

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2025

DOCKET NUMBER: AR20250003642

APPLICANT REQUESTS: correction of his service record due to Executive Order (EO) 14184 (Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate) to, in effect:

- Void and remove from his Army Military Human Resource Record (AMHRR), his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 25 June 2022
- Void and remove from his AMHRR, his NGB Form 22 (National Guard Report of Separation and Record of Service) for the period ending 28 June 2023
- Reinstatement in [REDACTED] Army National Guard ([REDACTED] ARNG) in full time status, or in the Active Guard Reserve (AGR), with an effective date of 26 June 2022
- Show constructive service credit without a break in service
- Restore all entitlements to include but not limited to back pay, allowances, and benefits beginning 26 June 2022
- Remove any and all derogatory and disciplinary documents related to him refusing to become fully vaccinated against Coronavirus Disease 2019 (COVID-19) from his AMHRR
- Retroactive promotion to lieutenant colonel (LTC), with a date of rank (DOR) of 8 June 2022 [date of notification of selection for promotion] with an acknowledgment that the reason his promotion was delayed was retaliation
- Placement of an official memorandum in his AMHRR explaining the retaliation he faced
- Recognition with a prestigious award, such as a Legion of Merit or a Meritorious Service Medal
- Protection against future retaliation
- Restoration and protection of his security clearance
- Grant religious accommodation request for his exemption from all vaccines
- Consideration for a position to assist ABCMR or other military investigative boards, based on his experience with military injustice and administrative failures
- Cite the unlawful nature of the COVID-19 vaccine mandate as justification for all requested relief
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letters (119 Pages)
- Recommendations for correction
- Memorandum subject: Notification of Promotion Status
- General Officer Memorandum of Reprimand (GOMOR), investigation and separation documents (80 pages)
- DD Form 214 for the period ending 25 June 2022
- Letter to the Office of the Secretary of Defense
- Character References and Affidavits (69 pages)
- Documents Relating to the COVID Vaccine (494 pages)
- Training certificates, awards, academic reports, evaluations, training material (108 pages)

FACTS:

1. The applicant states, in effect, he was involuntarily separated from his AGR position in the ■■■ ARNG for refusing to become fully vaccinated against COVID-19 with a Separation Program Designator (SPD) Code of JNC, due to unacceptable behavior. Due to his personal and religious convictions, he was singled out, chastised, and made an example of as a senior unvaccinated Soldier by launching an investigation against him. During the investigation, his chain of command accused him of being a bully, a government time waster, a domestic extremist, a COVID-19 conspiracy theorist, interferer of the presidential election, and much more. He was eventually separated for refusing the vaccine, despite the fact that these accusations were baseless and the ■■■ ARNG persisted in retaliating against him. Later on, he enlisted in the U. S. Army Reserves (USAR). He backs up his claims that he was a model Soldier up until the illegal and baseless actions against him with approximately 1000 pages of research and supporting documentation. He even joined the class-action lawsuits against the military while he waited patiently for EO 14184.

2. The Board does not have jurisdiction over the restoration and protection of the applicant's security clearance. The applicant may apply for the restoration and protection of his security clearance through the proper channels; therefore, this issue will not be discussed during these proceedings.

3. In regard to the applicant's request for protection against all future retaliation, the Board does not consider, review, or discuss future events and/or documents. The applicant may address any future retaliation against him, at the time of occurrence, through the proper channels; therefore, this issue will not be discussed during these proceedings.

4. The ABCMR will not consider an application until the applicant has exhausted all administrative remedies to correct the alleged error or injustice. Applicants should address requests through their chain of command. The following requests should be addressed through the applicant's chain of command, and will not be discussed during these proceedings:

- Recognition with a prestigious award, such as a Legion of Merit or a Meritorious Service Medal due to saving a Soldier from committing suicide, for helping vaccine-injured soldiers file complaints and seek medical assistance, and for advocating for religious exemption seekers and preventing coercion
- Grant a religious accommodation request for his exemption from all vaccines, as his original request was submitted multiple times but was denied, delayed, or ignored in violation of his constitutional and military rights; correcting past denials to reflect that his religious beliefs were valid, and should be respected

5. The ABCMR considers individual applications that are properly brought before it. In appropriate cases, it directs or recommends correction of military records to remove an error or injustice. Since the EO 14184 has already invalidated the requirement for the COVID-19 vaccination, there is no need for the Board to cite the unlawful nature of the COVID-19 vaccine mandate as justification for all requested relief. In addition, the Board does not place an official memorandum in his AMHRR explaining the retaliation he faced.

