

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 March 2025

DOCKET NUMBER: AR20240007346

APPLICANT REQUESTS: promotion to the rank/grade of lieutenant colonel (LTC)/O-5 –

- upon being assigned to the LTC/O-5 position on 1 July 2018; or
- on his retirement and departure from the Active Guard/Reserve (AGR) program on 30 November 2019

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 290-803, 17 October 2006
- Special Orders Number 24 AR, 9 February 2010
- National Guard Bureau (NGB) Memorandum - Subject: Promotion as a Reserve Commissioned Officer of the Army, 12 February 2010
- Tennessee National Guard Memorandum - Subject: Results of the Fiscal Year 2015 (FY15) Department of the Army (DA) Reserve Component (RC) Selection Board LTC Army Promotion List (APL), 16 July 2015
- Tennessee National Guard Memorandum - Subject: Notification of Acceptance of Delay, 22 September 2017
- Applicant's election to delay promotion, 13 October 2017
- Memorandum for Record (MFR) - Subject: Command and Staff Assignments, 6 June 2018
- Orders Number 177-1055, 26 June 2018
- National Guard list of positions
- Officer Record Brief (ORB), 28 June 2019
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 November 2019

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. He should have held and retired at the rank of LTC. He was first time board selected for promotion to LTC and remained fully promotable (educationally qualified, physically qualified, good Officer Evaluation Report's, etc.) from 2015 to retirement, and he was assigned to and performing the duties of the position of an LTC for 1.5 years up to retirement.

b. In 2019, he retired quickly to take advantage of a civilian career opportunity and did not have time to look at the specific promotion/rank details. He recently learned that other board selected officers have had Dates-of-Rank (DOR) back-dated to the date they were assigned to the higher position. Upon review of USC, regulations and documents, and his own paperwork, it appears that he either should have been promoted upon being assigned to the LTC/O-5 position on 1 July 2018, or he should have been promoted upon his retirement and departure from the AGR program on 30 November 2019. If recalled to active duty due to a war or national emergency, he would better serve the Army in the rank/grade of LTC/O-5.

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

a. Having prior Army enlisted service, on 2 August 1998 –

- DA Form 71 (Oath of Office – Military Personnel) shows he was appointed as a Reserve commissioned officer and executed his oath of office
- National Guard Bureau (NGB) Form 337 (Oaths of Office) show he was appointed as a second lieutenant in the Tennessee Army National Guard (TNARNG) and executed his oath of office

b. On 12 December 2003, the TNARNG published Orders Number 346-067, which ordered the applicant to full time National Guard Duty in an AGR status for 3 years with a report date of 15 December 2003.

c. On 3 October 2005, the U.S. Army Human Resources Command (HRC) published Orders Number A-10-520507, which ordered the applicant to active duty in support of Operation Iraqi Freedom, with a report date of 9 November 2006.

d. On 17 October 2006, the Joint Force Headquarters, Tennessee National Guard published Order Number 290-803, which ordered the applicant to full time National Guard Duty in an AGR status for a voluntary indefinite period of duty, with a report date of 20 October 2006. On 27 November 2006, the order was amended by changing the Period of Duty to 1 month and 24 days (061020 – 061214/20 October 2006 – 14 December 2006).

e. On 4 April 2007, HRC published Orders Number A-10-520507A01, which amended Order Number A-10-520507, by changing the period of active duty to 131 days.

f. His record shows he served continuously in an AGR status until he was retired by reason of sufficient service for retirement.

g. On 12 February 2010, NGB memorandum shows the applicant was notified that he was promoted to the rank/grade of major/O-4 in the Reserve of the Army for service in the Army National Guard, effective with a promotion eligibility date (date or rank) of 3 February 2010.

h. On 13 October 2017, the applicant completed and signed a notification of involuntary delay under the provisions of Title 10, USC, section 14311(e), AGR officers are under automatic delay of promotion. He was an AGR officer and had been serving continuously since 15 December 2003. He understood if he was released or removed from AGR status and had not been previously promoted he must, (a) be promoted in as position vacancy or; (b) be transferred to the U.S. Army Reserve (USAR) to accept promotion or; (c) decline the promotion at which time he would be considered either a non-selection for promotion or a failure of selection. One of these options must be taken within any remaining period of time up to 3 years from his Promotion Eligibility Date. Enclosed were his AGR orders which indicated that he had been serving in an AGR status.

