

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20230012075

APPLICANT REQUESTS:

- Correction of his date of rank (DOR) to colonel (COL) to 1 October 2022 or 20 October 2022
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Unit Manning Report (UMR)
- Orders 182-900 Promotion to COL
- Memorandum Recommendation for Office Unit Vacancy Promotion
- Emails from National Guard Bureau (NGB), 12 July 2023
- Email from U.S. Army Human Resources Command (AHRC)
- Email from NGB, 1 August 2023

FACTS:

1. The applicant states:

a. His DOR must be corrected to 1 October 2022 or 20 October 2022 as per the 2023 National Defense Authorization Act (NDAA) and the DOR backdated for National Guard Officers.

b. Puerto Rico Army National Guard (PRARNG) G-1 submitted the documentation to apply the NDAA to the applicant's case, however, it was returned without action by NGB because they have not received any guidance from the Department of the Army (DA) on how to implement the NDAA.

c. The applicant sent the information to AHRC; however when he informed NGB that the PRARNG G-1 was going to resubmit an amendment request via e-tracker as per AHRC email, NGB replied that his promotion order would not be backdated.

d. The NDAA, 23 December 2022, in Section 513 stipulated the following:

(1) Backdating of effective DOR for Reserve Officers in the ARNG due to delays in federal recognition: paragraph 2 of section 14308(f) of Title 10, United States Code, is amended to read as follows: "If there is a delay in extending Federal recognition in the next higher grade in the ARNG 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 NGB deems such officer's application for Federal recognition be completely submitted by the state and ready for review at the NGB, and the delay was not attributable to the action or inaction of such officer..."

(2) In the event of state promotion with an effective date before 1 January 2024, 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.

(3) In the event of state promotion with an effective date on or after 1 January 2024, the effective date of the promotion concerned shall be adjusted by the Secretary concerned to the later of the date the NGB deems such officer's application for Federal recognition to be completely submitted by the state and ready for review at NGB and the date on which the officer occupies a billet in the next higher grade.

e. The applicant was seen by the Federal Recognition Board (FRB) on 7 April 2022, his case was uploaded in HRP on 19 April 2022, Army Guard Reserve (AGR) Title 32 officer ceiling was approved on 1 October 2022, Federal recognition for promotion was published with an effective date and DOR of 30 March 2023.

f. PRARNG submitted an amendment request via e-track for orders to read effective and DOR of 1 October 2022; however, it was returned without action.

g. The applicant was assigned to the 201st Regional Training Institute commander position on 1 April 2022. He met all the requirements for promotion since that date, therefore he thinks his DOR should be backdated to at the least 20 October 2022, the date the AGR controlled grade was available, the last requirement needed to process his promotion to higher as per the NGB email.

h. Applying the NDAA to the applicant's case, it exceeded 100 days since his application for Federal recognition was submitted by the state, and the delay was not the applicant's fault ("attributable to the action or inaction of such officer"). NGB should adjust the applicant's DOR "not earlier than the effective date of the state promotion" which is 7 April 2022.

i. COL S-R-, NGB, mentioned that the AGR controlled grade was approved on 20 October 2022, ("the last requirement needed to process my promotion to higher"). If that is the case, the applicant's DOR must be 20 October 2022.

j. Many people do not know the new law and keep talking about the Senate confirmation date, which no longer is the effective date of the promotion according to the NDAA. The NDAA was enacted to fix this issue because the Senate was taking too much time to confirm.

k. The applicant waited for one year for promotion, from the date of his assignment to the date of the order (from 1 April 2022 to 30 March 2023). He has been trying to resolve this situation for the past four months without positive results.

l. Laws were made to be followed and if the NDAA will not be applied to his case, then why was it enacted. He's not sure if the Board is the right action or if he must submit a Congressional inquiry.

2. The applicant provides the following documents:

a. A Unit Manning Report (UMR) which shows the applicant was slotted in the commander position, a COL position, in the rank of lieutenant colonel.

b. Orders 182-900, published by PRARNG Element Joint Forces Headquarters, dated 4 January 2021 promoted the applicant to the rank of COL effective 7 April 2022 with a DOR of 4 April 2022. Additional instructions state "officer will not be paid as promoted until Federal recognition is issued."

c. Memorandum Recommendation for Officer Unit Vacancy Promotion, dated 22 March 2022 which recommended the applicant for promotion to COL in the vacant position of Commander. Effective date of promotion was determined by Federal recognition orders issued by NGB. The applicant would not wear the insignia of the grade to which promoted nor be paid in that grade until Federal Recognition was confirmed.

d. Email traffic between the applicant and COL H- M. S-R-, NGB, which states in pertinent part:

(1) From the applicant to NGB, dated 1 July 2023 regarding his DOR. He explains the NDAA regarding backdating of effective DOR for reserve officers in the ARNG due to delays in federal recognition. The applicant explained what the NDAA stated, his situation, and the analysis. The entire email is available for the Board's review.

