

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230014066

APPLICANT REQUESTS:

- requests date of rank (DOR) adjustment to major (MAJ)/O-4 to be backdated to “9 June 2020” vice “30 October 2020”
- personal appearance

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

- DD Form 149 (Application for Correction of Military Record)
- NGB Form 89 (Proceedings of Federal Recognition Examining Board), 18 March 2020
- Memorandum – Subject: Fiscal Year 2020 (FY20), Title 10 (T10) Army National Guard (ARNG) Active Guard Reserve (AGR), MAJ Promotion Recommendations, 18 November 2019
- Memorandum – Subject: FY20, ARNG T10 AGR, MAJ Promotion Recommendation Review (PRR) Announcement, 11 October 2019
- Memorandum – Subject: Request for Federal Recognition DOR Adjustment, 24 February 2020
- Orders Number 825791, 19 November 2020
- Special Orders Number 339, 16 November 2020
- Email communication

FACTS:

1. The applicant states in pertinent part that his promotion packet was submitted on 5 December 2019 to the Office Personnel Management, [REDACTED] ARNG. He contests that a delay in communication and cancellation of the State Federal Recognition Boards due to COVID-19 restrictions resulted in his packet being submitted to the National Guard Bureau (NGB) until 2 April 2020. Further, COVID-19 restrictions prompting the requirement for increased telework added to the delay of his packet being submitted for scrolling until 9 June 2020; 8 months from the date that the NGB recommended him for promotion with a controlled grade authorization. Due to these delays, the applicant is now a year behind his peer group for promotion consideration to the next higher grade.

2. A review of the applicant's available service records reflects the following:

a. After serving as an enlisted Soldier, on 13 December 2010, the NGB issued Special Orders Number 275 AR announcing Federal recognition of the applicant's initial appointment as a commissioned Officer in the [REDACTED] ARNG effective 28 August 2010 at the rank of second lieutenant (2LT)/O-1.

b. On 28 June 2012, the NGB issued Special Orders Number 234 AR, announcing Federal recognition of the applicant's promotion to first lieutenant (1LT)/O-2 with a 5 March 2012 effective DOR.

c. On 11 September 2014, the NGB issued Special Orders Number 255, announcing Federal recognition of the applicant's promotion to captain (CPT)/O-3 with a 8 September 2014 effective DOR.

d. On 29 June 2017, the NGB issued Orders Number 180-01 ordering the applicant to active duty in the AGR program effective 1 August 2017.

e. On 16 November 2020, the NGB issued Special Orders Number 339, announcing Federal recognition of the applicant's promotion to captain (CPT)/O-2 with a 30 October 2020 effective DOR.

3. The applicant provides the following a:

a. NGB Form 89 (Proceedings of Federal Recognition Examining Board), 18 March 2020, reflective of the completion of the applicant's Federal recognition board on 18 March 2020, further recommending that he be granted Federal recognition.

b. Memorandum – Subject: Fiscal Year 2020 (FY20), Title 10 (T10) Army National Guard (ARNG) Active Guard Reserve (AGR), MAJ Promotion Recommendations, 18 November 2019, reflective of the applicant being recommended for promotion to MAJ. Paragraph 5 provides that States are only authorized to promote AGR officers when the assignments and controlled grades are available. Human Resource Officers are required to forward a promotion voucher memorandum to the State after the Officer is serving in a higher-grade position and a voucher is available to accommodate the promotion.

c. Memorandum – Subject: FY20, ARNG T10 AGR, MAJ Promotion Recommendation Review (PRR) Announcement, 11 October 2019, reflective of the applicant be placed 1 of 3 Soldiers in the Logistics Career Field.

