

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230010648

APPLICANT REQUESTS: correction of his Date of Rank (DOR) for promotion to the rank/grade of lieutenant colonel (LTC)/O-5 to show 15 February 2023 vice 28 August 2023.

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum, Subject Army Directive 2019-28 (Authority to Adjust Effective Date of Promotion of a Reserve Commissioned Officer in the Event of Undue Delay in Federal Recognition of Promotion), 19 September 2019
- Memorandum, Subject: Execution of Personnel Actions for the Army Combat Fitness Test (Personnel Policy Operational Message 22-023), 15 June 2022
- Memorandum, Subject: Fiscal Year 2023 (FY23), Army National Guard (ARNG) Title 10 (T10) Active Guard/Reserve (AGR), LTC Promotion Recommendation Review (PRR) Board Results, 22 September 2022
- Memorandum, Subject: Fiscal Year 2023 (FY23) ARNG Title 10 (T10) AGR Major (MAJ), LTC and Colonel (COL) First Round Promotion Recommendation, 14 December 2022
- Memorandum, Subject: Recommendation for Promotion of T10 AGR Officer, 15 December 2022
- Memorandum, Subject: Promotion Recommendation of Officer, 15 December 2022
- DA Form 5500 (Body Fat Content Worksheet (Male)), 15 September 2022
- DA Form 705 Test (Army Combat Fitness Test (ACFT) Scorecard), 26 April 2022
- DA Form 3349 (Physical Profile Record)
- Officer Record Brief (ORB)
- DA Form 1059-2 (Senior Service and Command and General Staff Academic Evaluation Report)
- Email correspondence
- National Guard Bureau (NGB) Form 89 (Proceedings of a Federal Recognition Examining Board)
- Memorandum, Subject: Recommendation for Promotion of Commissioned Officer, 27 February 2023
- G-1 portal screenshot

FACTS:

## 1. The applicant states:

a. In June 2021, he was selected to serve as the Chief of Strength Maintenance Training Center on Camp Robinson in North Little Rock, AR. This position is rated for a LTC per the Table of Distribution and Allowances (TDA), he was selected to take this position as a Major (MAJ). He became eligible for promotion to MAJ on 20 July 2021. The ARNG Promotion process for Title 10 AGR requires members to be selected by the PRR Board held by the NGB in Alexandria, Virginia. He was not able to be seen at the FY21 board due to the zone of consideration. He was able to be seen by the PRR in July of 2022. In February 2022 his position transitioned from Chief to Commander. The Director of the ARNG, Lieutenant General (LTG) J- J- approved, his Training Center to become a Battalion and elected to allow him to remain in position and serve as the first Commander of the Strength Maintenance Training Battalion. This position remained rated as a LTC position and again he was selected to serve above his current grade. While serving as Battalion Commander the results of the PRR were released (Order of Merit List), on 22 September 2022. Promotion notifications were not released until 14 December 2022 (5 months after the board). He was recommended for promotion to LTC. Unfortunately, the ARNG promotion process requires Title 10-AGR service members who have been selected by the PRR which is signed and approved by the Director, ARNG LTG J- J- to then go through a Federal Recognition Board (FRB) in their home ARNG State. In order for a Title 10- AGR service member to go before the FRB they must receive a promotion voucher from ARNG Human Capital Management (HCM). On 16 December 2022, he submitted all the required documents to HCM so that he would go before the January FRB.

