

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20230010746

APPLICANT REQUESTS: in effect, adjustment of his date of rank (DOR) for captain (CPT) to 16 November 2019.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Letter
- DA Form 71 (Oaths of Office), 27 November 2017
- DA Form 1059 (Service School Academic Evaluation Report)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Special Orders Number 71
- [REDACTED] Army National Guard ([REDACTED] ARNG) Order Number 1074305.00, 22 March 2021

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 that his CPT DOR be adjusted to 16 November 2019. On 27 November 2017 he took his oath of office with one year and six months time in grade (TIG). In accordance with the Judge Advocate Legal Services Publication, a bifurcation of a Direct Commission Course and Office Basic Course (OBC) was submitted and approved.

b. On 16 November 2018, he completed his Direct Commission Course and on 15 May 2019, he completed and graduated from the Judge Advocate Officer Basic Course.

c. On 10 January 2020, he was pre-selected by the Army Human Resources

Command (HRC) Board and on 23 March 2021, he was promoted to the rank of CPT with an effective DOR of 20 January 2021.

d. According to regulation, his promotion was supposed to be effective six months after he completed the Judge Advocate Officer Basic Course (JAOBC). In addition, pursuant to Army regulation, a Judge Advocate General (JAG) officer will be awarded three years of constructive service for the first professional law degree by a law school accredited by the American Bar Association. The DOR will further be backdated by the period of commissioned service credit awarded. This is in excess of the amount used to establish the officer's appointment grade. Promotion for JAG officers is automatic upon completion of TIG and educational requirements. He completed his educational requirements on 15 May 2019 and was TIG complete on 15 November 2019.

3. A review of the applicant's records show the following information:

a. DA Form 71 reflects on 27 November 2017, the applicant was appointed as a Reserve commissioned officer in the rank of second lieutenant (2LT) in the ■■■ ARNG.

b. DA Form 1059, reflects the applicant completed the Judge Advocate Officer Basic Course (JAGOBC) on 15 May 2019 and achieved course standards, in the rank of first lieutenant (1LT).

c. DA Form 3497 (Counsel's Oath) shows the applicant took his Counsel's Oath as a JAG Officer on 15 May 2019.

d. DD Form 214 shows he entered active duty on 2 March 2019 and was honorably released from active duty training on 16 May 2019 in the rank of 1LT. This document also reflects he completed the JAGOBC, phase I and II in 2019.

e. Special Orders Number 71 (FEDREC of Promotion to COL), 17 March 2021 shows the National Guard Bureau (NGB), extended FEDREC and appointed the applicant to the rank of CPT/O3 with an effective date and DOR of 20 January 2021.

f. ■■■ ARNG Order Number 1074305.00 shows the applicant was promoted to CPT/O3 in the ■■■ ARNG, effective 20 January 2021.

g. NGB Form 22 (National Guard Report of Separation and Record of Service) reflects the applicant was honorably transferred to the U.S. Army Reserve Control Group Reinforcement on 8 August 2024, in the rank of CPT, with an effective date of 20 January 2021.

4. An advisory opinion was requested from the NGB regarding the applicant's requested DOR adjustment to CPT to 27 November 2017. On 9 August 2024 the Chief, Special Actions Branch, stated:

- a. The Recommendation: Approval.
- b. The discussion shows:

(1) "[The] applicant states that on 27 November 2017, he took his Oath of Office with one year and six months' TIG. In accordance with The Judge Advocate Legal Services Publication (JALS) 1-1 para[graph] 7-3, a bifurcation of Direct Commission Course and Officer Basic Course was submitted and approved. On 16 November 2018, he completed his Direct Commission Course and on 15 May 2019, completed and graduated from JAOBC in Charlottesville Virginia. On 10 January 2020, [Applicant] was pre-selected by the HR[C] board and on 23 March 2021 was promoted to the rank of CPT and notified of an effective date of rank of 20 January 2021. According to applicable regulation, his promotion was supposed to be completed six months after completion of JAOBC graduation.

(2) "Upon accession, an ARNG JAG Officer receives a Federal Recognition Order from NGB reflecting the Rank and DOR as 1LT with a DOR 1 year 6 months prior to their actual date of accession. This backdated DOR is the effective date of rank for promotion and seniority purposes.