(2) From COL S-R-, dated 12 July 2023, NGB did not have implementation guidance for the NDAA from the DA.

(3) From COL S-R-, dated 12 July 2023, stating she wanted to clear up some confusion on the applicant's timeline of his Federal recognition. Federal recognition recommendations could not be actioned for Title 32 AGR officers until the Controlled Grade Vouchers were available. Although the applicant's state order, FRB, and packet submission were in the spring of 2022, the COL Controlled Grade was not available until 1 October 2022, which could officially accept the applicant's recommendation and initiated action. AGR controlled grade branch approved the packet on 20 October 2022 and the applicant was placed on PSL 01-23 and submitted to DA on 26 October 2023[2]. Suitability screening was completed by DA on 27 January 2023 and official routing to the Secretary of the Army started on 30 January 2023 with his order effective 30 March 2023.

e. Email from AHRC, dated 25 July 2023, states as a National Guard member, the applicant's state is the authority for backdating his DOR, not AHRC.

f. Email from NGB, dated 1 August 2023, states the applicant's promotion order would not be backdated. The entire email is available for the Board's consideration.

3. The applicant's service record contains the following documents:

a. Memorandum: Appointment as a Reserve Commissioned Officer of the Army, dated 15 June 1996 appointed the applicant as a second lieutenant (2LT) in the U.S. Army Reserve.

b. DA Form 71 (Oath of Office - Military Personnel), dated 15 June 1996 shows the applicant took the oath of office as a Reserve commissioned officer in the rank of 2LT.

c. NGB Form 337 (Oaths of Office) shows the applicant took the oath of office in the PRARNG on 1 December 1999.

d. NGB Memorandum Promotion as a Reserve Commissioned Officer in the Army, dated 31 March 2023 promoted the applicant to the rank of COL effective 30 March 2023.

e. Special Orders 126, published by NGB, gave federal recognition to the application for his promotion to the rank of COL effective 30 March 2023 with a DOR of 30 March 2023.

f. Orders 004389974.00, published by the PRARNG, dated 4 April 2023, promoted the applicant to the rank of COL effective 30 March 2023 with a DOR of 30 March 2023.

g. The applicant's service record was void of Orders 182-900, which was submitted by the applicant.

4. On 29 November 2024, the Chief, Special Actions Branch, National Guard Bureau (NGB) provided an advisory opinion, which states:

a. The applicant requests that his DOR in the rank of COL be adjusted to 1 October 2022 or 20 October 2022. NGB recommends partial approval.

b. The applicant states his DOR should be corrected to 1 October 2022 or 20 October 2022 per the 2023 NDAA and the DOR backdate for National Guard Officers. He further states the PRARNG G-1 submitted the documentation to apply the NDAA to his case; however, it was returned without action by NGB because they have not received any guidance from Department of the Army on how to implement the NDAA. He additionally states that he sent the information to AHRC. However, when he informed NGB that the NGB was going to resubmit an amendment request via eTracter, as per the AHRC email, NGB replied that his promotion order would not be backdated.

c. The applicant was promoted to the rank of COL effective 30 March 2023 per order number 23 AR, 31 March 2023. For unknown reasons, this order was later amended to reflect an effective date of 1 October 2023, per order number 167 AR, 10 May 2023.

d. Upon coordination with the ARNG Federal recognition branch it was determined that the guidelines for a unit vacancy promotion (UVP) is that the officer must be in the higher-grade position when the packet comes to Federal Recognition for processing. Additionally, the officer also must have a controlled grade. He did not have a controlled grade when his packet was sent to Federal Recognition for UVP processing. His packet was sent to AHRC for controlled grade verification in April 2022 and was not sent back until October 2022, with comments that a controlled grade was available on 1 October 2022. All UVP's get the effective date and DOR of Senate confirmation. UVP scroll S032-23 took 155 days to be confirmed, therefore, Federal recognition will backdate the entire scroll to the 100-day mark, which is 3 February 2023. This backdating will take place before the end of 2024.

e. Based on the reasons stated, it is the recommendation of NGB that his DOR be adjusted to 3 February 2023.

f. This opinion was coordinated with the ARNG Federal recognition branch. Upon several attempts, the PRARNG did not provide input for this opinion.

