

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 August 2024

DOCKET NUMBER: AR20230014997

APPLICANT REQUESTS:

- Correction of his date of rank (DOR) for his promotion to captain (CPT)
- Personal Appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Orders B-02-700882 Promotion to first lieutenant (1LT) and amending orders 21 February 2017 and 26 August 2020
- Military Personnel (MILPER) Message 19-047, 8 February 2019
- MILPER Message 20-009, 10 January 2020
- Army Board for Correction of Military Records (ABCMR) Decision AR2017009537, 2 July 2020
- Orders B-12-008497 Promotion to CPT, 9 December 2020
- Memorandum DOR Correction (Special Selection Board (SSB)), 4 January 2021
- Memorandum SSB Results, 4 October 2022
- Letter from U.S. Army Human Resources Command (AHRC) to Representative, 28 September 2023

FACTS:

1. The applicant states:

a. Administrative errors by various Army entities have delayed and derailed his promotions to 1LT and now CPT. The attached ABCMR decision from 2017, along with the SSB, show the Army was at fault for the delays in his promotion.

b. AHRC refuses to rectify the issue by using protocol as an excuse without considering the injustice that has been done to his career and promotion timeline. As it currently stands, he is one year behind his peers in the promotion timeline and at a loss of approximately \$12,000 in potential backpay.

c. He commissioned as a second lieutenant (2LT) in May 2014. He was qualified and eligible for promotion to 1LT in November 2015, the Army National Guard (ARNG) failed to promote him due to administrative errors.

d. He transferred to the U.S. Army Reserve (USAR) in 2016. He was promoted to 1LT in January 2017. He requested his DOR be backdated to November 2015. He exhausted lower levels of support before being told to go through the ABCMR to backdate his rank.

e. The ABCMR responded in 2020 with a favorable decision, backdating his 1LT DOR to November 2015. The ABCMR determined the National Guard was at fault for failing to promote him and that there was no reason he should not have been promoted on time.

f. Because of the delayed ABCMR decision, he had missed the chance to go to the CPT Board in 2019 because with a January 2017 DOR for 1LT, he was not eligible. He went through the CPT board in 2020 and was promoted in October 2020.

g. In April 2021, he requested his DOR for CPT be backdated to October 2019 considering the ABCMR decision, which places him in an earlier promotion window due to an earlier 1LT DOR. He was advised to submit his request to the SSB, which he did. The SSB Convened in October 2022 and stated he was selected for promotion to CPT under the 2019 board. The letter states AHRC would backdate his DOR. However, AHRC refuses to backdate his DOR because he was not in a CPT billet in 2019. He was not in a CPT billet in 2019 because he had no reason to be. His 1LT DOR was still January 2017, at the time because the ABCMR had not rendered its decision, and therefore, he was not on track for a promotion, like he was in 2020.

h. The ABCMR and SSB Decisions combined rectify his promotion eligibility and timeline issues, but AHRC refuses to adequately consider these facts in making a just and reasonable decision concerning his DOR. The use of the phrase "catch 22" is appropriate for describing the situation AHRC has placed him in.

i. AHRC says his CPT DOR can only be backdated if he was in a CPT billet. At the time, he had no reason to be in the billet, because of mistakes the Army made with his 1LT Promotion. If the Army had not failed to promote him on time to 1LT and the ABCMR had rendered its favorable decision earlier, he would have been eligible for promotion to CPT in 2019 as the SSB results states he was qualified. Given these facts, he believes that it is just and reasonable to backdate his CPT DOR to 2019.

2. The applicant provides the following documents:

a. MILPER Message 19-047, 8 February 2019, announcement of the fiscal year (FY) 2019, Reserve Component (RC) Army Reserve Active Guard Reserve (AR AGR) AR Non-AGR and Army Reserve National Guard of the United States (ARNGUS) CPT, Army Promotion List (APL), Competitive Categories, Promotion Selection Boards (PSB), states the zones of consideration for the board consists of all Reserve Active Status List (RASL) 1LTs whose DOR falls within:

- AR AGR and Non-AGR above the zone 31 August 2015 and earlier
- Promotion Zone 1 September 2015 through 31 August 2016
- ARNGUS above the zone 31 August 2014 and earlier
- Promotion Zone 1 September 2014 through 31 August 2015

b. MILPER Message 20-009, 10 January 2020, FY 2020, RC AR AGR, AR Non-AGR, and ARNGUS CPTAPL, Competitive Categories, PSB Zones of Consideration, states the zones of consideration for the board consists of all Reserve Active Status List (RASL) 1LTs whose DOR falls within:

- AR AGR and Non-AGR above the zone 31 August 2016 and earlier
- Promotion Zone 1 September 2016 through 31 August 2017
- ARNGUS above the zone 31 August 2015 and earlier
- Promotion Zone 1 September 2015 through 31 August 2016

c. ABCMR Decision AR2017009537, 2 July 2020, states the Board determined the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommended all Department of Army records of the applicant be corrected by amending Orders B-092-700882, published by AHRC, 21 February 2017, promoting him to 1LT to reflect effective date and DOR as 15 November 2015 vice 23 January 2017.

d. Memorandum DOR Correction (SSB), 4 January 2021, wherein he requested his DOR for his promotion to CPT be amended to be on par with the FY 2019 RC CPT APL PSB Results. He explained why he was ineligible for the 2019 APL PSB and the ABCMR decision, which corrected his 1LT DOR. The entire memorandum is available for the Board's review.

e. Memorandum SSB Results FY 2019, 4 October 2022, states he was considered and selected for promotion by a SSB to CPT under the criteria and instructions established for the regularly constituted FY 2019 CPT APL AR Non-AGR PSB. The entire memorandum is available for the Board's review.

f. Letter from AHRC to United States Representative, 28 September 2023, which states:

(1) The applicant (by his own accord) was provided with clear and concise explanations and instructions to remedy his situation after transferring from the ARNG to the USAR Troop Program Unit (TPU) to include the completion of his SSB results.

