

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 January 2025

DOCKET NUMBER: AR20230008080

APPLICANT REQUESTS: date of rank (DOR) adjustment to Chief Warrant Officer 4 (CW4) on 1 January 2018 or 1 February 2018 vice 30 December 2019.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored Statement
- Memorandum, Subject: Unqualified Resignation of the Applicant
- Memorandum, Subject: Declination of Promotion
- Orders 236-0503
- Orders 011-0500
- Orders 019-0507
- Orders 037-715
- DA Form 71 (Oaths of Office)
- Service Orders 121
- Army National Guard (ARNG) Current Annual Statement
- Order 349-049
- Appointment Letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DA Form 3508 (Application for Remission or Cancellation of Indebtedness)
- Orders 067-802
- U. S. Army Human Resources Command (AHRC) Letter
- Applicant Sworn Statement
- Three Army National Guard (ARNG) Letters
- DA Form 3508 (Application for Remission or Cancellation of Indebtedness)
- Three National Guard Endorsement Letters

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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:

a. He requests correction of his DOR to his original promotion date to CW4 of 1 January 2018 or even his accession date into the Nebraska Army National Guard (NEARNG) to 1 February 2018 due to the improper processing of his promotion declination memorandum by HRC. Had his name been removed from the Headquarters, Department of the Army (HQDA) Promotion List as requested, none of this would have happened. Had he not been promoted by HRC, he would have been assessed into the NEARNG as a CW3 and would have been able to submit his promotion paperwork upon my accession into the NEARNG Title 32 Active Guard Reserve (AGR) program.

b. As soon as he discovered the problem, he immediately notified his chain of command and did everything in his power to rectify the issue. He followed the advice of the chain of command, human resource departments, and Inspector General to resolve the issue with a portion of this taking place while deployed to a combat zone and flying nightly combat missions.

c. Upon the discovery that all of his appeals to HRC, NGB, and HQDA had fallen short and there was no way he was going to avoid the reduction to CW3, he was left with no other option but to accept the reduction and the debt and begin the long process of appealing it. The extreme delay in finding any resolution forced a re-promotion date of two years behind the first one. As it now stands, HRC has favorably reviewed his debt remission packet and canceled by debt of \$13,178.32, however, he is still losing two years' time-in-grade as a CW4 and is well behind his peers for a future promotion to CW5.

d. Without the ability to compete against his peer group for CW5, the likeliness of him achieving that rank is significantly reduced which will affect his retirement pay and his family for many years into the future. He is being held responsible for issues well outside of ability to control or affect and this entire process has been a major point of frustration, hardship, and injustice on his family and over all of the years it has taken place.

3. The applicant provides:

a. A self-authored statement, he reiterates the above as soon as he discovered the problem, he immediately notified his chain of command and did everything in his power to rectify the issue. He followed the advice of his chain of command, human resource departments, and Inspector General to resolve the issue with a portion of this taking place while deployed to a combat zone and flying nightly combat missions. He is being held responsible for issues well outside of my ability to control or affect and this entire process has been a major point of frustration, hardship, and injustice on he and his family, over all of the years it has taken place.

b. Memorandum, Subject: Unqualified Resignation of the applicant, 11 July 2017, shows the applicant tendered his unqualified resignation from the Army to be effective 18 April 2018 or as soon as practicable thereafter.

c. Memorandum, Subject: Declination of Promotion, 16 October 2017 shows the applicant declined promotion to CW4 to be effective immediately.

d. ARNG Current Annual Statement, 2 July 2019 shows the applicant had 15 years creditable service for retired pay.

e. Appointment letter, 12 February 2018, the applicant was appointed in the Reserve of the Army in the grade of CW4.

f. DA Form 3508, (Application for Remission or Cancellation of Indebtedness) 23 July 2020, shows the applicant's request for a waiver of his debt in the amount of \$13,178.32 due to overpayment for his rank adjustment.

