

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2025

DOCKET NUMBER: AR20230013976

APPLICANT REQUESTS: in effect, correction of promotion dates from second lieutenant/2LT to first lieutenant/1LT, 1LT to captain/CPT and CPT to major/MAJ.

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

- DD Form 149 (Application for Correction of Military Record)(online)
- DD Form 1059 (Service School Academic Evaluation Report)
- Two Officer Evaluation Records (OER)
- Special Orders Number 269 AR, 21 October 2003
- Special Orders Number 104, 1 April 2005
- NGB Form 22 (Report of Separation and Record of Service), 1 December 2005
- Special Orders 355, 21 December 2005
- Memorandum for Record (MFR), Subject: Request for Federal Recognition from 2LT to 1LT, 9 March 2005
- MILPER Message 06-218, 2006 Zone of Consideration for Promotion to Reserve of the Army Captain Army Promotion List (APL) Selection Boards, issued 8 August 2006
- Orders B-03-801747, 11 March 2008
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- MILPER Message 13-003, Fiscal Year (FY)13, Major, APL, Army Reserve active Guard Reserve (AR-AGR), army Reserve Non-Active Guard Reserve (AR Non-AGR), and ARNG of the United States Complete Categories, Promotion Selection Boards, issued 6 January 2013
- Orders B-02-500409, 6 February 2015
- Orders 20-258-00014, 14 September 2020

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 his promotion to first Lieutenant from 2LT was delayed in error and unjust. He was commissioned as a 2LT on 20 August 2002, completed the Infantry Officer Basic Course in May 2002, and was promoted to 1LT 8 March 2005, a time in grade at 2LT of over 30 months. He was educationally qualified and promotion to 1LT should have occurred upon completing 24 months' time in grade on 20 August 2004. This delay in promotion affected each subsequent promotion. He is requesting his promotion date to 1LT be corrected to 20 August 2004 and his promotion dates to CPT and MAJ also be adjusted based on this correction. He worked diligently to be promoted on time as a 2LT.

a. There seemed to be difficulties due to his transfer amongst units as the state level set personnel to fill units for deployment. He had several conversations with his company commander and battalion commander, and both informed him the promotion was working its way through the system. When his promotion came with an unexpected date of 8 March 2005, he re-initiated conversations with both commanders about the date of rank being incorrect and attempted to get it back dated to the correct date. They informed me that 8 March 2005 was the date he was federally recognized that the maximum time in grade for a 2LT IAW NGR 600-100 was 42 months, that he was promoted within that window, and there was no way to correct it. At that time, he thought he had exhausted all his options for correction and was angry at being delayed for further promotion and for the loss of income that resulted while he was mobilized/deployed.

b. He is now a DA civilian and was recently working with Deputy G1 on a promotion issue for a Soldier in our unit. During this process they started talking of their past promotions and the applicant shared with him the promotion challenges he had getting to 1LT. He surprised the applicant by telling him he believed that his promotion date was incorrect, and that the applicant could apply for remedy through the Army Board for Correction of Military Records. Had he known about this process in 2004/2005 he would have acted then, but he is hoping that now that he is aware of the error and its remedy this process can adjudicate this unjust error.

c. He believes that his military promotion record for 1LT needs to be corrected to on or about, 20 August 2004. His promotion date to 1LT was both in error and unjust as:

(1) His company commander recommended him for promotion on 17 August 2004. This should have been sufficient to promote him to 1LT on 20 August 2004 per Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers)) (13 July 2004).

(2) The State of Nevada G1 delayed in requesting Federal Recognition to 1LT until 9 March 2005.

(3) The date of the memorandum from the State of Nevada G1 became his date of rank and was not back dated to when he successfully completed 24 months in grade.

(4) He was deprived of over 6 months' time in grade as a result of late action by the State of Nevada that affected his date of rank to both CPT and MAJ. His promotion date to 1LT was incorrect based on the timelines and procedures outlined in AR 135–155 (13 July 2004). IAW AR 135–155 (13 July 2004) promotion to 1LT requires that officers:

- Must have completed all phases of the Basic Officers Course
- Served 24 months' time in grade as a 2LT
- Will be considered for promotion without review by a selection board
- Records will be screened to determine eligibility for promotion far enough in advance to permit promotion on the date promotion service is completed

d. Additionally, officers found not qualified for promotion to the grade of 1LT will have a final determination made by the area commander. A memorandum of non-selection will be sent to each officer determined not qualified for promotion. A copy of the memorandum of non-selection will be placed in the officer's MPRJ and OMPF. His company commander recommended him for promotion as he had met all the requirements for promotion and had excellent OERS.

