

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 May 2024

DOCKET NUMBER: AR20230010259

APPLICANT REQUESTS: adjustment of his date of rank (DOR) to captain (CPT)/O-3 to reflect 5 November 2021.

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

- DD Form 149 (Application for Correction of Military Record)
- Email Thread with Members of Ohio Army National Guard (OHARNG)

FACTS:

1. The applicant states he is requesting to have the effective date of his DOR to CPT adjusted to reflect 5 November 2021.

a. He believes he experienced an injustice due to the mismanagement of his promotion paperwork at the battalion (BN) and brigade (BDE) levels, as well as the National Guard Bureau (NGB) levels. His promotion packet took a total of 28 months from initial submission to publishing of orders. The correction to his DOR will subsequently benefit him when he is considered for promotion to major (MAJ) and will allow him to recuperate funds lost due to the untimely delay where he continued to receive pay as a first lieutenant (1LT).

b. The time it took to process his promotion, from August 2021 to January 2023, is unacceptable for any promotion for a military member in any rank or branch. His leadership failed to process the paperwork in a reasonable time and once it passed state levels, the NGB failed to process scroll number P28-22 in a timely manner. On 5 November 2021, he submitted his packet to the unit with a letter to the board that his Officer Evaluation Report (OER) was being processed. He had not received an update for nearly 5 months when he was finally informed that his packet was kicked back because the OER was not submitted. The OER was not due at the time of submission and he followed the instructions he was given. He hounded his rater and senior rater and was finally able to get the OER accepted on 23 March 2022.

c. His promotion packet was immediately submitted and on 8 April 2022, the BDE commander signed his packet. On 19 April 2022 the G1 received the packet and sat on

it until 26 April 2022 when it was signed and forwarded to NGB. It took another 5 months for the scrolling process to begin on 7 September 2022 with scroll P28-22. The scrolling process was delayed from 7 September 2022 through 28 January 2023, an obscene amount of time to wait for promotion, equating to 15 months past his eligibility date.

2. The applicant provides an email thread from approximately 28 January 2022 to 26 April 2022 which indicates his packet was kicked back due to a missing OER, which was subsequently submitted, and next steps identified.

3. 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 5 May 2018.

b. On 23 May 2018, the NGB issued Special Orders (SO) #114 announcing the Federal recognition of the applicant's initial appointment as a second lieutenant (2LT) within the OHARNG, effective 5 May 2018.

c. Orders 158-904, dated 7 June 2018, appointed the applicant to the OHARNG in the rank of 2LT as a platoon leader.

d. He entered active duty on 8 July 2018. He was honorably released from active duty training on 26 October 2018. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 months and 19 days of active service. It also shows he completed the Transportation Basic Officer Leadership Course.

e. On 26 February 2020, the NGB issued SO #61 announcing the Federal recognition of the applicant's promotion to the rank/grade of first lieutenant (1LT), effective 5 November 2019.

f. Orders 0000238358.00, dated 4 March 2020, appointed the applicant to the OHARNG in the rank of 1LT as a platoon leader with an effective date of 5 November 2019.

g. On 3 February 2023, the NGB issued SO #47 AR announcing the Federal recognition of the applicant's promotion to the rank of CPT, effective 23 January 2023.

h. Orders 0004005427.00, dated 10 February 2023, promoted the applicant in the OHARNG to the rank of CPT, effective 23 January 2023 as a Supply Management Officer.

4. On 1 February 2024, the NGB Chief, Special Actions Branch, rendered an advisory opinion in the processing of this case. He opined:

a. In coordination with the OHARNG, the applicant's packet was completed, signed by the BDE commander 8 April 2022, and boarded by a FedRec board on 19 April 2022. A board approved packet was uploaded and accepted to NGB on 27 April 2022. The OHARNG did not delay submission of a board approved packet to NGB.

b. In review of the NGB scrolling process, the state submitted the applicant's promotion packet to NGB on 27 April 2022. NGB did not assign it to scroll P28-22 until 19 August 2022, 114 days after submission. The scroll completed the FedRec Process with a final publication date and DOR of 23 January 2023. From submission to NGB to publication of orders, it took 271 days. This is considered an unjust amount of processing time IAW 10 USC 741.

c. It is the recommendation of the office that the applicant's request be partially approved, and his DOR be adjusted to 27 April 2022, when NGB received his promotion packet. The applicant's promotion packet reached NGB on 27 April 2022 and did not begin scrolling until 19 August 2022 and was published on 23 January 2023. That is an unjust amount of time for the Federal Recognition Process. The advisory opinion was coordinated with the NGB Federal Recognition Branch and the OHARNG.

5. On 12 February 2024, the advisory opinion was forwarded to the applicant for his acknowledgment and/or response. The applicant has not provided a response to date.

6. By regulation (NGR 600-100), to be eligible for promotion to CPT, 1LTs must have completed the Basic Officer Leaders Course (BOLC) and have a baccalaureate degree from a qualifying educational institution. 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 federally recognized.

7. 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:

1. 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 for partial approval finding sufficient evidence to support the applicant submitted his promotion packet to NGB on 27 April 2022. However, NGB did not assign it to scroll P28-22 until 19 August 2022, 114 days after submission.

2. The Board determined the scroll completed the FedRec Process with a final publication date and DOR of 23 January 2023. The opine noted from submission to NGB to publication of orders, it took 271 days. This is considered an unjust amount of processing time IAW 10 USC 741. The Board agreed in accordance with the opine the applicant's DOR should be adjusted to 27 April 2022, when NGB received his promotion packet. The applicant's promotion packet reached NGB on 27 April 2022 and did not begin scrolling until 19 August 2022 and was published on 23 January 2023. Therefore, the Board granted partial relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 by showing the applicant's date of rank as 27 April 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 the applicant's date of rank (DOR) to captain (CPT)/O-3 to reflect 5 November 2021.



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 that CPTs will be considered for promotion at 2 years TIG; MAJs at 4 years. To be eligible for promotion to CPT, 1LTs 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 federally recognized.

3. 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.

4. 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//