g. ARNG letter, 27 July 2020, shows it was recommended that he entire debt of \$13,178.32 be remitted. It shows the overpayment was no fault of the applicant.

h. ARNG letter, 1 October 2020, the NEARNG adjutant general concurred with the full remittance of the debt incurred by the applicant.

i. ARNG letter, 5 October 2020, his commander concurred with the full remittance of the debt incurred by the applicant during his transition from the active component Army to the ARNG and Reserve program.

j. AHRC letter, 14 October 2020, shows the applicant s application for remission or cancellation of indebtedness in the amount of \$13,178.32 had been reviewed and approved.

k. The applicants sworn statement, 14 July 2021 shows he submitted a letter of declination to the appropriate authority. He was not the removed from the promotion list and was promoted to CW4 on 14 January 2018.

l. ARNG Endorsement letters, show his company commander, battalion commander and Adjutant General recommends that the applicant's DOR or rank be adjusted to 1 January 2018 and the debt be remitted.

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

a. On 23 June 2004, he enlisted in the Regular Army.

b. On 3 November 2004, he was honorably discharged to accept commission or warrant in the Army. His DD Form 214 shows he completed 4 months and 11 days net active service.

c. DA Form 71 (Oath of Office-Military Personnel), he executed an Oath of Office on 4 November 2004 and was appointed as a Reserve Warrant Officer in the rank of warrant officer 1/WO1.

d. Orders 291-185, 18 October 2006 promoted the applicant to chief warrant officer 2/CW2. Effective Date and Date of Rank 4 November 2006.

e. Orders 285-055, 12 October 2011 promoted the applicant to chief warrant officer 3/CW3. Effective date and DOR: 1 November 2011.

f. Orders 236-0503, 24 August 2017 reassigned the applicant to the U.S. Army transition point for processing and discharge from the RA. Date of Discharge: 18 April 2018.

g. Orders 349-049, 15 December 2017 promoted the applicant to chief warrant officer 4/CW4. Effective date and DOR: 1 January 2018.

h. Orders 011-0500, 11 January 2018, amended Orders 236-0503, to read date of discharge, unless changed or rescinded: 31 January 2018.

i. He was honorably discharged on 31 January 2018. His DD Form 214 shows he completed 13 years, 2 months, and 11 days net active service.

j. DA Form 71 shows he executed an Oath of Office on 1 February 2018 and was appointed as a Reserve Warrant Officer in the rank of warrant officer 4/CW4 in the NEARNG.

k. Orders 033-005, 2 February 2018 ordered the applicant to active duty in the ARNG or Reserve status in the grade of CW4 for the period 1 February 2018-31 January 2021.

l. Orders 037-715, 6 February 2018 appointed the applicant in the ARNG in the grade of CW4.

m. Order 067-802, 8 March 2018 rescinded the applicant's in promotion to the grade of CW4. Officer declined the promotion.

n. Memorandum, Subject: Appointment as a Reserve Commissioned Officer of the

Army (U.S. Army Reserve (USAR)), 3 May 2018, HRC appointed the applicant as a Reserve commissioned officer of the Army.

o. Memorandum, Subject: Appointment as a Reserve Commissioned Officer of the Army, USAR, 31 May 2018, National Guard Bureau, in the ARNG in the grade of CW4.

p. Special Orders 121, 31 May 2018, transferred the applicant from the USAR. Effective date 1 February 2018 in the grade of CW4, with a DOR as CW4 as 1 January 2018.

q. Orders 31-334-0008, 30 November 2018 ordered the applicant to active duty in support of Operation Freedom's Sentinel for 400 days in the rank of CW4.

r. Orders 344-018, 10 December 2018, amended Orders 236-0503 (discharge orders) for the period of 1 February 2018-31 January 2019 to read "1 February 2018 – 2 January 2019".

