

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2024

DOCKET NUMBER: AR20230011203

APPLICANT REQUESTS: in effect, adjust his Date of Rank for the rank/grade of major (MAJ)/O-4 to 4 October 2019.

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

- DD Form 149 (Application for Correction of Military Record)
- [REDACTED] news article
- Email with Lieutenant Colonel (LTC) [REDACTED] 12 September 2018
- Email with LTC [REDACTED] 25 October 2018
- Email with LTC [REDACTED] 31 October 2018
- DA Form 1059 (Service School Academic Evaluation Report) Military Intelligence (MI) Captain Career Course (CCC)
- Email with Warrant Officer One (WO1) [REDACTED] 15 July 2019
- Email with LTC [REDACTED] 25 July 2019
- Email with LTC [REDACTED] 1 August 2019
- Headquarters (HQs), 223rd MI Battalion (BN) (Linguist) Memorandum, Subject: Recommendation for Promotion of Officer
- Email to the applicant 23 September 2019
- Email from LTC [REDACTED] 10 October 2019
- DA Form 67-10-1 (Company Grade Plate Officer Evaluation Report (OER) for the rating period of 30 June 2019 through 27 October 2019
- DA Form 67-10-1 for the rating period of 30 October 2019 through 29 October 2020
- Email [REDACTED] Employees' Retirement System [REDACTED]
- Inspector General (IG) request for assistance regarding [REDACTED]
- DA Form 67-10-1 for the rating period of 30 October 2020 through 31 July 2021
- [REDACTED] news article
- DA Form 67-10-2 (Field Grade Plate OER) for rating period of 1 August 2021 through 31 July 2022
- DA Form 4187 (Personnel Action) for officer transfer

FACTS:

1. The applicant states in effect, he requests the adjustment of his DOR for MAJ from 4 October 2021 to 4 October 2019 because on or about August 2019 he was promised a promotion to the rank of MAJ for doing an outstanding job as a company commander.

a. He came out of command in October 2019 and was to be promoted to MAJ by a Unit Vacancy Promotion (UVP). This changed when he became a whistleblower and reported the [REDACTED] Army National Guard ([REDACTED] ARNG) did not implement a state law which allowed ARNG members to apply for state benefits through [REDACTED]. He spoke to his chain of command and requested to use the open door policy, but only got the run around. He filed multiple complaints and as a last resort, he informed his command he would go to the media if the state did not follow the law and implement the program. He went to the media and his story was published, as a result almost immediately the [REDACTED] ARNG was able to enroll service members in [REDACTED]; however, he was retaliated against.

b. He did not get his UVP as he was promised, and he was not allowed to be assigned to a position where he could get promoted until 2-years later. He began to receive bad OERs which is clearly a case of reprisal for doing the right thing. All he did was get a story published to help the service members of the [REDACTED] ARNG. He should not be punished for helping service member get what they deserve by law. He gave the state numerous opportunities to correct the issue, which they had 12-years to do but it took the story to be published in [REDACTED]. His case is a perfect example of promissory estoppel, in which he was promised in writing a promotion based on his exemplary performance. However, his promotion was delayed indefinitely for 2-years when he was selected on the mandatory board and finally assigned to the position, he wanted [REDACTED] and was promoted. His OERs went from top block to bottom block after he blew the whistle on the state with the publication of the story. He requests the Board rectify this grave injustice and adjust his DOR to 4 October 2019.

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

a. With prior Army National Guard (ARNG) enlisted service, on 14 May 2009, the applicant executed his oath of office and was appointed as a Reserve commissioned officer in the rank/grade of second lieutenant (2LT)/O-1. He subsequently was extended temporary Federal recognition.

b. On 14 August 2009, Special Orders Number 199, issued by the National Guard Bureau (NGB), extended Federal recognition to the applicant for his initial appointment in the ARNG in the rank/grade of 2LT/O-1, effective 14 May 2009.

c. On 21 December 2009, Orders Number 355-322, issued by the State [REDACTED] Office of the Adjutant General, ordered the applicant to active duty for training (ADT) to attend the [REDACTED] Basic Officer Leader Course (BOLC), effective 4 March 2010.

d. DA Form 1059 shows the applicant achieved course standards for the [REDACTED] BOLC during the period of 4 March through 1 July 2010.

