

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230014013

APPLICANT REQUESTS: in effect –

- change of his commissioning date to a date in December 2019
- promotion to the rank/grade of first lieutenant (1LT)/O-2 to a date in October 2022
- entitlement to backpay and allowances
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- U.S. Army Trial Defense Service, 22nd Legal Operations Memorandum - Subject: [Applicant], Administrative Separation under Army Regulation (AR) 135-178 (Enlisted Administrative Separations), Chapter 13, 22 July 2021
- Headquarters, 22D Legal Operations Detachment Memorandum - Subject: Memorandum for [Applicant], 19 December 2021
- U.S. Army Reserve Command (USARC) Deputy G-3/5/7 letter to Congressional Representative, 7 June 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 4 September 2023

FACTS:

1. The applicant states:

a. He was supposed to commission in December 2019, and be promoted to first lieutenant (1LT)/O-2 in October 2022, when he completed the Basic Officer Leadership Course (BOLC). He completed BOLC. All pay and allowances should also be corrected after December 2019 and October 2022.

b. He finished Army Reserve Officers' Training Corps (ROTC) in December 2019. He had to wait for his security clearance to be granted before commissioning. He filed an Inspector General (IG) request for assistance in July 2020. He also discovered he had a pending separation packet/action which stopped his security clearance

determination. He went through the Judge Advocate General and his congressional representative to fix the issue. He was granted his security clearance in March 2022. He commissioned in May 2022. His commission delay was due to the USARC issuing a wrong separation packet. This separation packet delayed his commissioning by two years and six months. This should be fixed.

c. After the error was discovered, he spent one year trying to fix the separation issue and another five months to gain his security clearance. After commissioning, he spent 14 months in Army Aviation school, and was released from active duty in September 2023.

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

a. Having prior enlisted service in the U.S. Army Reserve (USAR) and Cadet service, DA Form 71 (Oath of Office - Military Personnel) shows he was appointed as a Reserve commissioned officer and executed his oath of office on 14 May 2022.

b. On 9 June 2022, the U.S. Army Human Resources Command (HRC) published Orders Number T-06-223853, which ordered the applicant to active duty for training for 432 days to attend Aviation BOLC, with a report date of 26 July 2022.

c. On 4 September 2023, he was honorably released from active duty and was transferred to his USAR unit in Texas. DD Form 214 shows he completed 1 year, 1 month, and 9 days active service.. In relevant part, item 14 (Military Education) is voided of entry indicating he successfully completed Aviation BOLC.

d. On 28 March 2024, HRC published Orders Number T-03-407892, which ordered the applicant to active duty for training for 111 days to attend Ordnance BOLC, with a report date of 28 April 2024.

3. The applicant's record is void of evidence and he provided no evidence showing he successfully completed BOLC.

4. In support of his case the applicant provides:

a. U.S. Army Trial Defense Service Memorandum, 22nd Legal Operations Detachment - Subject: [Applicant], Administrative Separation under AR 135-178, Chapter 13, dated 22 July 2021, wherein, the Deputy Regional Defense Counsel stated:

(1) The applicant (Cadet C_) was served notice of separation under AR 135-178, chapter 13 (Secretarial Plenary Authority) on 15 January 2021. This was in error.

(2) The Professor of Military Service should have requested for a National Agency Check (NAC) with request for Secret personnel security clearance on the enrollment of a scholarship cadet. For the applicant that would have been in May of 2018. Please reference AR 145-1, Section III, 3-34 for a more detailed explanation (I've attached with the memo in the email for reference). Ultimately, since the applicant is no longer an enlisted Soldier with the 341st Medical Battalion and his Military Occupational Specialty while with the unit did not require a security clearance, the unit should never have moved forward with a security clearance.