b. Due to an administrative error and oversight by HCM his voucher was not processed on time, and he missed the January FRB. HCM mistakenly interpreted the ACFT requirements for FY22 and refused to accept the DA Form 705 he had submitted. In accordance with the ARNG PPOM 22-023 which states: "(3) ACFT. (a) Effective immediately or on the next scheduled Annual Promotion Board, but no later than 1 January 2023, States may utilize a passing ACFT taken after 1 April 2022 for promotion purposes." The ACFT he submitted was dated 26 April 2022. He was on temporary duty during much of this discussion regarding HCMs refusal but as soon as he returned to home station on 13 January 2023, he took another ACFT in order to move the process along. When his voucher was finally released, he noticed the voucher memo was dated 15 December 2022 and signed on 29 December 2022 and the promotion memo was also dated 15 December 2022 but not signed until 18 January 2023. These unjust administrative delays resulted in him not being seen at the FRB until February. What was most unjust about the delay with HCM was that ACFT card used for his voucher packet was the original one he submitted on 16 December 2022 with an ACFT date of 24 April 2022. His FRB was conducted on

15 February 2023, and he was again recommended for promotion to LTC by the Adjutant General of the Virgin Islands ARNG Major General K-K-L-. His packet for promotion finally made its way back the NGB on 28 February 2023 (3 months after the PRR results). NGB's promotion process requires yet another administrative review of promotion packets before sending over to the Department of Military Personnel Management (DMPM) to be assigned a "scroll" number and makes its way through the Pentagon for staffing and final approval. Due to more unjust administrative delays his packet sat in awaiting confirmation of AGR control grade for 35 days. This process takes no longer than three days at most and is designed to confirm that an AGR Soldier has a voucher to be promoted into.

c. The AGR voucher from NGB-HCM was already submitted with the packet back in December. Two other members of the Virgin Islands ARNG were recommended to LTC during the February FRB, LTC N- and LTC P- V. Without the additional delay of the AGR control grade section their packets started the scrolling process on 3 April 2023 and their scroll was approved on 16 June 2023. Due to that delay his packet did not leave the NGB and get assigned to scroll P25-23 with DMPM until 14 April 2023 where it remains still. Per Army Directive 2019-28 (Authority to Adjust Effective Date of Promotion of a Reserve Commissioned Officer in the Event of Undue Delay in Federal Recognition of Promotion): Effective immediately, an ARNG unit vacancy promotion appointment scroll will be considered delayed for the purposes of this directive when processing exceeds a set limit of days as a result of administrative delay within Headquarters, Department of the Army (HQDA). To be designated as unduly delayed, the scroll package must meet the following conditions: (1) The processing time within HQDA from the day of first receipt at the DMPM, Office of the Deputy Chief of Staff, G-1 must exceed 100 days because of a processing delay or administrative error. As he has outlined this promotion process has taken over 224 days and more specifically his packet has been with DMPM 103 days. The bevy of administrative delays has put that also in jeopardy. He is asking the Army Board for Correction of Military Records to back date his orders to the latest published DOR memo from the FRB which reads effective date 15 February 2023.

2. A review of the applicant's official record shows the following:

a. On 1 July 2009, the applicant was appointed as a Reserve commissioned officer and executed an oath of office.

b. On 3 November 2009, Special Orders Number 265 issued by the NGB extended Federal Recognition (FEDREC) for the applicant's initial appointment in the ARNG.\

c. On 6 August 2018, Special Orders Number 179 issued by the NGB extended FEDREC for the applicant's promotion to the rank/grade of MAJ/O-4, effective on with a DOR of 20 July 2018.

d. DA Form 1059-2 ((Senior Service and Command and General Staff College Academic Evaluation Report) shows the applicant completed the Command and General Staff Operations Course from 9 May 2019 through 22 August 2019.

e. On 12 March 2021, Orders Number 0781-14 issued by the NGB ordered the applicant to AGR duty with assignment to the ARNG Professional Education Center, Camp Robinson North Little Rock, AR, for a period of 3 years, 1 month, and 17 days, effective 17 July 2021.

f. NGB Form 89, dated 15 February 2023, shows the applicant was qualified for promotion to the rank/grade of LTC/O-5 and he met the physical, moral, and general qualifications for this promotion, and was promoted in an authorized position at the higher grade in paragraph 201, line 02, as the deputy branch chief.

g. On 7 September 2023, Special Orders Number 296 issued by the NGB extended FEDREC to the applicant for his promotion to the rank/grade of LTC/O-5, effective on with a DOR of 28 August 2023.

