

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230011373

APPLICANT REQUESTS: adjustment of her date of rank (DOR) to the rank/grade of colonel (COL)/O-6 from 22 November 2022 to 26 August 2022 with applicable pay and benefits.

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

- DD Form 149 (Application for Correction of Military Record)
- National Guard Bureau (NGB) Orders Number 053-19
- NGB Memorandum, Subject: Fiscal Year 2022 (FY22) Army National Guard (ARNG) Title 10 Active Guard/Reserve (AGR) Major (MAJ), Lieutenant Colonel (LTC) and COL Promotion Recommendation
- NGB Special Orders Number 136
- NGB Special Orders Number 160
- NGB Memorandum, Subject: Request for Continuation on Active Duty (COAD) for LTC S-R-, H- (the applicant)
- excerpt from Army Regulation (AR) 40-58 (Army Recovery Care Program)
- excerpt from AR 600-9 (The Army Body Composition Program)

FACTS:

1. The applicant states her promotion was delayed due to her failure to meet the Army Body Composition Program standards; however, on 26 August 2022, she was approved for continuation on active duty which exempted her from this standard.

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

a. With prior U.S. Army Reserve (USAR) cadet service, on 12 March 2001, Orders Number 71-6, issued by the U.S. Army Cadet Command, the applicant was assigned to the USAR Control Group (Annual Training), effective 29 April 2001.

b. On 28 April 2001, the applicant executed her oath of office and was appointed as a Reserve commissioned officer in the rank/grade of second lieutenant (2LT)/O-1.

c. On 29 April 2001, the applicant executed her oath of office and was appointed in the ARNG in the rank/grade of 2LT/O-1.

d. On 8 June 2001, Orders Number C-06-116163, issued by the USAR Personnel Command, the applicant was released from the UAR Control Group (Annual Training) for appointment in the Florida ARNG (FLARNG), effective 29 April 2001.

e. On 29 June 2001, Special Orders Number 174, issued by the NGB, the applicant was appointed in the ARNG, effective 29 April 2001 and was extended Federal recognition.

f. On 1 April 2006, the applicant was honorably released from the ARNG and assigned to the USAR Control Group (Individual Ready Reserve).

g. On 6 April 2006, Orders Number C-04-609592, issued by the U.S. Army Human Resources Command (HRC), the applicant was released from the USAR Control Group (Reinforcement) and assigned to the FLARNG, effective 1 April 2006.

h. On 25 April 2006, Orders Number C-04-611389, issued by HRC, the applicant was assigned to a USAR Troop Program Unit (TPU), effective 24 April 2006.

i. On 26 June 2006, Special Orders Number 158, issued by the NGB, the applicant's Federal recognition was withdrawn, effective 1 April 2006 for transfer to the USAR.

j. The applicant was ordered to active duty for operational support, effective 28 February 2009.

k. On 1 July 2015, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 4-years, 9-months and 5-days of active service.

l. On 2 July 2015, the applicant executed her oath of office and was appointed in the ARNG in the rank/grade of MAJ/O-4 and was extended temporary Federal recognition.

m. On 31 August 2015, Orders Number 243-0005, issued by the NGB, the applicant was ordered to an AGR status, effective 1 September 2015.

n. On 7 March 2016, Special Orders Number 45, issued by the NGB, the applicant was appointed in the FLARNG, effective 2 July 2015, and was extended Federal recognition.

o. On 9 March 2017, Orders Number 068-44, issued by the NGB, the applicant was ordered to active duty in an AGR status, effective 8 August 2017.

p. On 8 February 2018, Special Orders Number 37, issued by the NGB, the applicant was promoted and extended Federal recognition to the rank/grade of LTC/O-5, effective on with a DOR of 1 November 2017.

q. On 22 May 2019, Orders Number 142-101, issued by the State of Alaska Department of Military and Veterans Affairs, the applicant was ordered to an AGR status, effective 16 July 2019.

r. On 15 July 2019, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 3 years, 11 months, and 19 days of active service. She immediately returned to active duty, effective 16 July 2019

s. On 29 May 2022, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 2 years, 10 months, and 14 days of active service.

t. On 2 December 2022, Special Orders Number 136, issued by the NGB, the applicant was promoted and extended Federal recognition to the rank/grade of COL/O-6, effective on 22 November 2022 and a DOR of 11 November 2022.

3. The applicant provides:

a. NGB Orders Number 053-19 which shows the applicant was ordered to an AGR status, effective 1 June 2022.

b. NGB Memorandum, Subject: FY22 ARNG Title 10 AGR MAJ, LTC and COL Promotion Recommendation which shows the applicant was recommended for promotion to the rank of COL.

c. NGB Special Orders Number 160 dated 7 December 2022 shows the applicant's DOR being amended to reflect 22 November 2022.

d. NGB Memorandum, Subject: Request for COAD for Applicant, dated 26 August 2022, shows the applicant's request for COAD was approved until 20 August 2024 which will be when she will obtain 20 years of Active Federal Service.

e. Excerpt from AR 40-58, paragraph 7-36 (Army Body Composition Program Exemption) shows that Soldiers who approved for continuation of active duty are exempt from the standards of the Army Body Composition Program; however, they must maintain a Soldierly appearance.

f. Excerpt from AR 600-9, paragraph 3-3 (Exemption) shows that Soldiers who approved for continuation on active duty are exempt from the standards of the Army Body Composition Program; however, they must maintain a Soldierly appearance.