(3) The applicant is not and has not been deployable since signing his ROTC agreement because he is not a member of the 341st Medical Battalion. His Personnel Deployability Limitation Code is listed as "SM" which is Simultaneous Membership Program. His rank is listed as "CSR" which is Cadet Senior Advanced ROTC and his grade is listed as "E-5" which is the pay grade for SMP cadets. I request, on behalf of the applicant, the separation packet be retracted immediately.

b. Headquarters, 22D Legal Operations Detachment Memorandum - Subject: Memorandum for [Applicant], dated 19 December 2021, wherein, Defense Counsel states:

(1) The Department of Defense Consolidated Adjudications Facility ("DOD CAF") started a security clearance determination in June 2016. They continued delaying the final determination until U.S. Army Reserve Command (USARC) initiated a separation action based on the lack of security clearance in February 2019. As a result, the applicant has not been able to commission as an officer, even after completing all required training.

(2) The applicant's separation action was initiated without proper authority. After numerous requests to withdraw both from defense counsels and his chain of command, USARC withdrew the separation packet on 21 October 2021. However, the applicant is still awaiting final security determination from DOD CAF. DOD CAF has been incredibly unresponsive over the many years this action has been pending.

(3) The applicant is a motivated Soldier who wants to be a leader in the Army. He always shows his allegiance to the Constitution and the people of the United States.

c. USARC Deputy G-3/5/7 letter to Congressional Representative, dated 7 June 2022, which states, on 23 March 2022, the applicant was adjudicated favorably by the DOD CAF and granted a Sensitive Compartmented Information (SCI) eligibility. This issue is resolved, the applicant is granted a Top-Secret SCI security clearance and met the security clearance requirement to be commissioned as an officer within the USAR.

5. On 5 June 2024, the HRC, Force Shaping Division, provided an advisory opinion for this case and recommended no relief. The advisory official stated:

a. The Reserve Personnel Management Directorate, Accessions Branch, is not the Commissioning Authority for this case; the U.S. Army Cadet Command (USACC) is. However, the Accessions Branch provides the following advisory opinion: We believe the applicant's appointment, effective 14 May 2022, is legitimate, correct, and should not be adjusted. We recommend "no relief."

b. In accordance with Department of the Army (DA) Accession Guidance, Cadet Command Accession Guidance, AR 145-1 (Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training), and 12:8 "d. Commanding General, USACC will ensure administrative procedures and quality control measures are in place to ensure that all cadets offered an appointment and participating in a commissioning ceremony meet the conditions of appointment on that day pursuant to all statutes and policies in effect."

c. In addition, by AR 145-1: "12-2. Eligibility: To be eligible for appointment, an SROTC Cadet must-h. Possess a secret personnel security clearance based on a national agency check, local agency check, and credit check.

d. Based on this guidance, and the applicant's information, the following are the requirements for appointment:

- Appointment Scroll: 30 October 2019
- Adjudicated Security Clearance: 23 March 2022
- Valid Accessions Physical: 2 May 2022
- Enlisted Discharge Effective: 13 May 2022
- Appointment Memo (ROTC): 14 May 2022
- DA Form 71/Oath: 14 May 2022

e. The Accessions Branch rationale is that the earliest possible Commission date (Scroll, Security Clearance, Accessions Physical - and completion of BOLC A) is 23 March 2022, based upon the security clearance. However, discharge from U.S. Army Reserve (USAR) Troop Program Unit (TPU) enlistment was not effective until 13 May 2022. Furthermore, the DA Form 71 is clearly marked as being executed on 14 May 2022. The Accession Branch is confident that the delay between CAF [Consolidated Adjudications Facility] adjudication of the TS [Top Secret] Security Clearance - and the discharge/appointment memo/DA Form 71 (i.e., March 2022 to May 2022) was simply the administrative time necessary to enable enlistment discharge and ROTC Appointment Memo/DA Form 71.

f. As a note, the applicant was originally assigned to the Army Reserve Aviation Command (ARAC) (1-158 Assault Helicopter Battalion, Conroe, TX) but was not able to successfully complete Initial Entry Rotary Wing Flight School. The applicant remains assigned to the ARAC but is now assigned to the 90th Aviation Support Battalion, White Settlement, TX.