d. Memorandum – Subject: Request for Federal Recognition DOR Adjustment,

24 February 2020, reflective of the applicant's submitted request for Federal recognition of his promotion to MAJ with a DOR adjusted from 30 October 2020 to on/before 30 July 2020 citing that the [REDACTED] ARNG OPM experienced challenges during the COVID-19 pandemic restrictions which prevented his timely placement on a promotion scroll for Federal recognition in a timely manner. The applicant provides a timeline noting that he was notified on 18 November 2019, that a control grade voucher was available, and his promotion packet would be submitted to the [REDACTED] ARNG for processing. The applicant was not assigned to a scroll until 9 June 2020 which was later approved on 30 October 2020.

e. Orders Number 825791, 19 November 2020, reflective of the applicant being promoted to MAJ by the State on 30 October 2020.

f. Email communication, reflective of chronological communication pertaining to the processing of the applicant's request for Federal recognition dating back to December 2019. On 9 June 2020, the applicant was advised that he was on scroll PL22-20. On 24 September 2020, the applicant notes that his packet has been processing for 98 days. This communication is further provided in its entirety within the supporting documents for the board member's review.

4. On 25 June 2024, the NGB, Chief, Special Actions Branch provided an advisory opinion recommending partial approval of the applicant's request noting that the promotion process was not delayed an undue amount during the [REDACTED] ARNG process. However, after review of the scrolling process the packet was placed on scroll P22-20 and was published 134 days later. 134 days is slightly longer than the 100 days currently required for the scrolling process to be completed. Therefore, the applicant's DOR should be backdated to 18 September 2020 to account for this delay.

5. On 10 July 2024, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments. As of 6 August 2024, the applicant has not responded.

#### 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. and the advisory opinion from the National Guard Bureau (NGB), Chief, Special Actions Branch. In concurrence with the advisory official's recommendation for partial relief, the Board concluded that the promotion process within the North Carolina Army National Guard ([REDACTED] ARNG) was not subject to undue delay. However, upon

analysis of the scrolling process, it was noted that the applicant’s packet was placed on scroll P22-20 and published after 134 days—slightly exceeding the 100-day benchmark for processing.

2. Given this modest delay, the Board determined that the applicant’s date of rank (DOR) to major (MAJ)/O-4 should be adjusted to 18 September 2020 to reflect a more equitable timeline. The Board further evaluated the applicant’s request to backdate the DOR to 9 June 2020 and found that justification for such a revision was insufficient. Therefore, the Board granted partial relief, adjusting the applicant’s DOR to 18 September 2020.

3. 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:

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 DOR to MAJ as 18 September 2020. Recommend DFAS–IN determined exact arrears payment.

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) adjustment to major (MAJ)/O-4 to be backdated to “9 June 2020” vice “30 October 2020.


<p>CHAIRPERSON</p>

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. NGR 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions) provides policies and procedures governing the appointment, assignment, temporary Federal Recognition, Federal Recognition, reassignment, transfers between States, branch transfers, area of concentration etc. of commissioned officers in the ARNG.

a. Paragraph 8-3 (Promotion as a Reserve Commissioned Officer of the Army) provides that an Officers effective date and date of rank as a Reserve of the Army will be determined by their duty status, type of selection board which selected the Officer, and delay status (if applicable). Chief, NGB will extend federal recognition in the higher grade to an ARNG Officer utilizing NGB Form 0122e (NGB Special Federal Recognition Orders). The DOR is the date the Officer actually or constructively was appointed or promoted to a specific grade. If and AGR officer is recommended for promotion by a Department of the Army Board to the rank of LTC and below, is already assigned to the next higher-grade position the day the board is approved and the AGR control grade is

available, the Officer's effective DOR will be the date the report is approved by the Secretary of Defense (SECDEF).

b. Paragraph 8-16 (Federal Recognition for promotion after Department of the Army Mandatory Board Selection) provides that an ARNG commissioned officer selected for promotion as a Reserve commissioned officer may be extended Federal Recognition in the higher grade provided, they meet the promotion eligibility criteria as outlined in this chapter.

2. Title 10 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 FEDREC in the next higher grade in the ARNG or the Air National Guard shall be the date on which such FEDREC in that grade is so extended. (2) 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; 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. AR 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 applicant's 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//