

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230013203

APPLICANT REQUESTS: to change his Chief Warrant Officer Four (CW4)/W4 promotion Date of Rank (DOR) to 15 March 2023 instead of 2 August 2023.

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

- DD Form 149 (Application for Correction of Military Record)
- National Guard Bureau (NGB) Form 89 (Proceedings of a Federal Recognition (FEDREC) Examining Board), 15 March 2023
- NGB Memorandum - Subject: Promotion as a Reserve Commissioned Warrant Officer of the Army, 9 August 2023
- Special Orders Number 259 AR, 9 August 2023
- Orders Number 0005702953.00, 15 August 2023
- Officer Record Brief (ORB), 20 August 2023
- Email communication, 22 September 2023
- Title 10, U.S. Code (USC), Section 14308 extract

FACTS:

1. The applicant states:

a. He requests his promotion date to CW4 be backdated to the effective date of his State FEDREC promotion of 15 March 2023 in accordance with Title 10, USC, section 14308 (Promotions: How Made).

b. In accordance with (IAW) the 2023 National Defense Authorization Act (NDAA) changes to Title 10, USC, section 14308, Promotions: how made, in the event of State promotion with an effective date before 1 January 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. The FEDREC process from when the NGB received his promotion packet to the date the FEDREC order was published exceeded 100 days and he requests that the effective date of the promotion be backdated. He is unsure as to why the FEDREC process takes

so long with some scrolls (over 100 days) and others are completed in 80-90 days or less.

2. A review of the applicant's official records show the following:

a. Having prior Army National Guard enlisted service, on 2 December 2010:

- DA Form 71 (Oath of Office - Military Personnel) shows he was appointed as a Reserve Warrant Officer and executed his oath of office
- NGB Form 337 (Oaths of Office) shows he was appointed as a Warrant Officer One in the Minnesota Army National Guard (MNARNG) and executed his oath of office

b. On 27 July 2011, the NGB issued Special Orders Number 170 extending FEDREC for his initial appointment in the ARNG.

c. On 15 August 2012, DA Form 71 shows he was appointed as a Chief Warrant Officer Two (CW2) and executed his oath of office.

d. On 26 April 2013, the NGB published Special Orders Number 109 extending FEDREC for his promotion to the rank of CW2, effective on 2 December 2012.

e. On 25 June 2018, the NGB published Special Orders Number 141 extending FEDREC for his promotion to the rank of CW3, effective on with a DOR of 11 June 2018.

f. On 18 March 2023, Joint Force Headquarters Minnesota, Office of the Adjutant General published Orders Number 077-1004, which promoted the applicant to the rank/grade of CW4/W4, effective on with a DOR of 11 June 2023. Additional instructions state "Effective date of the promotion will be the date the permanent Federal Recognition Order is published State Certificate processed by request only."

g. On 9 August 2023, the NGB published Special Orders Number 259 AR, which announced the extension of FEDREC in the ARNG for the applicant's promotion to CW4, effective on with a DOR of 2 August 2023.

h. On 15 August 2023, the MNARNG published Order Number 0005702953.00, which promoted the applicant to CW4, effective 2 August 2023.

3. In support of his case the applicant provides:

a. NGB Form 89 which shows on 15 March 2023 the Board recommended he be granted FEDREC for promotion to CW4.

b. NGB Memorandum - Subject: Promotion as a Reserve Commissioned Warrant Officer of the Army, dated 9 August 2023, which notified the MNARNG and applicant that he was promoted to CW4, effective 2 August 2023.

c. ORB dated 20 August 2023, which shows his personnel, training, assignment, education, service, and awards/decorations data.

d. Email communication during the period of August through September 2023, between the applicant and MNARNG Chief, Army Personnel Management, discussing the applicant's promotion to CW4, FEDREC order, and promotion exceeding 100 days in the FEDREC process. The email also shows a timeline of events.

e. Title 10, USC, section 14308 extract, wherein, he highlights, paragraph (f), Effective Date of Promotion After FEDREC.

4. On 20 March 2024, by email, the MNARNG, Chief, Officer Personnel Management responded to an NGB request for information and stated, in part, the applicant's packet boarded and submitted on eTracker 84 days prior to PED (promotion eligibility date) of 11 June 2023. Since then, they have had to correct other WO [warrant officer] FEDREC orders that had erroneous promotion dates prior to PED because they scrolled so quickly (to the point they are hesitant to board and submit 90 days prior when regulation says they can process 120 days). She would say precedent shows that scrolls should process within the 100 days. She would not concur with backdating to the State Federal Recognition Board (FRB) date of 15 March 2023. (since that was prior to PED) She would concur. It exceeds 100-day processing and is eligible to be adjusted per law. She recommended a PED of 11 June 2023.

