

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230015229

APPLICANT REQUESTS: in effect,

- adjustment of his Date of Rank (DOR)/grade for major (MAJ)/O-4 to September 2019 versus 14 November 2023
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Secretary of the Army Memorandum, Subject: Promotion Review Board (PRB) RP2002-07, Fiscal Year 2019 (FY19) MAJ, Army National Guard of the United States (ARNGUS), Army Promotion List (APL) Competitive Category (CC), Promotion Selection Board (PSB)
- DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG))
- DA Form 1559 (Inspector General (IG) Action Request) to U.S. Army Human Resources Command (AHRC) IG
- E-mail from AHRC Officer Promotions Branch
- DA Form 1559 to the National Guard Bureau (NGB) IG
- E-mail from AHRC IG
- E-mail with NGB IG

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 a flag was initiated on him when he was on active duty with the Regular Army (RA) for an action he did not do. After his transfer to the Army National Guard (ARNG) he was selected for promotion to the rank/grade of MAJ/O-4 on the FY19 PSB; however, the flag was never removed. In 2020, the Secretary of the Army directed his retention on the FY19 MAJ ARNGUS APL CC PSB. But the flag was never removed by the ARNG. Nearly, four years later he was selected again for promotion to

the rank of MAJ on the FY23 MAJ PSB, but the flag still remained and his records were to be reviewed again by a Special Selection Review Board (SSRB) due to the negligence of the NGB to remove the flag at the direction of the AHRC. However, the flag was finally removed and he was promoted to the rank/grade of MAJ/O-4 with an effective date and DOR of 14 November 2023. Due to no fault of his own, he requests his effective date and DOR for MAJ/O-4 be adjusted to September 2019.

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

a. With prior enlisted U.S. Army Reserve (USAR) service, on 5 March 2008, Orders Number 65-60-A-1242, issued by Headquarters (HQs), U.S. Army Cadet Command, the applicant was ordered to active duty effective 21 December 2008 for a 7-year active duty commitment.

b. On 17 May 2008, the applicant executed his oath of office and was appointed as a Reserve officer in the rank/grade of second lieutenant (2LT)/O-1.

c. The applicant's DA Form 1059 (Service School Academic Evaluation Report) shows the applicant achieved course standards for Basic Officer Leader Course during the period of 14 January through 19 May 2009.

d. On 10 June 2011, Orders Number 161-170, issued by HQs, AHRC, the applicant was promoted to the rank/grade of captain (CPT)/O-3, effective 1 July 2011.

e. The applicant's DA Form 1059 shows he achieved course standards for the Maneuver Captain Career Course during the period of 28 March through 29 August 2012.

g. On 23 April 2018, the applicant was honorably released from active duty. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 9 years, 10 months, and 8 days of active service.

h. On 24 April 2018, the applicant executed his oath of office and was appointed in the ARNG in the rank/grade of CPT/O-3 and was extended a temporary Federal recognition.

i. On 19 July 2018, Special Orders Number 161, issued by the NGB, the applicant was transferred from the USAR, effective 24 April 2018, in the rank of CPT with a DOR of 1 July 2011.

j. On 27 March 2020, the Secretary of the Army retained the applicant on the FY19 MAJ ARNGUS, APL. CC, PSB.

k. On 7 December 2023, Special Orders Number 415, issued by the NGB, the applicant was promoted to the rank/grade of MAJ/O-4, effective on with a DOR of 14 November 2023.

l. On 2 February 2024, Special Orders Number 55, issued by the NGB, the applicant was transferred from the State of MA to the State of MD ARNG, effective 20 July 2023.

4. The applicant provides:

a. DA Form 268 dated 13 May 2020 which shows the flag was removed and the case closed favorably effective 9 July 2019 which was signed by the Headquarters Department of the Army (HQDA) Promotions Adverse Actions Branch.

b. DA Form 1559 shows the applicant requested AHRC IG to investigate why his promotion had been delayed in the Officer Promotion Branch for 4-years and why the flag from when he was on active duty had not been removed. The flag was initiated on him when he was on active duty with the Regular Army (RA) for an action he did not do. After his transfer to the ARNG he was selected for promotion to the rank/grade of MAJ/O-4 on the FY19 PSB; however, the flag was never removed. In 2020, the Secretary of the Army directed his retention on the FY19 MAJ ARNGUS APL CC PSB. But the flag was never removed by the ARNG. Nearly, four years later he was selected again for promotion to the rank of MAJ on the FY23 MAJ PSB, but the flag still remained and his records were to be reviewed again by a Special Selection Review Board due to the negligence of the NGB to remove the flag at the direction of the AHRC. However, the flag was finally removed, and he was promoted to the rank of MAJ/O-4 with an effective date and DOR of 14 November 2023. Due to no fault of his own, he requests his effective date and DOR for MAJ/O4 be adjusted to September 2019.

c. Email dated 27 September 2023 from the HQDA Officer Promotions Branch which stated the PRB results were sent to the applicant's email address which was on file for closure of the case. The Reserve components team at AHRC does not process promotions for ARNG officers and the results of the PRB was not forwarded to the NGB for processing. All promotion documents for the previous PRB for retain closure had been sent to the NGB and consultation with HQDA G1 is ongoing to resolve the issue and get his promotion processed with the NGB.