(1) Time in grade and educations requirements were met on 20 August 2004.

a. Commissioned as a 2LT on 20 August 2002 and had completed 24 months' time in grade.

b. Completed Infantry Officer Basic Course on 23 May 2003 and his BS degree in 1996.

(2) At no point did he receive any derogatory information regarding his promotion. He has assumed the delay at the State level was due to the company mobilizing and then deploying from Fort Lewis, WA and there was little appetite from at the State level to make the effort of the correction.

e. Additionally, the unjust error that caused his delay to promotion to 1LT also unjustly caused him to be delayed one year promoting to CPT and MAJ respectively. Had he been promoted on 20 August 2004 he would have been eligible for the 2006 Zone of Consideration for Promotion to Reserve of the Army Captain Army Promotion List Selection Boards (MILPER 06-218) instead of the 2007 board and would have been eligible for the FY13 MAJOR (MAJ), Army Promotion List (APL), Army Reserve Active Guard Reserve (AR-AGR), Army Reserve Non-Active Guard Reserve (AR NONAGR), and Army National Guard of the United States (ARNGUS) Competitive Categories,

Promotion Selection Boards (MILPER 13-03) instead of the 2014 board. One small unjust delay in processing his memorandum for promotion to 1LT on time effected his pay while deployed to Iraq, delayed his promotion to CPT for one year while mobilized, and delayed his promotion to MAJ for one year. He respectfully requests that his date of rank to 1LT, CPT, and MAJ be corrected.

3. The applicant provides:

a. His DA Form 1059 for the period from 2 February 2003 through 23 May 2003 shows the applicant achieved course standards of the Infantry Officer Basic Course CL: C 2 3-03.

b. His OERs shows the applicant had outstanding performance, best qualified, and above center of mass for the periods covered 10 August 2002 through 23 January 2003 and 24 January 2004 through 23 January 2004.

c. Special Orders number 355 AR, 21 December 2005 shows the applicant's Federal Recognition withdrawn effective 1 December 2005 for transfer to USAR in the grade of 1LT.

d. MILPER Message Number 06-218, issued 8 August 2006 shows information pertaining to the 2006 Zone of Consideration for Promotion to Reserve of the Army Captain Army Promotion List (APL) Selection Boards.

e. Orders B-03-801747, 11 March 2008 shows the applicant's promotion to captain/CPT. Effective date 8 February 2008 and Date of rank 8 February 2008.

f. MILPER Message Number 13-003 issued 6 January 2013 shows information pertaining to the FY 13, Major, APL, Army Reserve active Guard Reserve (AR-AGR), army Reserve Non-Active Guard Reserve (AR Non-AGR), and ARNG of the United States Complete Categories, Promotion Selection Boards.

g. Orders B-02-500409, 6 February 2015 shows the applicant's promotion to major/MAJ. Effective date 7 February 2015 and Date of rank 7 February 2015.

h. Orders 20-258-00014, 14 September 2020 shows the applicant was reassigned in the Reserve Components for completion of 20 or more years of qualifying Service for Retired Pay at Age 60 and assigned to the Retired Reserve. Effective date: 1 December 2020.

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

a. He enlisted in the U.S. Marine Corps Reserve (USMCR) on 11 September 1989.

b. He entered active duty for training on 10 September 1990 and transferred to USMCR. His DD Form 214 shows he was honorably released from active duty on 30 April 1991. He completed 7 months and 21 days net active service.

c. The applicant was commissioned a Reserve officer in the grade of 2LT on 10 August 2002.

d. He executed an Oath of Office in the Maryland Army National Guard (ARNG) in the grade of 2LT on 10 August 2002.

e. Special Orders Number 228 AR, 20 August 2002 shows the applicant's effective date 10 August 2002 for initial appointment.

f. His DD Form 214 shows he entered active duty for training on 2 February 2003 as a 2LT in the ARNG. He was honorably released from active duty on 22 May 2003 and transferred to MDARNG. He completed 2 months and 22 days net active service.

g. Special Orders Number 269 AR, 21 October 2003 shows Special Order 228 AR, 20 August 2002, pertaining to extension of Federal Recognition the applicant in the grade of 2LT.

h. The applicant executed an Oath of Office in the Nevada ARNG (NVARNG) in the grade of 2LT on 17 March 2004.

i. Special Orders Number 79 AR, 1 April 2004 shows an effective date 17 March 2004 of for the applicant's change of State Federal Recognition Maryland, 2LT, Infantry.

j. His DD Form 214 shows he entered active duty on 16 August 2004 as a first lieutenant/1LT in the ARNG. He was honorably released from active duty on 28 November 2005 and transferred to NVARNG. He completed 1 year, 3 months and 13 days net active service.

k. Special Orders Number 104 AR, 1 April 2005 shows the applicant's effective date 9 March 2005 for promotion to 1LT in the NVARNG.