e. On 1 July 2010, the applicant was honorably released from active duty. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 3-months and 28-days of active service completing 16-weeks of the [REDACTED] BOLC and awarded Area of Concentration (AOC) 35D (All Source Intelligence).

f. On 31 January 2011, Special Orders Number 18, issued by the NGB, extended federal recognition to the applicant for his promotion to the rank/grade of first lieutenant (1LT)/O-2, effective on with a DOR of 14 November 2010.

g. The University [REDACTED] Certificate of Training shows the applicant successfully completed the [REDACTED] CCC Phase I on 19 January 2012.

h. The University [REDACTED] Certificate of Training shows the applicant successfully completed [REDACTED] CCC Phase III on 2 February 2012.

i. On 25 March 2014, Orders Number 084-332, issued by the State [REDACTED] Office of the Adjutant General, ordered the applicant to Active Duty for Training (ADT), effective 29 March 2014 to attend the 35E (Counterintelligence Officer) Course.

j. DA Form 1059 shows the applicant achieved course standards for the Counterintelligence Officer course during the period of 31 March through 30 July 2014.

k. On 30 July 2014, the applicant was honorably released from active duty after completion of 18-weeks of the Counterintelligence Officer course.

l. On 20 July 2015, Special Orders Number 155, issued by the NGB, extended Federal recognition to the applicant for his promotion to the rank/grade of captain (CPT)/O-3, effective on with a DOR of 16 June 2015.

m. DA Form 1059 shows the applicant achieved course standards for the 35G (Signals Intelligence Officer) course during the period of 11 July through 17 August 2016.

n. On 6 November 2016, HQs, [REDACTED] ARNG awarded the applicant the:

- Primary AOC: 35D (All Source Intelligence Officer)

- Secondary AOC: 35E (Counterintelligence Officer)
- Additional AOC: 35G (Signals Intelligence Officer)

o. On 3 May 2018, Orders Number 123-4000, issued by the [REDACTED] ARNG, ordered the applicant to active duty in an Active Guard/Reserve status, effective 15 May 2018 for a one-time occasional tour.

p. On 31 August 2018, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 3-months and 16-days of active service.

q. DA Form 1059 shows the applicant achieved course standards for [REDACTED] CCC Phase III during the period of 4 through 17 February 2019.

r. DA Form 1059 shows the applicant achieved course standards for [REDACTED] CCC Phase IV during the period of 18 February through 2 March 2019.

s. On 16 June 2019, the applicant attained 4-years time in grade at the rank/grade of CPT/O-3.

t. On 25 September 2019, Orders Number 268-356, issued by the State [REDACTED] Office of the Adjutant General, ordered the applicant to Full Time National Guard Duty – Operational Support (FTNGD-OS), effective 1 October 2019.

u. On 28 September 2019, Orders Number 271-549, issued by the State [REDACTED] Office of the Adjutant General, ordered the applicant to FTNGD-OS, effective 1 October 2018.

v. On 16 June 2020, the applicant attained 5-years time in grade at the rank/grade of CPT/O-3.

w. On 30 September 2020, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 2-years of active service.

x. On the Fiscal Year 2021 Reserve Component MAJ Army Promotion List Promotion Selection Board Results, the applicant was selected for promotion to the rank/grade of MAJ/O-4 in the ARNG Competitive Categories in [REDACTED] branch.

y. On 8 November 2021, Special Orders Number IP-4404, issued by the NGB, extended Federal recognition to the applicant for his promotion to the rank/grade of MAJ/O-4, effective on with a DOR of 4 October 2021.

z. On 22 June 2023, a Physical Evaluation Board (PEB) convened finding the applicant physically unfit and recommended his disposition be permanent disability retirement. He did not concur with the findings and submitted a written appeal.

aa. On 17 July 2023, the U.S. Army Physical Disability Agency notified the applicant a formal PEB found him physically unfit for retention and recommended he be placed on the Permanent Disability Retired List (PDRL) with 100 percent disability. The applicant did not concur with the PEB findings and recommendation and requested reconsideration of his Veterans Affairs ratings.

bb. On 17 July 2023, Orders Number D 198-15, issued by HQs, U.S. Army Physical Disability Agency, placed the applicant on the PDRL, effective 17 August 2023, with 100 percent disability.