6. In regard to the applicant's request to create a memorandum for record in the applicant's service record to reflect that the reason his promotion was delayed or denied was due to retaliation by the U.S. Army is not within the Board's purview. Therefore, this issue will not be discussed further in these proceedings.

7. The ABCMR does not detail active-duty service members for assistance with investigations. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Additionally, the ABCMR consists of civilians regularly employed in the executive part of the Department of the Army (DA) who are appointed by the Secretary of the Army and serve on the ABCMR as an additional duty. Therefore, his request will no longer be discussed during these proceedings.

8. The applicant provides, and the service record shows:

- On 26 June 2003, he was appointed as a Reserve commissioned officer. The applicant has prior honorable enlisted service in the ARNG
- On 10 May 2016, he was promoted to the rank of (MAJ)/O-4
- On 6 June 2019, he completed the required years of service and became eligible for retired pay upon his application

- On 1 December 2020, he submitted a request for exemption of the COVID-19 vaccination due to his religious beliefs through his chaplain
- On 24 August 2021, the Secretary of Defense mandated that all service members receive the COVID-19 vaccine
- In November of 2021, Soldiers in his unit submitted sworn statements, which show he tried to persuade them to follow his religious beliefs, influence their presidential vote in order to preserve the constitution, and conducted experiments on them to prove the vaccine and wearing a mask were harmful
- On 2 December 2021 his chaplain reviewed his prior request for exemption of the COVID-19 vaccination, and determined the applicant should be recommended for exemption to immunizations for religious reasons based upon personal faith conviction and individual compunction of conscience
- On 15 February 2022, an investigation was conducted against him for failing to support his commander, failing to execute lawful orders, bullying the members of his unit, undermining the commander's messages relating the COVID-19 vaccine by waiting for him to leave before presenting contradictory messaging
- On 21 March 2022, he was issued a GOMOR in part for the findings of the investigation, and in part for refusing to become fully vaccinated against COVID-19; he acknowledged receipt of the GOMOR
- The applicant does not provide, and the record is void of the 15-6 investigation, the findings, and recommendations by the investigating officer; the aforementioned findings are found in the applicant's rebuttal to the investigation, and also outlined in the GOMOR
- On 28 March 2022, he received notification of his involuntary release from full time ARNG duty for failing to execute lawful orders by undermining the commander's message regarding the COVID-19 vaccination, and for bullying members who were considering or had recently received COVID-19 vaccinations
- On 11 May 2022, his commanding general approved the applicant's separation with an honorable discharge
- On 12 May 2022, his commanding general determined that the GOMOR be placed permanently in the applicant's AMHRR
- On 8 June 2022, he was notified of his selection for promotion; however, to be promoted, he had to meet requirements outlined in National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions)
- His DD Form 214 shows that on 25 June 2022, he was honorably released from active duty due to unacceptable conduct at the rank of MAJ; he completed 14 years, 3 months, and 22 days of active federal service
- On 10 January 2023, the Secretary of Defense rescinded the COVID-19 vaccine mandate

- His NGB Form 22 shows that on 28 June 2023, he was honorably released from the [REDACTED] ARNG due to his appointment in the USAR; he completed 20 years, and 3 days of service
- He is currently still serving in the USAR, at the rank of MAJ
- It is unclear what entitlements the applicant is asking to have restored; he does not provide any documentation to support the specifics of his request
- The applicant does not provide, and the service record is void of his separation packet

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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. Based upon the available documents, the Board majority concluded the applicant's conduct was primarily influenced by his refusal to receive the COVID-19 vaccine and the subsequent policy changes regarding that issue. In light of this context, the Board majority determined that an injustice occurred, and that the applicant's record should be amended as requested. The Board minority expressed concern over the applicant's demonstrated leadership deficiencies, which were viewed as contributing factors to the issuance of the GOMOR and the applicant's eventual separation from active duty for unacceptable conduct.