5. On 5 December 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

6. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

**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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request, available military records and the National Guard Bureau- Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for partial approval finding the UVP scroll S032-23 took 155 days to be confirmed, therefore, Federal recognition would backdate the entire scroll to the 100-day mark, which is 3 February 2023. The Board agreed based on the advising opine there is sufficient evidence to support partial relief to adjust the applicant's date of rank to COL with an effective date of 3 February 2023.

**BOARD VOTE:**

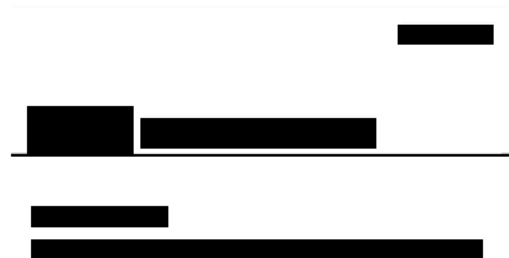
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:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

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 records of the individual concerned be corrected by adjusting the applicant's date of rank to COL with an effective date of 3 February 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 correction of the applicant's date of rank (DOR) to colonel (COL) to 1 October 2022 or 20 October 2022.



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. National Guard Regulation (NGR) 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), prescribes policies and procedures governing the appointment, assignment, temporary Federal Recognition, Federal Recognition and reassignment of commissioned officer of the ARNG.

a. Paragraph 3-5 states a Federal Recognition board action is required for promotion.

b. Paragraph 8-2 (Promotion criteria), promotion will be based on efficiency, time in grade, time in commissioned service, military education and civilian education and the potential for service in the next higher grade. Promotion will be accomplished only when the officer is assigned to an appropriate higher graded position vacancy in the unit.

c. Paragraph 8-3 (Promotion as a Reserve Commission Officer of the Army), the effective date determines the officer Federal pay and allowances in the next higher grade. The effective date is determined when the Chief, NGB in conjunction with the Secretary of Defense approval or the Senate confirmation date. Department of the Army

Select M-Day commissioned officer, effective date and DOR will be the DA board approval if the officer was assigned to a position in the next higher grade. If the officer was not assigned to a position in the next higher grade, the effective date and DOR will be the date of assignment to the next higher-grade position.

d. Paragraph 8-8 (Minimum year of time in grade for promotion eligibility), a commissioned officer must complete the minimum time in grade prior to being considered for promotion and Federal recognition in the higher grade. For promotion to the rank of captain the minimum time in grade as a first lieutenant is 2-years.

e. Paragraph 8-10 (Military Education requirements for promotion) states for promotion to the rank of captain the minimum required military education is the completion of Basic Officer Leader Course

2. Title 10 United States Code (USC), section 14308 (Promotions: how made), (f) (Effective Date of Promotion After Federal Recognition), (1) 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 ARNG or the Air National Guard shall be the date on which such Federal recognition in that grade is so extended. (2) If there is a delay in extending Federal recognition in the next higher grade in the ARNG 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 NGB deems such officer's application for Federal recognition to be completely submitted by the State and ready for review at the NGB, and the delay was not attributable to the action or inaction of such officer; in the event of State promotion with an effective date before 1 January 2024, 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.

3. 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.

4. The National Defense Authorization Act, dated 23 Dec 2022, states:

a. Section 513, Backdating of Effective Date of Rank for Reserve Officers in the National Guard Due to Delays in Federal Recognition: Paragraph (2) of section 14308(f) of title 10, United States Code, is amended to read as follows: If there is a



delay in extending Federal recognition in the next higher grade in the ARNG or the Air National Guard to a reserve commissioned officer of the Army or the Air Force that exceeds 100 days from the date NGB deems such officer's application for Federal recognition to be completely submitted by the State and ready for review at NGB, and the delay was not attributable to the action or inaction of such Officer.

b. 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.

c. 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:

(1) The date NGB deems such officer's application for Federal recognition to be completely submitted by the State and ready for review at NGB; and

(2) The date on which the officer occupies a billet in the next higher grade.

5. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

//NOTHING FOLLOWS//