cc. On 27 July 2023, Orders Number 5493644, issued by the [REDACTED] ARNG, assigned the applicant to the PDRL, effective 16 August 2023.

dd. On 1 August 2023, Special Orders Number 244, issued by the NGB, withdrew the applicant's Federal recognition due to his assignment to the U.S. Army Reserve (USAR) Control Group (Retired Reserve), effective 16 August 2023.

ee. On 16 August 2023, the applicant was honorably released from the ARNG and assigned to the USAR Control Group (Retired Reserve). NGB Form 22 (Report of Separation and Record of Service) shows in item 5a (Rank) Major, item 5b (Pay Grade) O04, and item 6 (Date of Rank) 4 October 2021.

3. The applicant provides:

a. The Sacramento Bee news article titled National Guard whistleblower, published on 27 March 2017, says he was forced to retire for exposing misconduct. MAJ [REDACTED] called to the public's attention the severe dilapidated conditions [REDACTED] by speaking with a news reporter to expose wasteful spending and mismanagement in the [REDACTED] ARNG.

b. Email dated 12 September 2018, between the applicant and LTC [REDACTED] which discussed vacant MAJ positions and the coding of Soldiers who were to be assigned to the Inactive National Guard in order to open up MAJ positions. LTC [REDACTED] responded he was loyal to his officers. He also stated the following summer, the applicant could be assigned to a MAJ Linguist Coordinator position and be promoted through a UVP.

c. Email dated 25 October 2018 between the applicant and LTC [REDACTED] which stated the applicant was going to be assigned to a MAJ position in [REDACTED] in July.

d. Email dated 31 October 2018 between the applicant and LTC [REDACTED] which discussed who was going to be assigned to the two MAJ vacancies. LTC [REDACTED] - stated he was not aware of the vacancies and asked how to do that. The applicant wanted to discuss with LTC [REDACTED] that he be assigned to one of the MAJ vacancies. LTC [REDACTED] expressed his desire to assign the applicant to a MAJ position in a detachment of the 223rd MI BN.

e. Email dated 15 July 2019 between the applicant and Warrant Officer One (WO1) [REDACTED] where the applicant requested a list of MAJ vacancies for 35 series and non-AOC specific. WO1 [REDACTED] sent the applicant the list.

f. Email dated 25 July 2019 between the applicant and LTC [REDACTED] which the applicant sent LTC [REDACTED] a DA Form 4187 for transfer. LTC [REDACTED] told the applicant he needed to discuss the request with Colonel [REDACTED] for top cover regarding his intent as transparency goes a long way.

g. Email dated 1 August 2019 between the applicant and LTC [REDACTED] which the applicant inquired if LTC [REDACTED] signed his DA Form 4187 with an effective date of 19 August 2019 as the UVP process could take 12-months from start to finish. LTC [REDACTED] told the applicant an early assignment was not possible as the [REDACTED] ARNG does not allow that until change of command requirements were met. The transfer would be changed to October 2019.

h. [REDACTED] (Linguist) Memorandum, Subject: Recommendation for Promotion of Officer dated [REDACTED] and unsigned for the recommendation of the applicant to be promoted in the ARNG in a MAJ Intelligence Officer position in IC Detachment, [REDACTED]

i. Emails for 22 through 23 September 2019 where the applicant requested to file a whistleblower complaint against the [REDACTED] ARNG as the [REDACTED] ARNG failed to process multiple requests for Blended Retirement System Continuation Pay for several service members. The [REDACTED] ARNG placed the blame on the individual service member for their inability to process the request. The IG office responded stating they were not understanding his complaint.

j. Emails during the period 2 through 10 October 2019 between the applicant and LTC [REDACTED] regarding the applicant's next assignment after completion of his command. The applicant preferred to be assigned to Camp Roberts as he believed it was his best chance to get promoted in a timely manner. LTC [REDACTED] asked the applicant if LTC [REDACTED] promised him a UVP.

k. DA Form 67-10-1 for the rating period of 30 June 2019 through 27 October 2019 which shows the applicant was rated as a Detachment Commander. The applicant's

rater rated his overall performance as excels. The rater commented the applicant's performance was exceptional and was ranked in the top 5 percent of officers he served with over 26-years. His senior rater rated his overall potential as highly qualified and commented the applicant was in the top 33 percent of officers he senior rates and to promote when eligible.