l. MFR, Subject: Request for Federal Recognition from 2LT to 1LT, 9 March 2005 shows a request form the Deputy Chief of Staff for Personnel, NARNG for Federal Recognition for promotion to 1LT/O2 be extended to the applicant.

m. NGB Form 22, shows the applicant was honorably discharged from the NVARNG on 1 December 2005 for individual resignation. His rank/grade is shown as 1LT/O2 with a date of rank of 9 March 2005. He was transferred to the U. S. Army Reserve (USAR). He completed 3 years, 3 months and 22 days net service this period.

n. He entered active duty on 20 January 2006 as a member of the USAR. He was honorably released from active duty on 27 March 2010. His DD Form 214 reflects his rank/grade as CPT/O3 with a date of rank of 8 February 2008. He completed 4 years, 2 months, and 8 days net active service this period.

o. The applicant was notified on 24 October 2019 that he had completed the required years of qualifying Reserve service and is eligible for retired pay upon application at age 60.

5. In the processing of this case an advisory opinion was obtained on 9 August 2024, from the National Guard Bureau, Chief, Special Actions Branch, who opined in pertinent part:

a. Summary. The applicant requests adjustment to his date of rank (DOR) from Second Lieutenant (2LT) to First Lieutenant (1LT), and any other future promotion that could have been affected by this claimed delay.

b. Recommendation. Disapproval.

c. Discussion.

(1) The Soldier requests that his DOR and effective date of promotion from 2LT to 1LT be adjusted due to errors and delays with his federal recognition packet at the state level, in addition correction of any future promotion DORs.

(2) The applicant was commissioned as a 2LT in the United States Army on 10 August 2002 per the Soldier's Oath of Office (DA Form 78), and his Oath of Office in the Maryland Army National Guard. Additionally, the Soldier finished Officer Basic Course (OBC) on 23 May 2003.

(3) Army Regulation (AR) 135-155, paragraph 2-1, dated 1 February 1998, states that Officers in the rank of 2LT will be considered for promotion without review by a selection board. The Officer's records will be screened to determine eligibility for promotion to the next higher grade.

(4) National Guard Regulation (NGR) (Federal Recognition and Related Personnel Actions) 600-100, dated 15 April 1994 which is the regulation during the Soldier's claimed event and provides guidance to all Army National Guard 2LT, that Officer Basic Course (OBC) is the minimum military educational requirement criteria for promotion from 2LT to 1LT. It additionally identifies the minimum years of promotion service prior to being considered for promotion and federal recognition from 2LT to 1LT to be three years.

d. It is the recommendation of this office that the applicant's DOR and effective date of promotion remain as is. A review of the case was conducted with the assistance of the Army National Guard Federal Recognition Section and the Army National Guard Officer Policy Branch, which determined that 2LT [REDACTED] was commissioned as a 2LT on 10 August 2002, and later promoted to the rank of 1LT on 9 March 2005, and therefore within the regulatory guidance of NGR-600-100, dated 15 April 1994.

e. The opinion was coordinated with the assistance of the Army National Guard Federal Recognition section and the Army National Guard Office Policy Branch.

6. The applicant was provided with a copy of the advisory opinion with an opportunity to respond. He 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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board found and concurred with the National Guard Bureau advisory opinion the applicant was commissioned as a 2LT in the United States Army on 10 August 2002 and took his Oath of Office in the Maryland Army National Guard. Additionally, the Soldier finished Officer Basic Course (OBC) on 23 May 2003. However, pursuant to Army Regulation, the Board notes that the minimum years of promotion service prior to being considered for promotion and federal recognition from 2LT to 1LT was three years and not two years as the applicant claims. Therefore, the Board found no error or injustice and denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.


X //SIGNED//

CHAIRPERSON

Signed by:

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, 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(f) (Effective date of promotion after Federal Recognition) states that the effective date of a promotion of a Reserve Commissioned Officer of the Army who is extended Federal Recognition in the next higher grade in the Army National Guard under section 307 or 310 of Title 32 shall be the date on which the Federal Recognition in that grade is so extended.
3. Army Regulation (AR) (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers) 135-155, paragraph 2-1, dated 1 February 1998, states that Officers in the rank of 2LT will be considered for promotion without review by a selection board. The Officer's records will be screened to determine eligibility for promotion to the next higher grade.
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. National Guard Regulation (NGR) (Federal Recognition and Related Personnel Actions) 600-100 provides guidance to all Army National Guard 2LT, that Officer Basic Course (OBC) is the minimum military educational requirement criteria for promotion from 2LT to 1LT. It additionally identifies the minimum years of promotion service prior to being considered for promotion and federal recognition from 2LT to 1LT to be three years.

//NOTHING FOLLOWS//