s. On 1 February 2018, he entered active duty and was honorably released from active duty (REFRAD) to continue on active duty on 2 January 2019 and transferred to Lincoln, NE. His DD Form 214 shows he completed 11 months and 2 days net active service.

t. Orders 231-712, 19 August 2019, amended Orders 037-715 for his grade of rank to CW3.

u. Special Orders 238, 22 August 2019, shows Special Orders 121, 31 May 2018 pertaining to the Extending Federal Recognition to the applicant (CW3) as reads "CW4 154F" IATR "CW3 154F".

v. Orders 259-701, 16 September 2019 promoted the applicant to CW4. Effective date and DOR: 16 September 2019.

w. On 3 January 2019, he entered active duty and was honorably REFRAD on 23 January 2019 to continue on active duty in another status. His DD Form 214 shows he completed 10 months and 21 days net active service.

x. Special Orders 13, 21 January 2020, shows the applicants promotion. Effective Date: 30 December 2019. DOR as CW4 30 December 2019.

y. Orders 364-001, 30 December 2021 ordered the applicant to active duty in Active Guard or Reserve status in the grade of rank CW4. Period: Voluntary duty for 5 years.

5. In the processing of this case an advisory opinion was obtained, 12 June 2024, from the NGB, Chief, Special Actions Branch, who opined in pertinent part:

(1) Recommendation. Approval.

(2) Discussion.

a. The applicant appeared on the 2017 promotion list to CW4 in the Regular Army (RA). He denied promotion to CW4 with the RA to avoid the two-year active-duty service obligation once promoted. HRC published a promotion order to CW4 with a DOR of 1 January 2018 despite the denial memorandum from the applicant to HQDA. He separated from RA on 31 January 2018 and was accessed as a CW4 into the Nebraska Army National Guard (NEARNG) Title 32 Active Guard Reserve (AGR) Program on 1 February 2018. HRC rescinded his CW4 promotion order on 8 March 2018 stating officer has declined promotion. NEARNG published an order reducing the applicant to CW3 on 19 August 2019. The National Guard Bureau (NGB) publishes an order reducing him to CW3 on 20 August 2019. The applicant states that NEARNG submitted a promotion packet on 17 October 2019 to NGB following the reduction to CW3. His promotion to CW4 was published with a current DOR on 30 December 2019.

b. The applicant incurred a debt as he was mobilized to Afghanistan serving as a CW4 during this time period. He submitted a debt remission packet that was approved on 15 October 2020 and his debt was cancelled. He requests his DOR to CW4 be adjusted to his original DOR of 1 January 2018 or his accession into the NEARNG for 1 February 2018. Soldier's ABCMR packet includes a memorandum from his company commander, Battalion commander and Adjutant General favoring his request for a backdated DOR.

(3) It is the recommendation of this office that the applicant's request be approved, and DOR and effective DOR be adjusted to 1 February 2018. Soldier declined active-duty promotion to CW4 and would have been eligible upon accession to the NEARNG if he did not have to wait for HRC to rescind his promotion order. Soldier was qualified and acting as a CW4 during this time period in a title 10 status deployed to Afghanistan.

(4) The Nebraska Army National Guard Concurs with this advisory opinion. Included is an endorsement from the Adjutant General of Nebraska.

6. On 13 June 2024, the applicant was provided with a copy of the advisory opinion with an opportunity to respond. No response as of 28 June 2024.

7. Special Orders 465, 3 December 2024, shows the applicants promotion. Effective Date: 30 December 2024. Date of Rank as CW5 30 December 2024.

BOARD DISCUSSION:

1. 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- Special Actions Branch advisory opinion, the Board concurred with the advising opinion recommendation for approval finding the applicant's date of rank (DOR) should be adjusted to 1 February 2018 to align with his accession into the NEAENG and his actual service acting as a CW4 during this time period in a title 10 status deployed to Afghanistan.