l. DA Form 67-10-1 for the rating period of 30 October 2019 through 29 October 2019 which shows the applicant was rated as an Intelligence Officer. The applicant's rater rated his overall performance as proficient. The applicant's senior rater rated his overall potential as qualified and commented he was capable of assuming positions of greater responsibility. He should be sent to the U.S. Army Command and General Staff College and be promoted when eligible.

m. Emails during the period of 23 February 2021 through 19 May 2021 which shows the applicant sent a [REDACTED] calculation to buy back 10-years of service to the State Personnel Programs office. The applicant's email dated 19 May 2021 he requested assistance to get enrolled.

n. CA Military Department IG Action Request dated 21 May 2021 shows the applicant requested assistance from the IG office to get enrolled in [REDACTED].

o. DA Form 67-10-1 for rating period of 30 October 2020 through 31 July 2021 which shows the applicant was rated as an Intelligence Officer. The applicant's rater rated his overall performance as proficient and commented he performed satisfactorily. The applicant's senior rater rated his overall potential as qualified and commented demonstrated the potential for positions of increased responsibility and to promote with peers.

p. [REDACTED] article titled, The commander of the scandal plagued [REDACTED] ARNG steps down, which stated the head of the [REDACTED] ARNG who presided over a series of scandals during the last 3.5-years retired. His retirement comes on the heels of embarrassing episodes for the guard including allegations of abuse of authority, homophobia, antisemitism and racism. During his tenure it was disclosed internal complaints of reprisal against whistleblowers, allegations of cover-up of misconduct in the leadership and misuse of government personnel and equipment.

q. DA Form 67-10-2 for rating period of 1 August 2021 through 31 July 2022 which shows the applicant was rated as an Operations and Plans Officer. His rater rated his performance as proficient and commented he was a capable and versatile officer. His senior rater rated his overall potential as most qualified and commented he should be selected for promotion when eligible and assign to the toughest assignments.

r. DA Form 4187 for a transfer request to assign the applicant as an Intelligence Officer in [REDACTED] effective 19 August 2019. The request was not signed by the applicant nor the approving authority, LTC [REDACTED]

4. On 19 April 2024, in the processing of this case, the NGB provided an advisory opinion regarding the applicant's request to have his DOR for MAJ adjusted to 4 October 2019. The advisory official recommended disapproval of the applicant's request. After a review of the applicant's service record and his application and supporting documents it was determined the applicant was promoted to the rank of CPT with the DOR of 14 June 2015 and then promoted to the rank of MAJ with the DOR of 4 October 2021. The applicant was assigned to a MAJ/O-4 position, effective 3 October 2021, after he was selected for promotion on the RC APL Promotion Selection Board for which the results were released on 30 September 2021. He was not eligible for promotion prior to the assignment to a MAJ position and the release of the board results. There was no record of a reprisal complaint through the IG office found. UVP's are not guaranteed, and he did not meet the requirements. He was promoted upon eligibility without delay.

5. On 22 April 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

6. The applicant responded in effect stating, he has several forms that support he applied for whistleblower status and claimed reprisal. There are too many articles detailing the extent of reprisal in the [REDACTED] ARNG. It is simply how the [REDACTED] ARNG operates, and there are too many articles detailing the extent of reprisals. The [REDACTED] ARNG does everything it can to attempt to cover it up. The first Article is about MAJ [REDACTED] who reported wasteful spending and mismanagement in the [REDACTED] ARZNG, who was also given bad OERs and forced out. In a situation, extremely similar to his.

a. Please, do a simple Google search on the [REDACTED] ARNG and retaliation. You will be blown away by how many stories there are from reputable news organizations. The bottom line up front is he had a key leader position as a company commander for nearly 3.5-years. His OERS were all, "most qualified" and stated to promote ahead of peers. He completed his CCC and was told several times, in writing, he would be promoted by UVP because of his work. Then, after exhausting all other remedies, he published a story about [REDACTED] which forced the [REDACTED] ARNG to start following the law. Even though they had 12-years to do so and several complaints that they were not following state law.