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


:	[REDACTED]	[REDACTED]	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[REDACTED]	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Contingent upon the applicant agreeing to the reinstatement terms and conditions for revoking his discharge and the applicant re-entering active duty, the Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by:

- Voiding and removing from his AMHRR, his DD Form 214 for the period ending 25 June 2022
- Voiding and removing from his AMHRR, his NGB Form 22 for the period ending 28 June 2023
- Reinstatement in the [REDACTED] ARNG in full time status, or in the Active Guard Reserve (AGR), with an effective date of 26 June 2022
- Awarding constructive service credit without a break in service
- Restore all entitlements to include but not limited to back pay, allowances, and benefits beginning 26 June 2022
- Remove any and all derogatory and disciplinary documents related to him refusing to become fully vaccinated against COVID-19 from his AMHRR
- Retroactive promotion to LTC, with a DOR of 8 June 2022

6/17/2025

A large, bold, black 'X' mark, likely a signature or stamp, positioned above a horizontal line.CHAIRPERSON
A solid black rectangular box redacting the name of the 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. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) states the Army, by law, may pay claims for amounts due to applicants as a result of correction of military records. The ABCMR will furnish the Defense Finance and Accounting Service (DFAS) copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant and settle claims on the basis of the corrected military record. The applicant's acceptance of a settlement fully satisfies the claim concerned.
2. Army Regulation 637-1 (Army Compensation and Entitlements Policy) provides Department of the Army (DA) policies for entitlements and collections of pay and allowances for active duty Soldiers. It is used in conjunction with the Department of Defense (DoD) Financial Management Regulation (FMR), Volume 7A. For the purpose of this regulation, active duty is defined in accordance with Title 37, United States Code (37 USC). The term "active duty" means full-time duty in the active service of a uniformed service and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary of the Army (SECARMY).
3. Title 10 (Armed Forces), United States Code (USC), section 1552 (c)(1) states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.
4. Army Regulation 635-8 (Separation Processing and Documents) prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents. When a DD Form 214 has been prepared and distributed, and subsequently determined that it was prepared in error, the responsible transition center will void the DD Form 214 by memorandum. Distribute this memorandum to all addressees that received the erroneously prepared DD Form 214, advising them of the error and requesting the voided DD Form 214 be destroyed and removed from the Soldier's Army Military Human Resource Record (AMHRR).
5. On 24 August 2021, the Secretary of Defense mandated that all service members receive the COVID-19 vaccine. The Secretary of Defense later rescinded the mandate on January 10, 2023. It states, "the vaccine mandate was an unfair, overbroad, and completely unnecessary burden on our service members. Further, the military unjustly discharged those who refused the vaccine, regardless of the years of service given to

our Nation, after failing to grant many of them an exemption that they should have received. Federal Government redress of any wrongful dismissals is overdue”.

6. On 27 January 2025, President Donald J. Trump signed Executive Order (EO) 14184, “Reinstating Service Members Discharged Under the Military's COVID-19 Vaccination Mandate.”

7. On 6 February 2025 the Secretary of Defense issued Memorandum, "Providing Remedies for Service Members and Veterans Negatively Impacted by the Department's Defunct Coronavirus Disease 2019 Vaccination Mandate Based Executive Order."

8. On 1 April 2025 the Office of the Under Secretary of Defense issued a Memorandum for Secretaries of the Military Departments, “Updated Guidance on Correction of Military Records for Service Members Involuntarily Separated for Refusal to Comply with Coronavirus Disease 2019 Vaccination Requirements.” It provides:

a. As directed by the Secretary of Defense, the Department of Defense shall take all actions necessary to make reinstatement available to all members of the military (Active and Reserve Components) who were discharged solely for refusal to receive the coronavirus disease 2019 (COVID-19) vaccine and who request to be reinstated. The Secretaries of the Military Departments will process reinstatements for individuals either involuntarily discharged or those who voluntary left the service or allowed their service to lapse, rather than be vaccinated under the vaccine mandate, consistent with this guidance.

