with the same DOR. The minimum TIG for promotion to the rank of CPT was 2-years making the earliest he would be eligible of 16 May 2013. Unfortunately, it cannot be confirmed when his promotion packet to CPT was initiated but his security clearance expired on 11 June 2013 and was not adjudicated until 18 March 2014 and by that time his Department of the Army photograph also expired. The promotion recommendation was not signed by his commander until 19 June 2014 and was reviewed by the FEDREC

board on 15 August 2014 and submitted to the NGB on 21 August 2014. The promotion scroll was approved, and he was promoted to the rank/grade of CPT/O-3 effective 23 December 2014 with the same DOR. The minimum TIG for promotion to the rank of MAJ was 4-years and the earliest he could be promoted to MAJ would have been 23 December 2018. His promotion packet was reviewed by the FEDREC board on 29 April 2019 and submitted to the NGB on 9 May 2019. The scroll was approved and he was promoted to the rank/grade of MAJ/O-4 on 30 July 2019.

c. Based on the available evidence, the applicant was correctly appointed to the rank/grade of 2LT/O-1 into the ARNG. There was no other credit that suggests he should have been commissioned as a 1LT and there is no evidence of an injustice in the process of his promotion to the rank of CPT. Since the unit commander recommends a unit vacancy promotion, the officer's promotion eligibility date does not guarantee a promotion on that date.

5. On 7 February 2024, the Army Review Boards Agency, Case Management Division provided the applicant the advisory opinion for review and comment. On the same date, the applicant responded stating:

a. The change in his DOR to 1LT was denied secondary to insufficient constructive credit. He assumed it would be the Board's decision and he has no further comment.

b. The change in the DOR to CPT was denied secondary to the inability to confirm when the promotion packet for CPT was initiated and further delay due to the lapse in his security clearance. Even if the [REDACTED] ARNG cannot confirm the date of initiation, the packet was submitted to the appropriate persons well before his eligibility for promotion to CPT. His security clearance would have still been active and should not have delayed his promotion for the effective date of 23 December 2014. The delay in the submission of the promotion packet was the reason for the subsequent and severe delay in his promotion to CPT. He disagrees with the denial of his request for the change in his DOR for CPT. He was failed by his unit after he took the time and effort to put the packet together.

c. The change in the DOR to MAJ was denied but he only requested a change in the DOR for MAJ if there would be a change in the DOR for 1LT and CPT. He has no complaints about his promotion to MAJ on the current timeline with the significant delay in the promotion to CPT. However, he would request a change in his DOR for MAJ if his DOR for CPT is adjusted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board concurred with the conclusion of the advisory official that the evidence does not support a conclusion that there was an error or delay in the applicant's initial appointment and subsequent promotions that constituted an injustice. Based on a preponderance of the evidence, the Board determined the applicant's initial appointment and subsequent promotions were properly completed.

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.

8/27/2024

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, USC, 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 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 (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. AR 135-101 (Army National Guard and Army Reserve – Appointment of Reserve Commissioned Officer for Assignment to Army Medical Department Branches), prescribes policy, procedures, and eligibility criteria for appointment in the Reserve Components of the Army, with or without concurrent active duty, in the six branches of the AMEDD.

a. Paragraph 1-3 (Personnel eligible and grade on appointment), commissioned officers of any Reserve Component (RC) of the Army who have served satisfactorily in the specialty for which they are applying may be appointed and/or called to active duty under either (1) or (2) below, whichever selection would result in a higher grade or greater promotion service on the date of appointment. (1) In the grade currently held if serving in the specialty for which applying. (2) In the highest grade for which they can fully qualify by education and experience, gained after becoming professionally qualified.

b. Paragraph 3-1 (Entry grade credit for Reserve appointment grade determination), grade and DOR upon original appointment and assignment to an AMEDD branch will be determined by the number of years of entry grade credit awarded. Except as limited by maximum credit limits (a below), entry grade credit granted will be the sum of constructive service credit and credit for prior active commissioned service. Entry grade credit awarded to AMEDD officers upon-appointment or assignment will be recorded on one of the following forms: DA Form 5074-R (Record of Award of Entry Grade Credit (Medical and Dental Officers)) for Medical Corps (MC) or Dental Corps (DC) officers or DA Form 5074-1-11 (Record of Award of Entry Grade Credit (Health Services Officers)) for Army Nurse Corps (ANC), Medical Service Corps (MSC), Army Medical Specialist Corps (AMSC), or Veterinary Corps (VC) officers.

c. Paragraph 3-2 (Determination of entry grade for officers not ordered to active duty), the grade of an individual appointed as a Reserve officer without concurrent call to active duty will be determined by comparing the entry grade credit awarded with the phase points shown below.

- Less than 3 years for Second Lieutenant
- 3 years or more, but less than 7 years for First Lieutenant
- 7 years or more, but less 14 years for Captain

4. National Guard Regulation 600-100 (Commissioned Officers – Federal Recognition and Related Personnel Actions), in effect at the time, prescribes policies and procedures governing the appointment, assignment, temporary Federal recognition, Federal recognition.

a. Paragraph 1-7 (Appointment grade), Federal recognition and initial Reserve of the Army appointment will be limited to the grade of second lieutenant except for those individuals who are entitled to three or more years of service credit under Title 10, USC, section 3353. Service credit consists of the sum of any prior commissioned service credit awarded for advanced education, training, or special experience. Award of constructive service credit is limited to those commissioned officers seeking appointment in one of the special branches.

b. Paragraph 2-1 (Appointment), Commissioned Officers of the ARNG are appointed by the several States of the United States Constitution. These appointments may be federally recognized by the Chief, National Guard Bureau under such regulations as the Secretary of the Army may prescribe and under the provisions of this regulation. Officers who are federally recognized in a particular grade and branch shall be tendered an appointment in the same grade as Reserve commissioned officers of the Army with assignment to the Army National Guard of the United States (ARNGUS), as provided in Title 10, USC, sections 3351(a) and 3359, if they have not already accepted such appointment.

c. Paragraph 8-7 (Eligibility for promotion), to be considered for FEDREC and subsequent Reserve of the Army promotion following State promotion to fill a unit vacancy, an ARNG commissioned officer must:

- be in an active status;
- be medically fit and meet the height and weight standards;
- completed the minimum years of promotion service;
- completed the minimum military education requirements;
- completed the minimum civilian education requirements; and

- passed an APFT within the time frame prescribed, an officer who has failed the APFT or failed to take the APFT should be flagged and is not eligible for Federal recognition

5. AR 135-155 (Promotion of Commissioned Officers and Warrant Officers Other than General Officers) in effect at the time prescribes policy and procedures used for selecting and promoting commissioned officers (other than commissioned warrant officers) of the Army National Guard of the United States (ARNGUS) and of commissioned and warrant officers (WO) of the U.S. Army Reserve (USAR).

a. Table 2-1 (Time in grade requirements commissioned officers, other than commissioned warrant officers) states for promotion to:

- 2LT to 1LT; 2 years minimum in the lower grade and 42 months maximum
- 1LT to CPT; 2 years minimum in the lower grade and 5 years maximum
- CPT to MAJ; 4 years minimum in the lower grade and 7 years maximum

b. Table 2-2 (Military educational requirements commissioned officers, other than commissioned warrant officers grade) states for promotion to:

- 2LT to 1LT; Resident officer basic course
- 1LT to CPT; Resident officer basic course
- CPT to MAJ; Any officer advanced course

//NOTHING FOLLOWS//