

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230010296

APPLICANT REQUESTS: in effect –

- correction of his first lieutenant (1LT)/O-2 Date of Rank (DOR) to 11 November 2020 instead of 28 January 2022, or in the alternative, to the time of the scroll around that time
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 149 Supplement

FACTS:

1. The applicant states he requests correction of his 1LT promotion DOR to on or about 11 November 2020, or the time of the scroll around that time, replacing 28 January 2022. The U.S. Army Human Resources Command (HRC) Memo for Commanders, Subject: Promotion of Reserve Component Officers to First Lieutenant and Chief Warrant Officer Two, dated 14 December 2009, states 18 months promotion O-1/2LT (second lieutenant) to O-2/1LT. His O-1/2LT Time-in-Grade (TIG) is 32 months and 17 days and is 14 months and 17 days over the 18-month rule. No notification nor action of any kind was ever made to withhold promotion in either the Mississippi Army National Guard (MSARNG) or Army Reserve, from anyone, anywhere, in any record system.

2. A review of the applicant's official military records show the following:

a. On 11 May 2019, having had prior Army National Guard and cadet enlisted service, DA Form 71 (Oath of Office - Military Personnel) shows the applicant was appointed as a 2LT in the Reserve and execute his oath of office.

b. National Guard Bureau (NGB) Form 337 (Oaths of Office) shows the applicant was appointed as a 2LT/O-1 in the MSARNG and executed his oath of office; he was also granted temporary Federal Recognition (FEDREC).

c. On 11 June 2019, the MSARNG, Adjutant General's Office published –

(1) Orders Number 162-848, which discharged the applicant from the ARNG to accept appointment as a commissioned officer, effective 10 May 2019.

(2) Orders Number 162-850, which appointed the applicant as a 2LT in the ARNG, effective 11 May 2019.

d. On 21 June 2019 –

(1) The NGB, Chief, Personnel Division notified the applicant that he was appointed as a Reserve commissioned officer in the rank of 2LT, effective 11 May 2019. The memorandum also shows his date of acceptance as 11 May 2019.

(2) NGB published Special Orders Number 170, which extended FEDREC to the applicant for the purpose of initial appointment in the rank of 2LT, effective on with a DOR of 11 May 2019.

e. He completed the Engineer Basic Officer Leader Course (BOLC) on 2 July 2020.

f. On 15 October 2020, DD Form 368 (Request for Conditional Release) shows he requested and was approved to be released from the ARNG for appointment in the U.S. Army Reserve (USAR).

g. On 21 April 2021, the applicant was honorably released from the MSARNG and transferred to the USAR Control Group. He completed 7 years, 1 month, and 16 days net service this period. NGB Form 22 (Report of Separation and Record of Service) shows in item 5a (Rank) "2LT" and item 6 (DOR) 11 May 2019.

h. On 22 April 2021, DA Form 71 shows he was appointed as a 2LT in the Reserve and executed his oath of office.

i. On 29 April 2021, the NGB published Special Orders Number 111, which withdrew the applicant's FEDREC status in the ARNG, effective 21 April 2021.

j. On 6 May 2021, HRC published Orders Number C-05-104771, which released the applicant from the USAR Control Group (Reinforcement) and assigned him to his USAR unit in Maryland, effective 22 April 2021.

k. On 9 February 2022, HRC published Orders Number B-02-200669, which promoted the applicant to the rank/grade of 1LT/O-2, effective on with a DOR of 28 January 2022.

I. He completed the Chemical, Biological, Radiological, and Nuclear Captains Career Course on 17 March 2023.

4. In support of his case the applicant provides a DD Form 149 supplement providing additional facts and a time of events related to his DOR and promotion. The document states, throughout the time inquiring about his transfer, Field grade officers in both components told him not to worry about it and that promotion was automatic and that it would be carried over. Looking back now, both the MSARNG and USAR thought the other was tracking. He did not notice that neither were tracking until much later. He is willing to discuss in person (D.C.) if asked for additional information.