b. After this, his "most qualified" OER's went to "qualified," he was fired from his active duty for operational support position and transferred to another CPT slot and told he would not be getting the UVP. It is clearly obvious that this was retaliation. He should not be punished for doing the right thing. This goes against the Army values and what

they stand for. The [REDACTED] ARNG was not following the law. The bill allows members of the [REDACTED] ARNG to join the [REDACTED] and purchase additional service credit.

c. He should not be punished and should be made a whole person. In the United States, we do not punish individuals for compelling an organization to follow the law. This is a cut and dry case of retaliation, which unfortunately, is the modus operandi of how the [REDACTED] ARNG operates. Please backdate his promotion as what promised to be before the reprisal. It is a simple way to right an atrocious wrong perpetrated by the [REDACTED] ARNG.

7. The applicant provided several documents many of which he provided in his application. However, below are those not previous provided:

a. [REDACTED] article titled; [REDACTED] ARNG member tell lawmakers of misconduct, retaliation for whistleblowing which states former service members testified at a state Senate committee about a rampant culture of retaliation that reaches the top of the organization. One former member stated she and others suffered reprisals after speaking out against the head of the [REDACTED] Military Department who oversees the air and army branches of the guard. Once you report something, you are guaranteed to be retaliated against, removed from your job and eventually kicked out. She also stated that 99.99 percent of the IG complaints are never substantiated because you have the fox watching the hen house. The committee was proposing a bill to strength protections for whistleblowers in the Guard. The bill would require the IG to report to the governor instead of the Adjutant General who leads the organization.

b. Stars and Stripes article titled; A culture of fear: A look at the [REDACTED] ARNG allegations spurring lawmakers to consider new legislation, which stated [REDACTED] lawmakers are considering a bill to remove the state's NG IG from under the command of its top general after years of allegations that senior command official retaliated against those who report possible wrongdoing. The legislation comes after allegations of misconduct and claims of reprisal forced the removal of three top officers from their posts in the [REDACTED] ARNG. The article continues to state that sexual harassment and hostile work environment is commonplace.

c. NBC article titled; [REDACTED] ARNG Culture Questioned, Whistleblowers expose hidden culture inside the [REDACTED] ARNG, parts of the article were not provided by the applicant.

d. Stars and Stripes article titled: Retired National Guard general files lawsuit claiming antisemitism, retaliation were behind his removal which states a retired brigadier general (BG) of the [REDACTED] Air NG was seeking \$1.6 million in lost compensation and damages involving claims of religious discrimination and wrongful termination in a lawsuit filed against his former military supervisor and Governor [REDACTED] and the [REDACTED] Military Department. His supervisor engaged in patterns of religions discrimination

against him who is Jewish. He reported the derogatory statements to the governor's office but he claims no action was taken. He was then involuntarily separated following an internal review which was not detailed in the lawsuit.

e. A portion of page one of BG [REDACTED] v Major General [REDACTED] which shows the complaint was filed for:

- discrimination on the basis of religion
- harassment on the basis of religion
- retaliation for complaining of religious discrimination and/or harassment
- failure to prevent discrimination, harassment and retaliation
- whistleblower retaliation
- discrimination on the basis of physical disability/medical condition
- wrongful termination of employment

f. DA Form 1559 submitted by 1LT [REDACTED] which stated the former task force commander conducted a retaliatory investigation directed against him and the applicant after his whistleblower involving fraud was made public. He requested the IG to investigate and issue findings of misconduct. He stated the command sought out derogatory information against him shortly after Senate Bill 14 was made public. His security clearance was suspended for unknown reasons. Service member provided the commander with a statements of libel in that he was out to defraud the [REDACTED]

g. An Inspector General report to provide all IG records which pertained to the applicant which shows the applicant filed 15 complaints to the IG office for assistance or requests for investigation on various topics. The full report is available for the Board's review.