3. The applicant provides:

a. Memorandum, Subject Army Directive 2019-28 (Authority to Adjust Effective Date of Promotion of a Reserve Commissioned Officer in the Event of Undue Delay in Federal Recognition of Promotion), dated 19 September 2019, which establishes the process for addressing delays in processing ARNG unit vacancy promotions FEDREC actions.

b. Memorandum, Subject: Execution of Personnel Actions for the Army Combat Fitness Test (PPOM 22-023), dated 15 June 2022, which provides guidance as it pertains to the ACFT and personnel actions which applies to all ARNG, AGR, enlisted, warrant officers, and commissioned officers, with emphasis on section (3) ACFT wherein it states "Effective immediately or on the next scheduled annual promotion board, but no later than 1 January 2023, States may utilize a passing ACFT taken after 1 April 2022 for promotion purposes.

c. Memorandum, Subject: FY23, ARNG Title 10 AGR, LTC PRR Board Results, dated 22 September 2022, which shows the applicant placed 6 out of 25 Soldiers and he was placed on the Order of Merit List (OML).

d. Memorandum, Subject: FY23 ARNG Title 10 AGR MAJ, LTC and COL First Round Promotion Recommendation, dated 14 December 2022, which shows the applicant was selected for promotion and his status in the Title 10 AGR OML and selected members must coordinate with their State HCM to certify qualification in

accordance with National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions).

e. Memorandum, Subject: Recommendation for Promotion of T10 AGR Officer, dated 15 December 2022, which shows the applicant was recommended for promotion to the rank/grade of LTC/O-5 as the Chief, Professional Education Center. His current rank/grade was MAJ/O-4.

f. Memorandum, Subject: Promotion Recommendation of Officer, dated 15 December 2022, which shows the applicant was assigned to a higher graded position and the controlled grade authorization was available on 14 December 2022, which was the effective date of promotion. He was authorized for FEDREC examination.

g. DA Form 5500 which shows the applicant was met the Army Body Composition standards.

h. DA Form 705 Test which shows the applicant passed the ACFT on 26 April 2022 (Deadlift and Sprint-Drag-Carry) he was profiled for all other events.

i. DA Form 3349 which shows the applicant had a profile for an ankle/foot injury and shoulder pain.

j. ORB showing the applicant's personnel information. He was assigned to the ARNG Professional Education Center at Camp Robinson as the Commander, effective 1 February 2022.

k. Email correspondence which shows the inquiries made pertaining to the applicant's promotion and the regulatory requirement for completion of an ACFT within 6 months of his promotion packet submission.

l. Memorandum, Subject: Recommendation for Promotion of Commissioned Officer, dated 27 February 2023, which shows the applicant was assigned to the LTC/O-5 billet under para 201, line 02, and his current rank/grade was MAJ/O-4 and he was recommended for promotion.

m. G-1 screenshot showing the timeline of processing the applicant's promotion packet.

4. On 18 April 2024, in the processing of this case, the NGB, Chief Special Actions Branch, provided an advisory opinion recommending partial approval and stating:

a. The applicant was notified of his eligibility for promotion on 14 December 2022. The State FRB was conducted on 15 February 2023. The applicant's promotion packet

was approved and submitted by the VIARNG to NGB on 7 March 2023. The packet was processed by Federal Recognition branch, and his promotion packet was assigned to a scroll on 14 April 2023. This scroll was approved on 6 September 2023 with an effective date of 28 August 2023. The applicant claims that because of an error in processing his initial request for a promotion voucher, HCM delayed his promotion packet processing by a month. He submitted documents to HCM on 15 December 2022, but he missed the FRB in January 2023 because of the delay.

b. According to Title 10, USC, section 14308: Promotions, if there is a delay in extending federal recognition in the next higher grade in the Army National Guard to a reserve commissioned officer that exceed 100 days from the date the NGB deems such officer's application for FEDREC to be completely submitted by the State and ready for review, 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.