b. In cases where the Service member was involuntarily separated, the Secretaries of the Military Departments will contact such Service members and make available to them reinstatement via the Boards for Correction of Military/Naval Records (BCM/NRs) process. The BCM/NRs should exercise their broad discretion to order all appropriate retroactive corrections of the Service member's record as described in the guidance.

c. The BCM/NRs will give COVID-19 reinstatement cases priority consideration, subject to existing statutorily specified priority consideration for post-traumatic stress disorder, traumatic brain injury, and military sexual trauma.

d. The BCM/NRs, using the attached guidance in the memorandum, will assess each case to determine if an error or injustice exists within the former Service member's record and order all appropriate records corrections, which may include but is not limited to reinstatement with no break in service, restoration of the member's previous grade or rank, and credit for lost service time due to separation.

9. On 7 May 2025 the Office of the Under Secretary of Defense issued a Memorandum for Secretaries of Military Departments, “Supplemental Guidance to the Military

Department Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests from Service Members Adversely Impacted by Coronavirus Disease 2019 Vaccination Requirements.” It provides:

a. On January 27, 2025, the President issued reference (a), concerning the Department of Defense's since-rescinded coronavirus disease 2019 (COVID-19) vaccination mandate, which was unlawful as implemented, and "an unfair, overbroad, and completely unnecessary burden" on Service members. The Secretary of Defense has taken decisive action to execute the President's guidance to correct this injustice:

(1) All former Service members discharged solely for refusing to receive the COVID-19 vaccine may pursue reinstatement in the military, and be considered for eligibility to receive backpay; and

(2) Former Service members who attest that they voluntarily left the military or allowed their service to lapse according to appropriate procedures due to the military's previous COVID-19 vaccination mandate may pursue a return to military service.

b. In addition, some Service members were separated with less than a fully honorable discharge characterization for their refusal to take a COVID-19 vaccine, depriving them of veterans' benefits. Other Service members, who remained in service and requested religious, administrative, or medical accommodations related to the COVID-19 vaccine requirement, may still have adverse information in their records connected to those requests.

c. To remedy these harms, on April 23, 2025, the Secretary of Defense directed the Under Secretary of Defense for Personnel and Readiness to issue additional guidance to the Military Department Review Boards concerning the review of requests from Service members and former Service members adversely impacted by the COVID-19 vaccine mandate. The following is directed:

(1) The Secretaries of Military Departments will, through their Boards for Correction of Military/Naval Records, continue to apply guidance, which was issued to facilitate the reinstatement or return of eligible individuals who wish to continue their military service.

(2) Carefully consider claims by individuals who filed formal requests for administrative or medical accommodation, including requests for religious accommodation, related to the Department's previous COVID-19 vaccine mandate, yet continued to serve. Adverse actions in a Service member's records solely associated with their refusal to take a COVID-19 vaccination or seek an exemption from that COVID-19 vaccine mandate should be removed.

d. This guidance is not intended to interfere with or impede the BCM/NRs' statutory independence, nor does it limit the Boards from considering additional claims related to harms caused by the Department's previous COVID-19 vaccine mandate and providing appropriate remedies.

e. Discharge Upgrade Requests:

(1) Service members who were involuntarily separated solely for refusing to be vaccinated, did not receive the same treatment across the Department. While some Service members were assigned “honorable” discharge characterizations, others received “general (under honorable conditions)” characterization and as a result, lost access to important educational benefits under the Post-9/11 GI Bill and the Montgomery GI Bill, and potentially other veterans benefits.

(2) To correct this injustice and enhance uniformity across the Military services, the Review Boards should generally grant a discharge upgrade request from a former Service member when:

- The former Service member was involuntarily separated;
- The separation was based solely on a refusal to receive the COVID-19 vaccine; and
- There are no aggravating factors in the Service member’s record, such as misconduct

(3) Review Boards should normally grant requests to upgrade the characterization of service to “honorable,” change the narrative reason for enlisted separation (i.e., to “Secretarial Authority”), and change the reentry code to an immediately-eligible-to-reenter code under these specific circumstances. Officer records should be changed to have similar effect.