i. On 22 September 2017, the Joint Force Headquarters, Tennessee National Guard, G1/Deputy Chief of Staff, Personnel, approved indefinitely, as an AGR officer, the request to delay promotion for the applicant to the grade of LTC.

j. On 18 July 2019, the applicant requested to retire effective 1 December 2019. He indicated his Basic Active Service Date was 19 April 1999 and he would have over 20 years of Active Federal Service. He had 64.5 days accrued leave and would accrue 12.5 days leave before his retirement.

k. On 5 August 2019, Joint Force Headquarters, Tennessee National Guard published Orders Number 217-1018, which retired the applicant, effective 30 November 2019, and placed him on the retired list in the rank of MAJ, effective 1 December 2019. In pertinent part, the order shows:

- Retired grade/Date or rank – MAJ/3 February 2010
- Statute authorizing retirement – Title 10, USC, section 3911
- Retirement type and allotment code – Non-Disability/1

l. On 30 November 2019, the applicant was retired. His DD Form 214 shows in:

- Item 4a (Grade, Rate or Rank) – MAJ
- Item 12i (Effective Date of Pay Grade) – 3 February 2010
- Item 23 (Type of Separation) – Retirement
- Item 25 (Separation Authority) – Army Regulation (AR) 600-8-24 (Officer Transfers and Discharges), paragraph 6-13c(1)
- Item 28 (Narrative Reason for Separation) – Sufficient Service for Retirement

m. On 19 February 2020 –

- TNARNG published Order Number 0000207272.00, which transferred the applicant to the Retired Reserve, effective 1 December 2019
- NGB published Special Orders Number 49, which withdrew the applicants Federal Recognition, effective 1 December 2019

4. In support of his petition to the Board, the applicant provides:

a. Special Orders Number 24 AR dated 9 February 2010, published by NGB, which extended Federal Recognition in the Army National Guard to the applicant for his promotion to the rank of MAJ, effective 3 February 2010.

b. Tennessee National Guard Memorandum - Subject: Results of the FY15 DA RC Selection Board LTC APL, dated 16 July 2015, which shows the applicant was selected for promotion to LTC/O-5.

c. MFR - Subject: Command and Staff Assignments dated 6 June 2018, which shows the applicant was selected to be assigned as the "Secretary General's Staff" no later than 1 July 2018.

d. Orders Number 177-1055 dated 26 June 2018, published by Joint Force Headquarters, Tennessee National Guard, which assigned the applicant as the executive officer, paragraph line number 200-04, 1 July 2018

e. National Guard list of positions, wherein the applicant highlights an LTC/O-5 (paragraph 200, line number 04), executive officer position.

f. ORB dated 28 June 2019 showing the applicant's assignment information, assignment history, military education, civilian education, and awards and decorations.

5. On 29 May 2025, the National Guard Bureau, Chief, Special Actions Branch provided an advisory opinion for this case and recommended disapproval. The NGB official states:

a. The applicant states his rank upon separation is incorrect. He was Department of

the Army (DA) Board selected in 2015. The applicant states after reviewing United States Code (USC), regulation, documents, and his paperwork, he believes he should have been promoted to LTC prior to or at the time of separation from the Tennessee Army National Guard, 30 November 2019. He states that he served for a year and a half in an O-5/LTC grade position thus rendering him eligible, and should he return to service, he would serve the Army better as an O-5/LTC.

b. After review of the applicant's submission and discussion with TNARNG, and Army National Guard (ARNG) G1 Personnel Division, Federal Recognition Section, the applicant's request cannot be accommodated. The ARNG promotion system is vacancy based. To promote an officer in the ARNG, the Soldier must be assigned to a higher graded vacancy in accordance with National Guard Regulation (NGR) 600-100. There is an additional requirement for AGR Soldiers under NGR 600-100, chapter 8, paragraph 8-17a, which states the officer may be promoted at the higher grade when a controlled grade authorization becomes available or upon release from the AGR program. While the applicant was released from the program, his release was based on a voluntary retirement. In accordance with Title 10, USC, section 1370, the applicant would have had to serve as an O-5/LTC to retire as an LTC for 3 years or a minimum of 2 years if approved by the Secretary of Defense.

c. It is the recommendation of this office that the applicant's request be disapproved. TNARNG concurs with this recommendation.