(3) "Once an ARNG JA has served a year from appointment in the ARNG, both the 1- year service requirement and two years TIG from their Fed Rec DOR will have been met. At that point, the officer will have 2.5 years TIG (18 months at appointment + 1 year of service), thus clearly meeting the TIG requirement. Upon completion of JAOBC, the educational requirement is met. Therefore, after one year of service and completing JAOBC, a JAG O-2 should be promoted to O-3, absent some unfavorable action, which in [applicant's] cases did not occur.

(4) "In accordance with AR 135-100, paragraph 3-12, Tables 3-3 and 3-4, all Judge Advocate (JA) slots in the ARNG are O-3/Captain or higher. 1LT is simply the rank provided at initial appointment to non-prior service (NPS) candidates upon accession, based on the constructive service credit provided for three years of law school.

(5) "Based on the above reasons to include enclosed documents and coordination with the [REDACTED] ARNG JAG office, this office recommends the Soldier's request be granted and his DOR as CPT be adjusted to 16 November 2019."

5. On 13 August 2024, the applicant was provided with a copy of the advisory opinion with an opportunity to respond. He has not responded.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.
2. The Board concurred with the conclusion of the advisory official that the evidence supports the requested relief. Based on a preponderance of the evidence, the Board determined the applicant's DOR for CPT should be changed to 16 November 2019.

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 showing his DOR for CPT is 16 November 2019.

12/16/2024

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 (Armed Forces), 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. Title 10, USC, section 14308 addresses promotions for Reserve Component commissioned officers.

a. Subparagraph (f) (Effective Date of Promotion after Federal Recognition) states, "The effective date of a promotion of a reserve commissioned officer of the Army or the Air Force who is extended Federal recognition in the next higher grade in the Army National Guard or the Air National Guard under section 307 (Federal Recognition of Officers: Examination; Certificate of Eligibility) or 310 (Federal Recognition of National Guard Officers) of Title 32 (National Guard) shall be the date on which such Federal recognition in that grade is so extended."

b. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 amended subparagraph (f), section 14308 by placing "(1)" in front of the existing subparagraph and adding the following as "(2)": "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 under paragraph (1) may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion."

c. The NDAA for FY 2023 further amended subparagraph (f), section 14308 by incorporating the following into the previously added paragraph (2):

"(2) If there is a 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 that exceeds 100 days from the date the National Guard Bureau deems such officer's application for Federal recognition to be completely submitted by the State and ready for review at the National Guard Bureau, and the delay was not attributable to the action or inaction of such officer – "

"(A) in the event of State promotion with an effective date before January 1, 2024, the effective date of the promotion concerned under paragraph (1) may be adjusted to a date determined by the Secretary concerned, but not earlier than the effective date of the State promotion; and"

"(B) in the event of State promotion with an effective date on or after January 1, 2024, the effective date of the promotion concerned under paragraph (1) shall be adjusted by the Secretary concerned to the later of – "

"(i) the date the National Guard Bureau deems such officer's application for Federal recognition to be completely submitted by the State and ready for review at the National Guard Bureau; and"

"(ii) the date on which the officer occupies a billet in the next higher grade."

3. National Guard Regulation (NGR) 600-100 (Commissioned Officer Federal Recognition and Related Personnel Activities) states that a commissioned officer who has been promoted by the State and extended Federal Recognition in the higher grade will be concurrently promoted to the higher grade in the Reserve of the Army with assignment to the Army National Guard. Federal recognition will be extended by the Chief, NGB to those officers found qualified by the board and approved by the Secretary of the Army after Senate confirmation of appointment. The effective date of Federal recognition will be the date of Senate confirmation if vacancies exist within the statutory limitation prescribed by Title 10, USC, section 3218, or, if no vacancies exist at that time, on the date such vacancies occur.

4. National Guard Regulation (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. A commissioned officer who has been promoted by the State and extended Federal Recognition in the higher grade will be concurrently promoted to the higher grade in the Reserve of the Army with assignment to the ARNGUS.

5. Department of Defense Instructions 1310.01 (Rank and Seniority of Commissioned Officers) states service secretaries have authority to adjust effective DOR for officers properly confirmed and appointed. A service secretary may adjust the DOR of an officer appointed to a higher grade under Title 10 USC, section 14308 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.

6. 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.

7. Title 10, United States Code, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

8. AR 37-104-4 (Military Pay and Allowances Policy) states, only the Director, DFAS-IN may make settlement actions affecting the military pay accounts of Soldiers as a result of correction of records by the ABCMR per provisions of AR 15-185.

//NOTHING FOLLOWS//