c. According to PPOM 23-047, an officer's promotion packet is considered completely submitted when reviewed and cleared by the NGB and assigned to a Promotion Screening List (PSL). If the extension of FEDREC exceeds 100 days, an officer's effective DOR will be adjusted to equal 100 days following assignment to a PSL.

d. While it is true that the applicant's promotion packet took more than 100 days to be processed, the delay was not due to an injustice that occurred at any one department. HCM does not have a policy to process promotion voucher requests within 30 days. Promotion voucher processing can normally take over 30 days based on the quality of the request. The applicant's request was processed timely and quickly despite the lack of an ACFT. There were no significant delays at FEDREC. The promotion packet was assigned to a scroll in 38 days. The promotion packet was assigned to a scroll on 14 April 2023 and sent to the DMPM. It took about 136 days for the scroll to be processed.

e. Based on these reasons; it is the recommendation of this office that the applicant's request be partially approved. There is no record of a significant delay over 100 days from when FEDREC considers the promotion packet completely submitted according to PPOM 23-047. Although FEDREC has no control over scroll processing once it is sent to DMPM, FEDREC recognizes the delay of over 100 days and has partially approved the applicant's request to backdate his effective date of rank to LTC to 15 July 2023, approximately 90 days since the scroll was sent to DMPM.

f. The ARNG Federal Recognition Branch concurs with this recommendation. The Virgin Islands Army National Guard concurs partially with this recommendation.

5. On 24 April 2024, the applicant was provided with a copy of the advisory opinion for comment.

6. On 7 May 2024, the applicant responded to the advisory opinion and asked "will his new effective date of 15 July permit him back pay and allowances?"

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the VIARNG conducted an FRB in February 2023 that recommended the applicant for promotion to LTC and sent his packet to the NGB in March 2023. The NGB submitted his packet to be scrolled in April 2023. The scroll was approved in September 2023 with an effective date of 23 August 2023. Accordingly, the NGB issued Special Orders Number 296, extending the applicant Federal recognition for promotion to LTC effective on with a DOR of 28 August 2023. The applicant contends that his DOR in the ARNG should be adjusted to 15 February 2023, the date of the FRB. The Board reviewed and agreed with the NGB advisory officials finding although his promotion packet took slightly more than 100 days to be processed (about 136 days for the scroll to be processed), but the delay was not due to an injustice that occurred at any one department. The applicant's promotion was processed timely and quickly despite the lack of an ACFT and there were no significant delays at the Federal Recognition section. Nevertheless, the Board agreed that since the applicant's promotion processing took a little more than 100 days, and since the slight delay was not attributable to the action or inaction of the applicant, an adjustment of the applicant's date or rank and effective date of promotion to 15 July 2023 seems appropriate (approximately 90 days since the scroll was sent to DMPM).

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 and Army National Guard records of the individual concerned be corrected by amending Special Orders Number 296, issued by the NGB on 28 August 2023 extending Federal recognition and promoting to LTC/O-5, effective on with a DOR of 15 July 2023.

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 any relief in excess of that described above.



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. 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. 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 Department of the Army 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. Selection for promotion does not automatically constitute an approved promotion action. 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, United States Codes, section 307. To be considered for promotion to LTC a member in the rank of MAJ must a minimum of 4 years in the lower grade. Minimum military education for promotion to LTC is 50 percent of the CGSOC.
2. Department of Defense Instruction 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.
3. Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers) paragraph 4-21 states except as provided elsewhere in this regulation, the effective date of promotion may not precede the date of the promotion memorandum. An officer is promoted after selection if all qualifications for promotion are met. When an officer does not meet the qualifications for promotion, the effective date of promotion will not be earlier than the later date all qualifications are met. In no case, will the DOR or effective date of promotion be earlier than the date the board is approved, or, if required, the date of Senate confirmation.
4. 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.

//NOTHING FOLLOWS//