5. On 6 March 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion for this case and recommended partial approval. The advisory official stated:

a. The applicant requests a DOR adjustment from 28 January 2022 to 11 November 2020 or the scroll date. He states no notification nor action of any kind was ever made to him communicating he would not receive promotion to 1LT/O-2. The applicant states the 14 December 2009 HRC Memo for Commanders: Promotion of Reserve Component Officers to First Lieutenant and Chief Warrant Officer Two, designates 18 months for promotion from O-1 to O-2. The applicant states his O-1 TIG was 32 months and 17 days which is 14 months and 17 days over the 18-month timeline.

b. On 11 May 2019, he commissioned with the MSARNG. In October 2019 the applicant inquired about transfer to the Reserves. On 2 July 2020 he completed BOLC; O-1 TIG 13 months. On 22 April 2022 the applicant's orders published for transfer from the ARNG to the USAR. "2022-01-28 DOR O2; O1 TIG 32 months."

c. The applicant provided NGB Form 0122E (Special Orders), BOLC DA Form 1059 (Service School Academic Evaluation Report), NGB Form 23A (Army National Guard Current Annual Statement), and DA Form 5016 (Retirement Accounting Statement) as supporting documents. The MSARNG Deputy Officer Personnel Manager (OPM) states the applicant's records indicate the applicant's Commander did not recommend promotion to 1LT prior to the applicant's conditional release request of 4 November 2020.

d. The MSARNG Deputy OPM references Per National Guard Regulation (NGR) 600-100 (Commissioned Officers FEDREC and Related Personnel Actions), chapter 8, paragraph 8-1b. National Guard officers may be considered and found qualified for FEDREC of their State promotion using two distinct processes: State FEDREC Boards and Department of the Army Mandatory Boards. Under either process, the precedent for an actual promotion in the ARNG is State assignment and appointment to the next higher grade. Eligibility for promotion does not automatically constitute an approved promotion action. Those that are eligible for promotion must be recommended by

Commanders and approved by The Adjutant General (TAG). The promotion packet should include TAG memo and the State promotion order.

e. The MSARNG Deputy OPM provides the applicant's 2LT FEDREC order, DD Form 368 (Request for Conditional Release), and DA Form 71 as supporting documents. A review of the applicant's request by the ARNG FEDREC Team shows there is no promotion packet uploaded in the eTracker system from the MSARNG promoting the applicant to the rank of 1LT.

f. After further review of the applicant's documents provided and discussions with the MSARNG and ARNG FEDREC Team, it is the conclusion of this office, that the applicant met TIG and educational requirements for promotion but did not have a commander's recommendation for promotion. There is no evidence to support ineligibility for promotion from the State. This office recommends the applicant's request for DOR adjustment be "partially granted." Correction of a DOR adjustment to a reasonable eligibility date executed by the USAR to re-align his promotion eligibility date for CPT with his peers. The ARNG FEDREC Team ARNG FEDREC has no equities in this ABCMR. The MSARNG concurs with the recommendation.

6. On 29 March 2024, the applicant was provided a copy of the NGB advisory opinion for comments or rebuttal. He did not respond.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant contends there was no notification or action of any kind was ever made to him communicating he would not receive promotion to 1LT/O-2.

a. The evidence shows the applicant was commissioned with the MSARNG on 11 May 2019 and completed BOLC on 2 July 2020. On 15 October 2020, he requested to be released from the ARNG for appointment in the USAR, and on 21 April 2021, he was released from the MSARNG and was transferred to the USAR Control Group. The MSARNG Deputy Officer Personnel Manager states the applicant's records indicate his commander did not recommend promotion to 1LT prior to the applicant's conditional release request. Eligibility for promotion does not automatically constitute an approved promotion action. Those that are eligible for promotion must be recommended by Commanders and approved by The Adjutant General.

b. The applicant met the time in grade and educational requirements for promotion on or about 11 November 2020 which is 18 months after his appointment in the ARNG, but he did not have a commander’s recommendation for promotion, despite the absence of any evidence to support ineligibility for promotion from the State. Since Army policy authorizes Reserve Component 2LTs on the reserve active-status list to be promoted with a minimum of 18 months TIG and completion of the officer basic course, if otherwise qualified, and since the applicant met the time in grade and educational requirements for promotion and his record contains no evidence to support ineligibility for promotion from the State, the Board determined an error and an injustice occurred, and voted to grant relief.