4. On 21 March 2024, in the processing of this case, the NGB, provided an advisory opinion regarding the applicant's request to have her DOR from adjusted from 11 November 2022 to 26 August 2022 due to a delay in her promotion for not meeting the Army Body Composition Program standards. The advisory official recommended approval of the applicant's request. She was found physically unfit for retention by the Physical Evaluation Board with a 40 percent disability rating and therefore to be medically retired. With her time in service and her medical disability she was eligible for COAD. The applicant's request for COAD was approved to obtain 20-years Active Federal Service. Army Regulations 40-58 and 600-9 both state a Soldier on COAD is exempt from the requirement of the Army Body Composition Standards; however, she must maintain a Soldierly appearance.

5. On 22 March 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment. She did not respond.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board reviewed and concurred with the National Guard Bureau's advisory finding that due to a delay in her promotion for not meeting the Army Body Composition Program standards, her date of rank was 11 November 2022 vice 26 August 2022. The applicant was found physically unfit for retention by the physical evaluation board and recommended to be medically retired. She was eligible for continuation on active duty due to her time in service and medical disability rating and was approved to obtain 20 years of active Federal service. Based on the advising official's recommendation, the Board granted 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 records and Army National Guard records of the individual concerned be corrected by issuing the applicant a Special Order extending her Federal recognition for promotion to COL/O-6 with an effective date and date or rank as 26 August 2022, with entitlement to back pay and allowances (if applicable) as a result of this correction.

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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. AR 40-58 (Medical Services - Army Recovery Care Program), prescribes policies, standards, and responsibilities for the entry, exit, and transfer into the Army Recovery Care Program (ARCP), and provides policies, standards, and responsibilities for the organization and functions of the Soldier Recovery Unit (SRU) to include the Remote Medical Management (RM2). Paragraph 7-36 (Army Body Composition Program), (Exemption), the following Soldiers are exempt from the requirements of AR 600-9, chapter 3; however, they must maintain a Soldierly appearance:

- Soldiers with major limb loss; major limb loss is defined as an amputation above the ankle or above the wrist which includes full hand and/or full foot loss; it does not include partial hand, foot, or toes
- Soldiers on established COAD and/or COAR status
- Pregnant and postpartum Soldiers
- Soldiers who have undergone prolonged hospitalization for 30 continuous days or greater

2. AR 600-9 (The Army Body Composition Program), policies and procedures for the implementation of the Army Body Composition Program (ABCP). Paragraph 3-3 (Exemptions), b. The following Soldiers are exempt from the requirements of this regulation; however, they must maintain a Soldierly appearance:

- Soldiers with major limb loss; Major limb loss is defined as an amputation above the ankle or above the wrist, which includes full hand and/or full foot loss, it does not include partial hand, foot, fingers, or toes
- Soldiers on established COAD and/or COAR status
- Pregnant and postpartum Soldiers
- Soldiers who have undergone prolonged hospitalization for 30 continuous days or greater

c. Soldiers that do not meet the criteria of paragraph 3–3b have the option to request a temporary exception to policy.

3. AR 635-40 (Personnel Separations – Disability Evaluation for Retention, Retirement or Separations), sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. Chapter 6 (Continuation on Active Duty Status of Unfit Soldiers), this chapter prescribes the criteria for Soldiers to be COAD, as applicable, subsequent to being found unfit after completion of the duty-related DES process. The purpose of this exception to policy is to conserve manpower by effective

use of needed skills or experience in a limited duty status. The fact that a Soldier has or has not applied for COAD will not influence the determination of fitness or the determination of the disability rating percentage, when applicable. A Soldier who has been found unfit by a PEB for further military Service has no inherent or vested right to continuation. Soldiers must elect to be considered for COAD. However, the SECARMY, or designee, may involuntarily continue the Soldier in consideration of the Soldier's service obligation, special skill, or experience. Requests will be approved based on the needs of the Army. Requests will not be approved solely to increase the Soldier's separation or retirement benefits. A status of COAD is not authorized until a finding of unfit is approved by USAPDA.

4. National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), prescribes policies and procedures governing the appointment Federal recognition of commissioned officers of the ARNG. Chapter 8 (Promotion for other than general officers), the promotion of officer in the ARNG is a function of the State. However, to be extended Federal recognition in the higher grade, the officer must have satisfied the requirements prescribed herein. 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. All officer recommended for promotion must be fully qualified.

//NOTHING FOLLOWS//