

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20230015305

APPLICANT REQUESTS:

- correction of her date of rank (DOR) to the rank of chief warrant officer four (CW4) to reflect 23 December 2019 vice 9 October 2020
- back pay
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 1059 (Service School Academic Evaluation Report), 24 March 2014
- Special Orders Number 379, 29 December 2014
- Memorandum, Subject: Modification to National Guard Regulation (NGR) 600-101 (Warrant Officers Federal Recognition and Related Personnel Actions), Chapter 7, Table 7-1, Minimum Time-in-Grade (TIG) for Promotion Eligibility – Personnel Policy Operational Memorandum (PPOM) Number 19-029, 4 June 2019
- Unit Manning Report (UMR), 3 November 2019
- Memorandum, Subject: Revision of Minimum Warrant Officer Education System (WOES) Requirements for Promotion Eligibility – PPOM Number 19-042, 22 November 2019
- DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)), 28 April 2020
- Special Orders Number 313 AR, 19 October 2020
- Memorandum, Subject: Request for DOR Change, 25 July 2023
- Email correspondence

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 on 23 December 2019, she was fully qualified, eligible, and in full compliance with all requirements for promotion to the rank of CW4 in accordance with National Guard Bureau (NGB), ARNG-HRH, PPOM Number 19-029 (Modification to NGR 600-101, Chapter 7, Table 7-1, Minimum TIG for Promotion Eligibility), dated 4 June 2019 and NGB, ARNG-HRH, PPOM Number 19-042 (Revision of Minimum WOES Requirements for Promotion Eligibility), dated 22 November 2019. She was promoted to chief warrant officer three (CW3) on 23 December 2014, after completion of the Warrant Officer Advanced Course (WOAC). At the time of her promotion to CW3, she was already occupying a CW4 position (enclosed UMR). On 22 November 2019, PPOM Number 19-042 (enclosed) entered in effect and stated that "minimum WOES requirement for promotion from CW3 to CW4 is WOAC." On 23 December 2019 she completed five years as CW3, which is the minimum TIG required for promotion to CW4, in accordance with PPOM Number 19-029 (enclosed). Nevertheless, despite meeting all the regulatory requirements for advancement, she was not considered for promotion until completion of Warrant Officer Intermediate Level Education (WOILE), which is one of the requirements for promotion to CW5. She was finally promoted to CW4 on 9 October 2020. In addition to complying with the minimum requirements for promotion established in the references above, she included copies of her OER during her time served as CW3, which demonstrates that she was technically and tactically proficient with potential for service as CW4. She also provided the WOAC and WOILE DA Forms 1059 for reference.

3. A review of the applicant's service records show:

a. Having prior enlisted service with the Puerto Rico Army National Guard (PRARNG), on 20 May 2010:

(1) She was appointed as a Reserve warrant officer and executed an oath of office in the rank of warrant officer 1 (WO1).

(2) NGB Form 337 (Oaths of Office) shows she was appointed as a Reserve warrant officer with the PRARNG and executed an oath of office in the rank of WO1.

b. On 21 May 2010:

(1) The Puerto Rico National Guard Element, Joint Forces Headquarters issued Orders Number 141-501 honorably discharging her from the ARNG and as a reserve of the Army with a retroactive effective date of 19 May 2010.

(2) The Puerto Rico National Guard Element, Joint Forces Headquarters issued Orders Number 141-503 appointing her in the ARNG in the rank of WO1 with a retroactive effective date of 20 May 2010 with a DOR of 8 April 2008.

c. On 24 May 2010, the Puerto Rico National Guard Element, Joint Forces Headquarters issued Orders Number 144-502 amending Orders Number 141-503 to reflect the DOR as 20 May 2010.

d. On 19 July 2010, the NGB issued Special Orders Number 154 AR for Federal Recognition of her initial appointment in the National Guard with a retroactive effective date of 20 May 2010.

e. DA Form 1059, dated 26 July 2010, shows she successfully completed Human Resources Warrant Officer Basic Course from 26 May 2010 to 27 July 2010.

f. On 28 July 2010, she accepted a Reserve warrant officer position and executed an oath of office in the rank of chief warrant officer 2 (CW2).