(4) If an applicant’s military records reflect multiple reasons for involuntary separation (i.e., when separation was not solely due to the fact that the former Service member refused to receive the COVID-19 vaccine), the Review Boards should apply existing policies that require the former Service member to establish evidence of an error, impropriety, inequity, or injustice in their discharge in order to warrant relief.

f. Removal of Adverse Actions and Information Solely Associated with COVID-19 Vaccine Mandate:

(1) The Department’s COVID-19 vaccine mandate also caused harms that were not reflected on separation documents. For instance, some Service members received administrative letters of reprimand, negative or inconsistent evaluations, or withholding

of opportunities for Reserve Component personnel to perform inactive duty training for pay to achieve a “good year” for participation and retirement purposes.

(2) While previous guidance required the Secretaries of the Military Departments to update Service member personnel records to remove adverse actions solely associated with denials of requests for exemption from the COVID-19 vaccine mandate on religious, administrative, or medical grounds, this relief should not have been limited to Service members who formally filed an exemption request. The inadequacy of the consideration afforded to those who submitted accommodation requests undermined the faith of many Service members, and they should not be penalized for deciding not to request an exemption that had little or no likelihood of success.

(3) To ensure that present and former Service members are not penalized for pursuing religious and other exemptions to the COVID-19 vaccine mandate in good faith, the BCM/NRs will carefully consider applications by individuals who request correction of records containing adverse information or reflecting adverse action solely associated with a request for exemption from the COVID-19 vaccination mandate, or with appeals of denials of such requests. Additionally, any present or former Service member who attests that they would have filed a request for exemption from the COVID-19 vaccine mandate were it not for the Department’s very high rate of disapproval of such requests shall be evaluated as if they had requested, and been denied, such an exemption.

(4) If adverse information associated solely with a request for exemption from the COVID-19 vaccination mandate is found within an applicant’s official military personnel file, the BCM/NR should, as appropriate, exercise its broad discretion to assess the potential impact on the Service member’s career and correct impacted personnel records appropriately.

g. Other Harms or Injustices Suffered by Service Members Not Specifically Addressed in this Guidance:

(1) Present and former Service members may have suffered other harms from the COVID-19 vaccine mandate that are not specifically addressed in this guidance. Adverse action may include the overt withholding of favorable personnel actions, including such actions as removing individuals from approved lists to attend training or professional military education, to assume leadership positions, or to conduct a permanent change of station transfer on schedule.

(2) Many Service members may have been denied these opportunities while waiting for the adjudication of their administrative or medical exemption requests. Even more concerning, some have reported that they were pressured to voluntarily separate

from the military due to their COVID-19 vaccine status, even while awaiting adjudication of their exemptions.

(3) The BCMR/NRs should exercise broad discretion in providing appropriate corrections to the records of Service members and former Service members who suffered harms resulting from the Department's COVID-19 vaccine mandate.

10. Army Regulation 600-37 (Unfavorable Information), sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR.

a. Paragraph 1-1 states, in relevant part, that the intent of Army Regulation 600-37 is to ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and, to ensure that the best interests of both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

b. Paragraph 1-4 stipulates that the objectives of Army Regulation 600-37 are to apply fair and just standards to all Soldiers; protect the rights of individual Soldiers and, at the same time, permit the Army to consider all available relevant information when choosing Soldiers for positions of leadership, trust, and responsibility; to prevent adverse personnel action based on unsubstantiated derogatory information or mistaken identity; to provide a means of correcting injustices if they occur; and, to ensure that Soldiers of poor moral character are not continued in Service or advanced to positions of leadership, trust, and responsibility.

11. Army Regulation 600-8-104 (Army Military Human Resource Records Management), in effect at the time, prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army. Paragraph 3-6 (Authority for Filing or Removing Documents in the AMHRR Folders) provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or another authorized agency.

12. Army Regulation 600-8-10 (Leaves and Passes) prescribes the policies and mandated operating tasks for the leave and pass function of the Military Personnel System. It provides a single-source operating document to the field, and as such, is binding on all communities involved in granting leaves and passes. It applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Re-serve, unless otherwise stated.

a. Transition leave (formerly called terminal leave) is a chargeable leave granted together with transition from the Service, including retirement. The unit commander or designee is the approval authority for transition leave requests.

b. The leave and pass program is designed to allow Soldiers to use their authorized leave to the maximum extent possible.

c. Soldiers who do not take leave, may lose leave at the end of the fiscal year (FY). Also, Soldiers who maintain a 60-day leave balance, and wait late in the FY to take leave, will be informed that they risk loss of leave over 60 days if the operational situation requires their presence. Accrued leave that exceeds 60 days at the end of the fiscal year is lost except as authorized.