6. On 30 May 2025, the applicant was provided with a copy of the NGB advisory opinion and supporting documents to allow for comments or rebuttal. He did not respond.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the findings and recommendations outlined in the NGB advisory, the concurrence from the TNARNG, and the lack of any rebuttal of those facts and recommendations submitted by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

//SIGNED//

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CHAIRPERSON

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 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.
3. AR 600-8-24 (Officer Transfers and Discharges) prescribes the officer transfers from active duty to the Reserve Component and discharge functions for all officers on active duty for 30 days or more. Section II (Voluntary Retirements), paragraph 6-13c (Approval authority) provides that guidance for retirement at 20 years of service is listed as follows: (1) A Regular Army or U.S. Army Reserve (USAR) commissioned officer with 20 years Active Federal Service (of which 10 years is active commissioned service may on their request and the approval of Secretary of the Army be retired (Title 10, USC, section 3911). A USAR officer does not have to be serving on active duty in commissioned status or in an active USAR status to be eligible under this paragraph.
4. National Guard Regulation 600-100 (Commissioned Officers – Federal Recognition and Related Personnel Actions), Chapter 8, paragraph 8-17a states the officer may be promoted at the higher grade when a controlled grade authorization becomes available, reassignment to an AGR position calling for the higher grade, or upon release from the AGR program.
5. Title 10, USC, section 1370; Retirement in highest grade in which served satisfactorily states, in order to be eligible for voluntary retirement under any provision of this title in a grade above the grade of captain in the Army, a commissioned officer of the Army, must have served on active duty in that grade for a period of not less than three years, except that — (1) the Secretary of Defense may reduce such period to a period of not less than two years for any officer; and (2) in the case of an officer to be retired in a grade at or below the grade of major general or rear admiral, the Secretary of Defense may authorize the Secretary of the military department concerned to reduce such period to a period of not less than two years.

6. Title 10, USC, section 12011 - Authorized strengths: Reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard provides that, of the total number of members of a reserve component who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members who may be serving in each of the grades of MAJ, LTC, and colonel may not, as of the end of that fiscal year, exceed the number determined in accordance with the appropriate table(s).

7. Title 10, USC, section 14311 - Delay of promotion: involuntary, section (e) Delay Because of Limitations on Officer Strength in Grade or Duties to Which Assigned, provides that:

a. Under regulations prescribed by the Secretary of Defense, the promotion of a reserve officer on the reserve active-status list who is serving on active duty, or who is on full-time National Guard duty for administration of the reserves or the National Guard, to a grade to which the strength limitations of section 12011 of this title apply shall be delayed if necessary to ensure compliance with those strength limitations. The delay shall expire when the Secretary determines that the delay is no longer required to ensure such compliance.

b. The promotion of an officer described in paragraph (1) shall also be delayed while the officer is on duty described in that paragraph unless the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, determines that the duty assignment of the officer requires a higher grade than the grade currently held by the officer.

c. The date of rank and position on the reserve active-status list of a reserve officer whose promotion to or Federal recognition in the next higher grade was delayed under paragraph (1) or (2) solely as the result of the limitations imposed under the regulations prescribed by the Secretary of Defense or contained in section 12011 of this title shall be the date on which the officer would have been promoted to or recognized in the higher grade had such limitations not existed.

d. If an officer whose promotion is delayed under paragraph (1) or (2) completes the period of active duty or full-time National Guard duty that the officer is required by law or regulation to perform as a member of a reserve component, the officer may request release from active duty or full-time National Guard duty. If the request is granted, the officer's promotion shall be effective upon the officer's release from such duty. The date of rank and position on the reserve active-status list of the officer shall be the date the officer would have been promoted to or recognized in the higher grade had the limitations imposed under regulations prescribed by the Secretary of Defense contained in section 12011 of this title not existed. If an officer whose promotion is delayed under paragraph (1) or (2) has not completed the period of active duty or full-time National

Guard duty that the officer is required by law or regulation to perform as a member of a reserve component, the officer may be retained on active duty or on full-time National Guard duty in the grade in which the officer was serving before the officer's being found qualified for Federal recognition or the officer's selection for the promotion until the officer completes that required period of duty.

//NOTHING FOLLOWS//