g. On 28 September 2010, the Puerto Rico National Guard Element, Joint Forces Headquarters issued Orders Number 271-533 for a change in military occupational specialty (MOS) to reflect 420A0 (Human Resources Technician) with a retroactive effective date of 27 July 2010.

h. DA Form 1059, dated 24 March 2014 shows she successfully completed the Human Resources WOAC from 2 February 2014 to 26 March 2014 in the rank of CW2.

i. On 29 December 2014, the NGB issued Special Orders Number 379 for Federal Recognition of her promotion to the rank of CW3 with a retroactive effective date of 23 December 2014.

j. On 19 October 2020, the NGB issued Special Orders Number 313 for Federal Recognition of her promotion the rank of CW4 with a retroactive effective date of 9 October 2020.

k. On 22 October 2020, the PRARNG, Army Element Joint Force Headquarters issued Orders Number 0000762408.00 promoting her to the rank of CW4 with a retroactive effective date of 9 October 2020.

l. She continues service with the PRARNG.

4. The applicant provides the following:

a. Memorandum, Subject: Modification to NGR 600-101, Chapter 7, Table 7-1, Minimum TIG for Promotion Eligibility – PPOM Number 19-029, dated 4 June 2019 showing the required TIG for CW3 to CW4 as 5 years.

b. UMR, dated 3 November 2019 showing the position she filled as a Human Resources Officer CW4 for her unit while in the rank of CW3.

c. Memorandum, Subject: Revision of Minimum WOES Requirements for Promotion Eligibility – PPOM Number 19-042, dated 22 November 2019 showing the minimum WOES requirement for CW3 to promote to CW4 is WOAC.

d. DA Form 67-10-2, dated 28 April 2020 showing for the period of 13 November 2018 to 12 November 2019 she was rated highly qualified as a Human Resources Officer and recommended for immediate promotion to the rank of CW4.

e. Memorandum, Subject: Request for DOR Change, dated July 2023 wherein she requested correction to her DOR to CW4 to reflect 23 December 2019 through the Acting Adjutant General of the PRARNG.

f. Email correspondence showing her attempts to correct her DOR change with no resolution and recommendation from the Senior Human Resources Technician for the PRARNG, G-1 to contact the Army Board for Correction of Military Records.

5. On 21 May 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending partial approval of the applicant's request stating:

a. The applicant requests a DOR adjustment to CW4 from 9 October 2020 to 23 December 2019.

b. She states she was eligible and qualified for promotion 23 December 2019 to the rank of CW4 per NGB, ARNG-HRH, PPOM Number 19-029, dated 4 June 2019 and NGB, ARNG-HRH PPOM Number 19-042, dated 22 November 2019. She had met the five-year TIG requirement and completed WOAC while also filling a CW4 billet however, was not considered by a Federal Recognition board (FEDREC) until after completion of WOILE, which is not required until promotion to CW5. She submitted officer evaluations reports, Unit Manning Document, DA Forms 1059, and referenced PPOMs for review.

c. After review of the applicant's submission and coordination with the PRARNG, the applicant had completed WOAC on 26 March 2014 and the five-year TIG requirements 23 December 2019 and was qualified for promotion to CW4. She was not considered at a FEDREC board until 14 May 2020, five months of undue delay at no fault of her own. The PRARNG recommends DOR adjustment to be effective 18 May 2020, the difference of the delay in being considered by a FEDREC board.

d. It is the recommendation of this office that the applicant's request be partially approved. She was eligible for CW4 per PPOM Number 19-029, dated 4 June 2019 and

PPOM Number 19-042, dated 22 November 2019 but was delayed in being considered by a FEDREC board for five months. Effective DOR of 18 May 2020 would correct the undue delay in consideration.

e. The PRARNG concurs with this advisory opinion.

6. On 28 May 2024, the applicant was provided with a copy of the advisory opinion and afforded an opportunity to respond.

7. On 11 June 2024, the applicant provided a rebuttal to the advisory opinion stating:

a. She respectfully requests a reconsideration on the advisory opinion for correction of her DOR to CW4 to be effective 23 December 2019. The reason this request is that although she met all requirements for promotion, including the five-year TIG requirement on 23 December 2019, NGR 600-101 stated that "an applicant may be examined for promotion no earlier than 120-days in advance of completing prescribed TIG requirements and all other requirements must be met by the time the FEDREC board convenes."

b. She should have been able to submit her board package to be reviewed by the FEDREC board within 120-days before 23 December 2019. However, she was not considered for a FEDREC board until 14 May 2020.