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 and Army National Guard records of the individual concerned be corrected by issuing the applicant Special Orders extending him Federal recognition for promotion to 1LT/O-2 in the MSARNG, effective on with a date of rank as 11 November 2020, 18 months after his commissioning date in the ARNG (11 May 2019).

█

█ █

█

████████████████████

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. Army Regulation (AR) 15-185 (Army Board for Correction of Military Records (ABCMR)) states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2–11 states 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.

2. NGR 600-100 (Commissioned Officers FEDREC and Related Personnel Actions) prescribes policies and procedures governing the appointment, assignment, temporary FEDREC, reassignment, transfers between States, Branch (BR) transfers, Area of Concentration designation, utilization, BR detail, and attachment of commissioned officers of the ARNG. Exceptions to this regulation will be considered on an individual basis; they will neither be considered as a precedent for changes in policy, nor blanket approval for future requests. Chapter 8 (Promotion for other than general officers), paragraph 8-1 states in:

a. Paragraph 8-1a, 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 FEDREC in the higher grade, the officer must have satisfied the requirements prescribed herein.

b. Paragraph 8-1b, 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 ARNG is State assignment and appointment to the next higher grade. Selection for promotion does not automatically constitute an approved promotion action. Those that are eligible for promotion must be recommended by Commanders and approved by TAG. The promotion packet should include TAG memo and the state promotion order.

(1) State 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 of the Unit Vacancy Promotion (UVP) process under Title 32, U.S. Code, section 307.

(2) 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 Title 10, U.S. Code (USC), section 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 FEDREC in that grade, without the examination prescribed by Title 32, USC, section 307 (see 10 USC 14316).

c. Paragraph 8-9 (Promotion to 1LT), this guidance applies to all ARNG 2LTs. In accordance with Tables 2-1 and 2-3 of reference c, Officer Basic Course is the minimum military education requirement criteria for promotion from 2LT to 1LT. Department of the Army policy authorizes Reserve Component second lieutenants on the reserve active-status list to be promoted with a minimum of 18 months TIG and completion of OBC, if otherwise qualified. Commanders and State Adjutant Generals retain the authority to disapprove promotions.

3. AR 135-155 (Promotion of Commissioned Officers and Warrant Officers) prescribes the officer promotion function of the military human resource support operations for officers on the Reserve active status list (RASL) and USAR warrant officers (WOs). In relevant part:

a. Paragraph 3-24 (Compute promotion eligibility date for promotion to first lieutenant) states, promotion eligibility to 1LT is 18 months of active status as a 2LT on the Reserve Active Status List (RASL) or a combination of service on the Active Duty List and the RASL without a break in service. Active status commences on the year, month, and day of appointment as determined on the DA Form 71 (Oath of Office – Military Personnel) and HRC-issued appointment memorandum. An exception to this is a Reserve Officers' Training Corps graduate who is appointed and enters active duty in the month of May or June of the same year.

b. Paragraph 3-26 (Consideration without board action) states, (1) An officer in the grade of 2LT or a USAR WO in the grade of WO1 will be considered for promotion without review by a selection board. The officer's records will be screened to determine eligibility for promotion to the next higher grade far enough in advance to permit promotion on the date promotion service is completed (paragraph 3-24 or 3-25). The records of ARNGUS unit officers will be screened and promotions accomplished by the Chief, NGB. The records of USAR officers will be screened and promotions accomplished by Commander, U.S. Army Human Resources Command. (2) An officer not qualified for promotion to the grade of CW2 or 1LT will not again be considered for promotion unless retained in an active status under paragraph 3-28.

c. Section VI – Special Circumstances, paragraph 3-29 (Officers in transition to and from the reserve active status list or active duty list), precedence or relative rank for transfers states, (1) A RASL commissioned officer or WO who transfers from another uniformed branch of service or between Army components will keep the same grade and DOR that he or she held the day before transferring. (2) A commissioned officer or WO who transfers from another uniformed service or between Army components, and

was not on the RASL or an approved WO promotion list in that service at the time of transfer will have a grade and DOR established by HRC.

4. Department of Defense Instructions 1310.01 (Rank and Seniority of Commissioned Officers) states the Secretary of the Military Department concerned may adjust the DOR 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 DOR to be adjusted.

//NOTHING FOLLOWS//