8. As pertinent to this case, on 30 April 2020, the applicant contacted the IG requesting an investigation and gather all statements from Soldiers who provided derogatory information about him. He also alleged current and former members of his unit were conspiring and spreading false rumors about him and allegedly led him to experience a hostile work environment to include bullying, slander, libel and defamation of character. This was not IG appropriate. The IG conducted a teach and train on IG appropriate and also informed him that he could submit a Freedom of Information Act request to see if there had been an investigation that had derogatory information.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The Board found the applicant's arguments regarding reprisal have merit, noting the emails the applicant provided do give a clear impression that there was intent to give him a UVP in October 2019, but during and after this period his evaluation reports show a clear change in how his raters and senior raters viewed his performance. Notwithstanding the recommendation of the advisory official, the Board found a preponderance of the evidence supports a conclusion that an injustice occurred and determined the applicant's date of rank for MAJ/O-4 should be changed to 4 October 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 date of rank for MAJ/O-4 is 4 October 2019.

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. Army Regulation (AR) 135-155 (Promotion of Commissioned Officer and Warrant Officers Other Than General Officers), in effect at the time, prescribes policy and procedures used for selecting and promoting commissioned officers (other than commissioned warrant officers) of the Army National Guard of the United States (ARNGUS) and of commissioned and warrant officers (WO) of the U.S. Army Reserve (USAR).

a. Paragraph 2-8 (Military educational requirements), to qualify for selection, commissioned officers (other than commissioned warrant officers) must complete the military educational requirements in table 2-2 not later than the day before the selection board convene date.

b. Paragraph 2-10 (Mandatory selection boards), b. First consideration for promotion will occur well in advance of the date the officer will complete the Time in Grade (TIG) requirements in tables 2-1 or 2-3, as appropriate. This may allow officers in the grades of 1LT through MAJ to be promoted on or before their maximum TIG. c. Subsequent consideration, those officers who were not selected for promotion on the first consideration, and who remain in an active status, will be reconsidered by the next board considering their grade and/or branch. d. Below the zone consideration. The Secretary of the Army may, when the needs of the Army require, authorize the consideration of officers for promotion to the next higher grade from below the promotion zone.

Table 2–1, Time in grade requirements commissioned officers, other than commissioned warrant officers

From	To	Minimum Years in lower grade	Maximum Years in lower grade
(2LT)	(1LT)	2	42 months
(1LT)	(CPT)	2	5
(CPT)	(MAJ)	4	7
(MAJ)	(LTC)	4	7
(LTC)	(COL)	3	(See note below.)

Notes: Announced annually. Normal time in grade is 5 years, subject to the needs of the Army.

Table 2–2

From	To	Requirements
2LT	1LT	Resident officer basic course.
1LT	CPT	Resident officer basic course.
CPT	MAJ	Any officer advanced course.

c. Paragraph 4-5 (Army National Guard of the United States promotion), a. An ARNGUS officer extended Federal recognition in a higher grade will be appointed in the same grade as a Reserve commissioned officer of the Army by memorandum published by the Chief, National Guard Bureau. b. ARNGUS commissioned officers (other than commissioned warrant officers) who are on a promotion list resulting from a mandatory promotion board will be extended Federal recognition in the higher grade. This will be without examination by a Federal recognition board when the officer is appointed in the State in that higher grade to fill a vacancy in the Army National Guard.

d. Paragraph 4-11 (Selected for Promotion), a. An officer who has been recommended for promotion to the next higher grade must meet the requirements listed below before being promoted in the Reserve components. The officer must:

- Be on the Reserve Active Status List (RASL) or, if a WO of any grade, serving in an active status
- Be in the zone of consideration listed in tables 2-1 or 2-3, as appropriate
- Be medically qualified
- Have undergone a favorable security screening
- Meet standards of the Army Body Composition Program
- Be a satisfactory participant as defined in paragraph 2-7

b. The effective date of the promotion will be computed as prescribed in section III. c. An officer's promotion is automatically delayed when the officer is:

- Absent without leave, in custody of or confined by law enforcement authorities (civil or military), a deserter, injured, or sick not in line of duty
- Serving a court-martial sentence or being punished under Article 15, UCMJ
- Under undisposed courts-martial charges (that is, the charges have been preferred, but not dismissed or withdrawn, nor has the officer been tried and acquitted or sentenced)
- Under investigation that may result in disciplinary action of any kind being taken against them
- Under proceedings that may result in administrative elimination or discharge under other than honorable conditions
- Under, or should be under, suspension of favorable personnel actions
- The subject of a criminal proceeding pending in a State or Federal court
- The recipient of a referred academic evaluation report, a referred OER, or a memorandum of reprimand which was not considered by the board that selected them for promotion
- Enrolled in the Army Drug and Alcohol Prevention Control Program
- Documented as overweight or failed the Army Physical Fitness Test most recently administered

e. Paragraph 4-15, the effective date of the promotion may not precede the date on which the promotion memorandum was issued. Do not issue the promotion memorandum before the date the promotion board results are approved and confirmed by the Senate, if required. The officer must already be assigned to a position in the higher grade or have completed the maximum years of service in grade in the current grade.