5. On 2 April 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion for this case and recommended disapproval. The advisory official stated:

a. The applicant states that he was promoted to CW4 on 2 August 2023. The applicant requests a change to his DOR based on Title 10, USC, section 14308, where it states that promotion dates could be adjusted if there is a delay in extending FEDREC that exceeds 100 days. He claims the delay was no fault of his own and should be backdated to match the date that MNARNG approved his promotion packet.

b. The applicant was eligible for promotion 11 June 2023. The State Federal Recognition Board was conducted on 15 March 2023. The applicant's promotion packet was approved and submitted by the MNARNG to the NGB on 20 March 2023. The packet was processed by the Federal Recognition branch, and his promotion packet was assigned to a scroll on 14 April 2023. This scroll was approved on 8 August 2023 with an effective date of 2 August 2023.

c. According to Title 10, USC, section 14308: Promotions, if there is a delay in extending FEDREC in the next higher grade in the ARNG to a Reserve commissioned officer that exceed 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, 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.

d. According to Personnel Policy Operational Memorandum (PPOM) 23-047, an officer's promotion packet is considered completely submitted when reviewed and cleared by 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.

e. 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. From the receipt of the completed packet on 20 March 2023, it took 25 days until the packet was assigned to a scroll, which is well under 100 days. From the date it was assigned to a scroll, it took 110 days until it was approved. Even though it took over 100 days for the scroll to be signed, the applicant was not eligible for promotion to CW4 until 11 June 2023. That is only 52 days before his actual effective promotion date of 2 August 2023. The applicant's DOR cannot be backdated to 15 March 2023 because he was not eligible for promotion until 11 June 2023. 15 March 2023 is the date of the State FRB [FEDREC Board], not the State promotion date.

f. Based on these reasons, it is the recommendation of this office that the applicant's request be disapproved. 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. The ARNG FEDREC Branch concurs with this recommendation. The MNARNG agrees partially with this recommendation.

6. On 16 April 2024, the applicant responded to the NGB advisory opinion and stated, due to delays, at no fault of his own, in the FEDREC promotion process exceeding 100 days, he requests that his DOR be changed from 2 August 2023 to his promotion eligibility date of 11 June 2023 based on Title 10, USC, section 14308. This would allow the DOR to be adjusted IAW the applicable laws and IAW his attached Minnesota State promotion order.

BOARD DISCUSSION:

1. 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 petition, available military records and National Guard Bureau- Special Actions Branch, the Board concurred with the advising official finding the applicant was eligible for promotion 11 June 2023 and considered their recommendation for disapproval. The Board found the State Federal Recognition Board was conducted on 15 March 2023. In addition, the opine noted although it took over 100 days for the scroll to be signed, the applicant was not eligible for promotion to CW4 until 11 June 2023. That is only 52 days before his actual effective promotion date of 2 August 2023.

2. The Board determined there is sufficient evidence to support the applicant's request for amending his date of rank. The Board noted at no fault of the applicant, and based on the advising opine, the applicant was eligible for promotion on 11 June 2023. As such, the Board determined partial relief is warranted to reflect his date of rank as 11 Jun 2023, the date he was eligible for promotion.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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 to show the applicant's effective date of rank as 11 June 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 change the applicant's Chief Warrant Officer Four (CW4)/W4 promotion Date of Rank (DOR) to 15 March 2023 instead of 2 August 2023.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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, USC, Section 14308 - Promotions: How Made, section (f) Effective Date of Promotion After Federal Recognition, states —

a. The effective date of a promotion of a reserve commissioned officer of the Army or the Air Force who is extended FEDREC in the next higher grade in the ARNG or the Air National Guard under section 307 or 310 of title 32 shall be the date on which such FEDREC in that grade is so extended.

b. If there is a delay in extending FEDREC 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 FEDREC 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 —

(1) in the event of State promotion with an effective date before 1 January 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

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

(a) the date the NGB deems such officer's application for FEDREC to be completely submitted by the State and ready for review at the NGB; and

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

2. 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//