d. DA Form 1559 shows the applicant requested the NGB IG to investigate why his promotion had been delayed in the Officer Promotion Branch for 4-years and why the flag from when he was on active duty had not been removed. He restated in this request the same information provided in the AHRC IG request.

e. E-mail dated 20 October 2023 from the AHRC IG noncommissioned officer stated the following information had been proved from the Chief of Officer Promotions Special Actions; the applicant went through a PRB for the FY19 RC MAJ APL and the Secretary of the Army retained him on 27 March 2020. His case manager notified him via official military -mail on 13 May 2020. It appeared the NGB did not receive or process his promotion based on the PRB closure. He should have been promoted and in no way should previous adverse/derogatory information be re-adjudicated. A request had been sent to process an administrative closure on the SSRB and an inquiry to the NGB to affect his promotion.

f. E-mail dated 24 October 2023 from the NGB IG office which stated once his request for assistance is assigned to an action office, someone would reach out to him.

5. On 22 July 2024, in the processing of this case, the NGB, provided an advisory opinion regarding the applicant's request for the adjustment of his DOR for MAJ to September 2019. The advisory official recommended approval of the applicant's request. A flag removal was sent to the NGB by HQDA promotion adviser actions signed on 13 May 2020 with an effective date of 9 July 2019. The applicant should have been promoted in September 2019 after his packet was seen by a PRB and was retained on the PSB APL on 27 March 2020. He was not promoted due to miscommunications of no fault of his own. The flag was not removed and erroneously prevented his promotion. His effective date and DOR for MAJ should be September 2019. The NGB Federal recognition branch concurred with the advisory.

6. On 23 July 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

7. On 5 August 2024, the applicant responded, expressing his appreciation and concurrence with the NGB recommendation to approve backdating his promotion to MAJ to September 2019.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. The Board reviewed and concurred with the National Guard Bureau's (NGB) advisory opinion finding the applicant was not selected for promotion to major (MAJ)/O-4 due to a Criminal Investigation Division (CID) suspension of favorable action (FLAG) imposed in September 2019, while on active duty. The FLAG was removed on and forwarded to NGB on 13 May 2020 with an effective date of removal of 19 July 2019. The applicant should have been selected for promotion during the September 2019 promotion board.

The Board concluded the applicant's date of rank should be adjusted to 1 September 2019.

2. 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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by issuing the applicant a Special Order extending his Federal recognition for promotion to MAJ with an effective date and date or rank as 1 September 2019, with entitlement to back pay and allowances (if applicable) as a result of this correction.

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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. Army Regulation (AR) 15-185 (Army Board for Correction of Military Records (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 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.

3. AR 135-155 (Promotion of Commissioned Officer and Warrant Officers Other Than General Officers), in effect at the time, prescribes policy and procedures used for selecting and promoting commissioned officers (other than commissioned warrant officers) of the Army National Guard of the United States (ARNGUS) and of commissioned and warrant officers (WO) of the U.S. Army Reserve (USAR).

a. Paragraph 2-8 (Military educational requirements), to qualify for selection, commissioned officers (other than commissioned warrant officers) must complete the military educational requirements in table 2-2 not later than the day before the selection board convene date.

b. Paragraph 2-10 (Mandatory selection boards), b. First consideration for promotion will occur well in advance of the date the officer will complete the Time in Grade (TIG) requirements in tables 2-1 or 2-3, as appropriate. This may allow officers in the grades of 1LT through MAJ to be promoted on or before their maximum TIG. c. Subsequent consideration, those officers who were not selected for promotion on the first consideration, and who remain in an active status, will be reconsidered by the next board considering their grade and/or branch. d. Below the zone consideration. The Secretary of the Army may, when the needs of the Army require, authorize the consideration of officers for promotion to the next higher grade from below the promotion zone.

**Table 2–1, Time in grade requirements commissioned officers, other than commissioned warrant officers**

| From  | To    | Minimum Years in lower grade | Maximum Years in lower grade |
|-------|-------|------------------------------|------------------------------|
| (2LT) | (1LT) | 2                            | 42 months                    |
| (1LT) | (CPT) | 2                            | 5                            |

|       |       |   |                   |
|-------|-------|---|-------------------|
| (CPT) | (MAJ) | 4 | 7                 |
| (MAJ) | (LTC) | 4 | 7                 |
| (LTC) | (COL) | 3 | (See note below.) |

Notes: Announced annually. Normal time in grade is 5 years, subject to the needs of the Army.