f. Paragraph 4-17 (Promotion eligibility date and date of rank), b. Date of rank (DOR). The DOR is the date the officer actually or constructively was appointed or promoted to a specific grade.

g. Paragraph 4-18 (Date of rank and effective date of promotion after an involuntary delay), only the Secretary of the Army is authorized to determine whether an officer was unqualified for promotion during any part of an involuntary delay of promotion. Accordingly, except as provided herein, only the Secretary of the Army may determine whether an adjustment must be made to an officer's DOR and effective date of promotion.

h. Paragraph 4-21 (Effective dates), promotion of unit officers, (2) Unit officers selected by a mandatory board will have a promotion date and effective date no earlier than the date the board is approved or the date of Senate confirmation (if required), provided they are assigned to a position in the higher grade. When the board approval or, if required, Senate confirmation is before assignment to the position in the higher grade, the effective date and the date of promotion will be the date of assignment to the higher graded position.

2. National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), prescribes policies and procedure governing the assignment, Federal recognition, utilization of commissioned officer of the ARNG.

a. Paragraph 8-1b. National Guard officer may be considered and found qualified for Federal recognition of their State promotion using two distinct processes: State Federal Recognition Board and Department of the Army (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.

(1) State Federal Recognition Boards (FRB), officer may be federally recognized through State FRB which are often referred to a State vacancy promotion boards or unit vacancy boards as part of the UVP process.

(2) DA Mandatory Boards, the second way to federally recognize the State promotion is through the DA Mandatory Selection Boards process. Mandatory promotion selection boards are convened by the Secretary of the Army. Those National

Guard officers selected by a DA mandatory board who are then appointed by the State in that higher grade to fill a vacancy in the ARNG are extended Federal recognition in that grade.

b. Paragraph 8-2 (Promotion criteria), promotion criteria will be based on efficiency, TIG, time in commissioned service, demonstrated command and staff ability, military education and civilian education and potential for service in the next higher grade. Promotion will not be used solely as a reward for past performance. All officers recommended for promotion must be fully qualified under the terms of this chapter and AR 135-155.

c. Paragraph 8-7 (Eligibility for promotion), a. to be considered for Federal recognition following State promotion to fill a unit vacancy, an ARNG commissioned officer must:

- be in an active status for a minimum of one consecutive year immediately preceding promotion consideration
- be medically fit and meet the height and weight standards
- have completed the minimum years of TIG
- have completed the minimum military education
- completed the minimum civilian education

States will not promote a commissioned officer who is in the zone of consideration for a DA Selection Board if they are within 120-days of the convening date of the board for those officers in the grade of 1LT through MAJ. Any officer in the rank of 1LT through LTC who was non-selected by a mandatory selection board will not be considered for promotion under this section unless selected by a subsequent DA mandatory board.

d. Paragraph 8-8 (Minimum years of time in trade for promotion eligibility), a commissioned officer must complete the TIG prior to being considered for promotion and Federal recognition in the higher grade. For promotion eligibility from CPT to MAJ the minimum time in grade is 4-years.

e. Paragraph 8-10 (Military education requirements for promotion), applicable to all ARNG officers, for promotion to the rank of MAJ the minimum military education is the completion of Captain Career Course or any officer advanced course.

f. Paragraph 8-14 (Consideration for promotion by a mandatory selection board), a commissioned officer will be considered for promotion by a DA mandatory board when the officer meets the minimum TIG requirements. Consideration for promotion by a DA mandatory selection board will occur during the year prior to the year the officer reaches maximum TIG. The provisions of AR 135-155 will apply.

g. Paragraph 8-15 (Time in grade for mandatory consideration for promotion), the maximum time in grade in years for mandatory promotion consideration for officer in the rank of CPT being considered for promotion to MAJ is 5-years.

3. 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//