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 review based on law, policy, and regulation. The Board reviewed and concurred with the National Guard Bureau's advisory finding that the applicant's promotion was delayed due to no fault of the applicant. However, the applicant's board was not approved by the Federal Recognition Board until 19 May 2020; therefore, the Board majority concluded partial relief was warranted to amend the date of rank to chief warrant officer four to 19 May 2020 vice the requested date of 23 December 2019 and the current date of rank of 9 October 2020. The Board minority found that due to it being no fault of the applicant, full relief was warranted. Additionally, the Board determined the associated back pay and allowances was appropriate and deferred those calculations to the Defense Finance and Accounting Service.

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:

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 by issuing the applicant a Special Order extending him Federal recognition for promotion to CW4 with an effective date and date of rank as 19 May 2020, with entitlement to back pay and allowances, if applicable, as a result of this correction.

2. The Board further determined that 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 granting the applicant a date of rank sooner than the date annotated above.

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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. NGR 600-101 (Warrant Officers Federal Recognition and Related Personnel Actions) prescribes NGB policies and procedures governing the appointment, assignment, and management of Warrant Officers in the ARNG. It provides eligibility requirements, administrative procedures, application processing, and other related Warrant Officer personnel actions to include Military Occupational Specialty Code re-designation, promotion, civilian education, and FEDREC.

a. Paragraph 2-2 states FEDREC is the process to ensure Officers appointed by individual states meet the qualifications required for service in the Federal Armed Forces. Prior to extending FEDREC, the President of the United States (POTUS) or the Secretary of Defense acting on behalf of POTUS, must first approve the Reserve Warrant Officer of the Army appointment. When the state appointment is federally recognized, an ARNG Warrant Officer is concurrently appointed as a Reserve Warrant Officer of the Army.

b. Paragraph 2-3 states that temporary FEDREC may be extended to an officer who has been found qualified by a FEDREC board for appointment in the ARNG of a state pending receipt of permanent FEDREC and appointment as a Reserve Officer of the Army. Temporary FEDREC may be withdrawn when necessary at any time. Temporary FEDREC will automatically terminate one-year after the effective date of the state appointment unless sooner withdrawn or if official orders are issued. However, should the initial period of temporary FEDREC expire due to administrative processing delays, through no fault of the applicant, a subsequent FEDREC board must convene to consider granting another one-year period of temporary FEDREC.

c. Table 7-1 (Minimum TIG for Promotion) states for promotion from CW3 to CW4 the minimum TIG is 6 years and if coded in a higher grade position the member may be considered one year earlier.

d. Table 7-2 (Minimum WOES Requirements for Promotion, Time in Current Grade and Course Enrollment) shows for promotion to CW3 WOAC is required and for CW4 WOILE is required.

3. 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.

4. Title 10, USC, section 741 (Rank: commissioned Officers of the Armed Forces) states the Secretary concerned may adjust the DOR of an officer if the appointment of that officer to that grade is delayed from the date on which it would otherwise have been made by reason of unusual circumstances that caused an unintended delay in the processing or approval of the report of the selection board recommending the appointment of that officer to that grade or the processing or approval of the promotion list established on the basis of that report.

5. Title 10, USC, section 14308 (Promotions: how made) states:

a. The DOR of an officer appointed to a higher grade under this section may be adjusted in the same manner as an adjustment may be made in the DOR of an officer appointed to a higher grade.

b. A Reserve Officer is not entitled to additional pay or allowances if the effective date of the Officer's promotion is adjusted to reflect a date earlier than the actual date of the Officer's promotion.

c. The effective date of a promotion of a Reserve Commissioned Officer of the Army who is extended FEDREC in the next higher grade in the ARNG shall be the date on which such FEDREC in that grade is so extended.

d. If there is a delay in extending FEDREC in the next higher grade in the ARNG to a Reserve Commissioned Officer of the Army that exceeds 100 days from the date NGB deems such officer's application for FEDREC be completely submitted by the state and ready for review at 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 by the Secretary concerned, but not earlier than the effective date of the state promotion.

6. Army Regulation 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 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//