**Table 2-2**

| From | To  | Requirements                   |
|------|-----|--------------------------------|
| 2LT  | 1LT | Resident officer basic course. |
| 1LT  | CPT | Resident officer basic course. |
| CPT  | MAJ | Any officer advanced course.   |

c. Paragraph 4-5 (Army National Guard of the United States promotion), a. An ARNGUS officer extended Federal recognition in a higher grade will be appointed in the same grade as a Reserve commissioned officer of the Army by memorandum published by the Chief, NGB. b. ARNGUS commissioned officers (other than commissioned warrant officers) who are on a promotion list resulting from a mandatory promotion board will be extended Federal recognition in the higher grade. This will be without examination by a Federal recognition board when the officer is appointed in the State in that higher grade to fill a vacancy in the Army National Guard.

d. Paragraph 4-11 (Selected for Promotion), a. An officer who has been recommended for promotion to the next higher grade must meet the requirements listed below before being promoted in the Reserve components. The officer must:

- Be on the Reserve Active Status List (RASL) or, if a WO of any grade, serving in an active status
- Be in the zone of consideration listed in tables 2-1 or 2-3, as appropriate
- Be medically qualified
- Have undergone a favorable security screening
- Meet standards of the Army Body Composition Program
- Be a satisfactory participant as defined in paragraph 2-7

b. The effective date of the promotion will be computed as prescribed in section III. c. An officer's promotion is automatically delayed when the officer is under investigation that may result in disciplinary action of any kind being taken against them.

e. Paragraph 4-15, the effective date of the promotion may not precede the date on which the promotion memorandum was issued. Do not issue the promotion memorandum before the date the promotion board results are approved and confirmed by the Senate, if required. The officer must already be assigned to a position in the

higher grade or have completed the maximum years of service in grade in the current grade.

f. Paragraph 4-17 (Promotion eligibility date and date of rank), b. DOR. The DOR is the date the officer actually or constructively was appointed or promoted to a specific grade.

g. Paragraph 4-18 (DOR and effective date of promotion after an involuntary delay), only the Secretary of the Army is authorized to determine whether an officer was unqualified for promotion during any part of an involuntary delay of promotion. Accordingly, except as provided herein, only the Secretary of the Army may determine whether an adjustment must be made to an officer's DOR and effective date of promotion.

h. Paragraph 4-21 (Effective dates), promotion of unit officers, (2) Unit officers selected by a mandatory board will have a promotion date and effective date no earlier than the date the board is approved or the date of Senate confirmation (if required), provided they are assigned to a position in the higher grade. When the board approval or, if required, Senate confirmation is before assignment to the position in the higher grade, the effective date and the date of promotion will be the date of assignment to the higher graded position.

4. National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions), prescribes policies and procedure governing the assignment, Federal recognition, utilization of commissioned officer of the ARNG.

a. Paragraph 8-1b. National Guard officer may be considered and found qualified for Federal recognition of their State promotion using two distinct processes: State Federal Recognition Board and Department of the Army (DA) Mandatory Boards. Under either process, the precedent for an actual promotion in the ARNG is State assignment and appointment to the next higher grade.

(1) State Federal Recognition Boards (FRB), officer may be federally recognized through State FRB which are often referred to a State vacancy promotion boards or unit vacancy boards as part of the UVP process.

(2) DA Mandatory Boards, the second way to federally recognize the State promotion is through the DA Mandatory Selection Boards process. Mandatory promotion selection boards are convened by the Secretary of the Army. Those National Guard officers selected by a DA mandatory board who are then appointed by the State in that higher grade to fill a vacancy in the ARNG are extended Federal recognition in that grade.



b. Paragraph 8-2 (Promotion criteria), promotion criteria will be based on efficiency, TIG, time in commissioned service, demonstrated command and staff ability, military education and civilian education and potential for service in the next higher grade. Promotion will not be used solely as a reward for past performance. All officers recommended for promotion must be fully qualified under the terms of this chapter and AR 135-155.

c. Paragraph 8-7 (Eligibility for promotion), a. to be considered for Federal recognition following State promotion to fill a unit vacancy, an ARNG commissioned officer must:

- be in an active status for a minimum of one consecutive year immediately preceding promotion consideration
- be medically fit and meet the height and weight standards
- have completed the minimum years of TIG
- have completed the minimum military education
- completed the minimum civilian education

States will not promote a commissioned officer who is in the zone of consideration for a DA Selection Board if they are within 120-days of the convening date of the board for those officers in the grade of 1LT through MAJ. Any officer in the rank of 1LT through LTC who was non-selected by a mandatory selection board will not be considered for promotion under this section unless selected by a subsequent DA mandatory board.

d. Paragraph 8-8 (Minimum years of time in trade for promotion eligibility), a commissioned officer must complete the TIG prior to being considered for promotion and Federal recognition in the higher grade. For promotion eligibility from CPT to MAJ the minimum time in grade is 4-years.

e. Paragraph 8-10 (Military education requirements for promotion), applicable to all ARNG officers, for promotion to the rank of MAJ the minimum military education is the completion of Captain Career Course or any officer advanced course.

f. Paragraph 8-14 (Consideration for promotion by a mandatory selection board), a commissioned officer will be considered for promotion by a DA mandatory board when the officer meets the minimum TIG requirements. Consideration for promotion by a DA mandatory selection board will occur during the year prior to the year the officer reaches maximum TIG. The provisions of AR 135-155 will apply.

g. Paragraph 8-15 (Time in grade for mandatory consideration for promotion), the maximum time in grade in years for mandatory promotion consideration for officer in the rank of CPT being considered for promotion to MAJ is 5-years.

5. 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//