2. The Board noted, the applicant was qualified and performing duties commensurate with the CW4 grade during this time, and that the delay in recognizing his promotion was due to administrative actions outside his control, including the time required for HRC to rescind the original promotion order. The Board determined, based on the advising opine and the totality of the evidence, including endorsements from his chain of command and the absence of any misconduct or disqualification, the applicant's DOR to CW4 should be adjusted to 1 February 2018, thereby correcting an administrative oversight and ensuring equitable recognition of his service. As such, the Board granted relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	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 of the individual concerned be corrected by showing the applicant's date of rank (DOR) with an effective date of 1 February 2018, to the rank of Chief Warrant Officer Four (CW4).

X //SIGNED//

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, U.S. Code, 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. National Guard Regulation 600-100 (Commissioned Officers-Federal Recognition and Related Personnel Actions) provides procedures for processing all applications for Federal Recognition. Paragraph 2-1 states that commissioned officers of the ARNG are appointed by the several States under Article 1, Section 8 of the U. S. 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 if they have not already accepted such appointment.)

2. National Guard Regulation 600-100 (Personnel-General, Commissioned Officers Federal Recognition and Related Personnel Actions), prescribes policies and procedures governing the appointment, assignment, temporary Federal Recognition, Federal Recognition, reassignment, transfers between States, branch transfers, area of

concentration designation, utilization, branch detail, and attachment of commissioned officers of the Army National Guard (ARNG). The promotion of officers in the ARNG is a function of the State. As in original appointments, a commissioned officer promoted by State authorities has a state status in the higher grade under which to function. However, to be extended Federal Recognition in the higher grade, the officer must have satisfied the requirements prescribed herein. National Guard officers may be considered and found qualified for Federal Recognition of their State promotion using two distinct processes: State Federal Recognition Boards and DA Mandatory Boards. Under either process, the precedent for an actual promotion in the Army National Guard is State assignment and appointment to the next higher grade.

a. State Federal Recognition Boards (FRB). Officers may be federally recognized through State FRB which are often referred to as "State vacancy promotion boards" or "unit vacancy boards" as part the Unit Vacancy Promotion (UVP) process under 32 USC 307.

b. DA Mandatory Boards. The second way to federally recognize the State promotion is through the DA Mandatory Promotion Selection Boards process. Mandatory promotion selection boards are convened by the Secretary of the Army pursuant to 10 USC 14101(a). Those National Guard officers selected ("DA Select") by a DA mandatory board who are then appointed by the State in that higher grade to fill a vacancy in the Army National Guard are extended Federal Recognition in that grade, without the examination prescribed by 32 USC 307 (see 10 USC 14316).

3. Army Regulation (AR) 135-155 (Promotion of Commissioned Officers and Warrant Officers Other than General Officers) provides policy for selecting and promoting commissioned officers of both the Army National Guard of the United States and the U.S. Army Reserve (USAR), and warrant officers of the USAR.

a. 3-19 Officers and warrant officers who have either failed of selection for promotion, or who were erroneously not considered for promotion through administrative error may be reconsidered for promotion by either a promotion advisory board or a special selection board, as appropriate.

b. Special selection boards, convened under the Reserve Officer Personnel Management Act (ROPMA) on and after 1 October 1996, will reconsider commissioned officers, (other than commissioned warrant officers) who were wrongly not considered, and reconsider commissioned officers (other than commissioned warrant officers) who were considered but not selected by mandatory promotion boards that convened on or after 1 October 1996. These boards do not reconsider officers who were not considered or not selected by mandatory promotion boards that convened before 1 October 1996.

c. These boards are convened to correct/prevent an injustice to an officer or former officer who was eligible for promotion but whose records—

(1) Through error, were not submitted to a mandatory promotion selection board for consideration.

(2) Contained a material error when reviewed by the mandatory selection board.

4. Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers other than General Officers) provides policy and procedures for the selection and promotion of commissioned officers of the Army National Guard of the United States and the U. S. Army Reserve.

//NOTHING FOLLOWS//