6. On 6 June 2024, the HRC, Chief, Reserve Component Officer Promotions Board Announcements, Support and Promotion Orders provided an advisory opinion for this case and stated:

a. Based on a review of the information provided, our records, laws, regulations, policies, and the systems available to HRC Officer Promotions, we find that the applicant's request does not have merit.

b. The applicant's Army Military Human Resource Records (AMHRR) do not reflect that he has met the military education requirement (Basic Course, renamed Basic Officer Leadership Course (BOLC)) for appointment/promotion to 1LT, per Army Regulation (AR) 135-155, paragraph 2-9. Military educational requirements and Table 2-1.

c. If the applicant has completed the BOLC requirement, we recommend that he update his AMHRR and inform our office once it has occurred.

7. On 12 June 2024, the applicant was provided a copy of the HRC advisory opinion to allow for comments or rebuttal. He did not respond.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not 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. Upon review of the applicant's petition, and available military records, the Board concurred with the U.S. Army Human Resources Command's (HRC) advising official finding the applicant's appointment on 14 May 2022 to be legitimate, correct, and should remain unadjusted. The applicant was discharged from the U.S. Army Reserve on 13 May 2022, thus making 14 May 2022 the earliest possible date the applicant could commission. The Board found no relief was warranted to amend his commissioning date from 14 May 2022 to a date in December 2019.

2. As it relates to the applicant's request for promotion to the rank/grade of first lieutenant (1LT)/O-2 to a date in October 2022, the Board concurred with HRC's Chief

of Reserve Component Promotions finding the applicant's request does not have merit. His current record does not reflect that the applicant has met the requirements, i.e. successful completion of the requisite military education – Basic Officer Leadership Course for promotion to 1LT/O-2 and if the applicant has in fact completed the course, that he update his record to reflect as such.

3. Based on the foregoing denials of amending the applicant's current commissioning date and promotion requests, the Board found no justification to warrant any entitlement to backpay and allowances.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.

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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. Title 10, USC, 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. AR 145-1 (Senior Reserve Officers Training Corps Program: Organization, Administration, and Training), in effect at that time, prescribes policies for the administration and execution of the Army's Senior Reserve Officers' Training Corps (SROTC) Program and implements Department of Defense Instruction (DoDI) 1215.08. In pertinent part:

a. Paragraph 3-34b (Eligibility for scholarships) states, the Professor of Military Science will immediately initiate a request for a National Agency Check (NAC) with request for Secret personnel security clearance on enrollment of a scholarship cadet. The clearance, based on this request, will suffice for the Cadet's commissioning upon graduation. If a student has been the subject of a previous Entrance National Agency Check (ENTNAC) or NAC and has not had a break in Federal service of more than 12 months from the date of the investigation to the time of enrollment in the scholarship program, a new NAC is not authorized. Although a Secret clearance is not a prerequisite to award a scholarship, students must obtain a Secret clearance within 180 days of the award in order to retain the scholarship status. Extensions not to exceed an additional 90 days may be granted by the region commander. Extensions in excess of 90 days must be approved by the CG, ROTCCC. Scholarship cadets who receive a Letter of Intent to Deny Security Clearance from the Commander, U.S. Army Central Personnel Security Clearance Facility will be processed for termination of scholarship according to paragraph 3-39 and disenrollment under paragraph 3-43a(16).

b. Paragraph 6-8 (Eligibility) states, to be eligible for appointment, ROTC Cadets must be recommended for appointment by the Professor of Military Science, and prior to appointment, Cadets must possess a secret personnel security clearance based on a national agency check.

3. AR 135-155 (Promotion of Commissioned Officers and Warrant Officers) prescribes the officer promotion function of the military human resource support operations for officers on the Reserve active status list and USAR warrant officers. In pertinent part, paragraph 2-9 (Military educational requirements) states, for promotion to 1LT and captain (CPT), officers must have completed all phases of BOLC that are required for an officer to be deployable. This is nonwaivable.

4. 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.

5. AR 15-185 (ABCMR) states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states 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//