(2) AHRC would not speak on the ARNG policies or processes governing its actions on when or how it will promote. At the time, he was assigned to the ARNG, it was solely responsible for his promotion, DOR and effective date (unless proven otherwise ineligible).

(3) In lieu of the SSB results mentioned recommending and approving his nomination to CPT under the FY 2019 criteria does not negate AHRC responsibilities to affirm, validate or forgo additional requirement criteria set forth in Army regulation (AR) 135-155 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers) to promote him as a USAR TPU officer.

(4) If eh believed that an injustice had occurred and he had been treated unfairly, AHRC recommended he request relief from the ABCMR. The entire letter is available for the Board's review.

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

a. NGB Form 337 (Oaths of Office) shows he took the oath of office in the ARNG as a 2LT on 14 May 2014.

b. Orders B-02-700882, published by AHRC, 21 February 2017 promoted him to 1LT with an effective date and DOR of 23 January 2017. Orders B-02-700882, published by AHRC, 26 August 2020, corrected the effective date and DOR to 15 November 2015.

c. Orders B-12-008497, published by AHRC, 9 December 2020, promoted him to CPT with effective date and DOR of 28 October 2020.

4. On 29 May 2024, the Chief, RC Officer Promotions Board Announcements, Support and Promotions Orders, provided an advisory opinion, which states:

a. Based on a review of the information provided, AHRC records, laws, regulations, policies, and the systems available to AHRC Officer Promotions, they find his request may have merit in part.

b. His awarded effective date of 28 October 2020 is bases on a FY 20 PSB selection and assignment to the higher-grade position in accordance with AR 135-155, Chapter 3, Managing Promotions and Chapter 4, Precedence and DOR.

c. However, had his 1LT DOR been correct prior to the previous ABCMR directive, he could have been considered, selected, and approved by the originally scheduled FY 19 CPT APL PSB in lieu of the SSB, therefore there may have been more than a reasonable chance that he could have been assigned to a higher grade position beforehand.

d. For that reason, in fairness, AHRC recommended his DOR and effective date be adjusted to the original approval date of the FY 19 APL PSB, 9 September 2019 (SSB select) and he be granted full relief with backpay and any associated adjustments of record for entitlements (unless proven otherwise ineligible).

5. On 14 June 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. On 18 June 2024, he responded stating, in pertinent part, he wholeheartedly concurred with AHRC's recommendation.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The applicant joined the ARNG as a 2LT on 14 May 2014. He was not timely promoted to 1LT due to administrative errors by the ARNG and/or NGB. His promotion was corrected via an ABCMR decision that corrected the effective date and DOR to 1LT to 15 November 2015. He was considered for promotion under the FY20 PSB and was selected for promotion to CPT. He was later issued Orders B-12-008497, by AHRC on 9 December 2020, promoting him to CPT, effective date and DOR of 28 October 2020.

b. His awarded effective date of 28 October 2020 is based on a FY20 PSB selection and assignment to the higher-grade position in accordance with AR 135-155. However, had his 1LT DOR been correct prior to the previous ABCMR directive, he could have been considered, selected, and approved by the originally scheduled FY19 CPT APL PSB in lieu of the SSB. The Board agreed that there may have been a reasonable chance that he could have been assigned to a higher grade position beforehand. Therefore, as a matter of equity and fairness, the Board determined his DOR and effective date should be adjusted to the original approval date of the FY19 APL PSB, which is 9 September 2019 (SSB select) and he be granted full relief with backpay and any associated adjustments of record for entitlements, provided all other criteria is met.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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 amending Orders B-12-008497, published by AHRC on 9 December 2020, to show the applicant is promoted to CPT with an effective date and DOR of 9 September 2019.

8/8/2024

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CHAIRPERSON

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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. The ABCMR may correct an officer's date of rank/effective date of rank when a proper appointment has already occurred.

a. Title 10 USC 624 and 741 provide for situations in which properly appointed officers are provided "backdated" dates of rank and effective dates to remedy errors or inequities affecting their promotion. The authority to remedy these errors or inequities is given to the Service Secretaries.

b. DODI 1310.01 (23 August 2013) provides that a Service Secretary may "adjust the date of rank of an officer . appointed to a higher grade .if the appointment of that officer to the higher grade is delayed by unusual circumstances."

c. What constitutes "unusual circumstances" will, generally, be for the Board to determine based on the available evidence, which often includes an advisory opinion.

d. There may be cases (specifically correction of constructive credit that affects original appointment grade) where relief is not possible because an appointment to a higher grade has not yet occurred. In those cases, the Board should be advised of the limits of its authority. The Board may also be advised that the applicant can submit a request for reconsideration after he or she has been appointed to a higher grade.

2. 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//