13. Army Regulation 15-185 (ABCMR), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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 may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

14. Wright Memorandum, dated 8 January 2015, states. The Under Secretary of Defense issued guidance on Limitations on the Authority of Military Department Correction Boards. This guidance affirms that Military Department Correction Boards do not have the authority to appoint military officers.

a. The President may appoint Regular officers above the grade of O-3 and Reserve officers above the grade of O-5 following Senate confirmation. Only the Secretary of Defense may appoint all officers in the grade of O3 and below because Congress, has vested such appointment authority in the President alone, and the President has assigned that function to the Secretary of Defense.

b. This decision affirms that Military Department Correction Boards do not have the authority to remedy perceived errors or injustices by correcting records to show that an officer has been appointed to a certain grade when the officer has not been appointed to that grade by the President or the Secretary of Defense. Boards may only make such a correction to reflect that a proper appointment has occurred. They may also adjust the date of rank (DOR) of an officer who has been properly appointed.

15. 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.

16. National Guard Regulation 600-100 (Commissioned Officers Federal Recognition and Related Personnel Actions) prescribes policies and procedures governing the appointment, assignment, temporary Federal Recognition, Federal Recognition, reassignment, transfers between States, branch transfers, area of concentration designation, utilization, branch detail, and attachment of commissioned officers of the Army National Guard (ARNG).

a. The promotion of officers in the ARNG is a function of the State. As in original appointments, a commissioned officer promoted by State authorities has a State status in the higher grade under which to function. However, to be extended Federal Recognition in the higher grade, the officer must have satisfied the requirements prescribed herein.

b. National Guard officers may be considered and found qualified for Federal Recognition of their State promotion using two distinct processes: State Federal Recognition Boards and DA Mandatory Boards. Under either process, the precedent for an actual promotion in the Army National Guard is State assignment and appointment to the next higher grade.

(1) State Federal Recognition Boards (FRB). Officers may be federally recognized through State FRB which are often referred to as "State vacancy promotion boards" or "unit vacancy boards" as part the Unit Vacancy Promotion (UVP) process under 32 USC 307.

(2) DA Mandatory Boards. The second way to federally recognize the State promotion is through the DA Mandatory Promotion Selection Boards process. Mandatory promotion selection boards are convened by the Secretary of the Army pursuant to 10 USC 14101(a). Those National Guard officers selected ("DA Select") 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, without the examination prescribed by 32 USC 307.

c. 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, this one-year period will be on the Active Duty list (ADL), Reserve Active Status List (RASL), or combination of the two
- Be medically fit in accordance with Army Regulation 40-501 and meet the height and weight standards prescribed in Army Regulation 600-9
- Have completed the minimum years of TIMIG
- Have completed the minimum military education (MILED) requirements
- Have passed an Army Physical Fitness Test (APFT)/Army Combat Fitness Test (ACFT) within the time frame dictated by Army Regulation 350-1 (Army Training and Leader Development)
- An officer who has failed the APFT/ACFT or failed to take the APFT/ACFT should be flagged in accordance with Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions) and is not eligible for Federal Recognition

d. Military Education (MILED) requirements for promotion to MAJ (applicable to all ARNG Officers) are:

- Completion of Command and General Staff Officer Course (CGSOC)
- Completion of the Logistics Executive Development Course (LDEC) or the Associate Logistics Executive Development Course (ALEDC), or equivalent Group I course

e. Mobilized ARNG Officers, regardless of the units to which they are assigned or mobilized, may be unit vacancy promoted against positions within their respective states provided they meet the promotion eligibility requirements outlined in this regulation and other G1 personnel guidance.

f. Minimum years of time in grade for promotion eligibility. A commissioned officer must complete the following minimum Time in Grade (TIMIG) prior to being considered for promotion and Federal Recognition from MAJ to LTC is four years.

17. Army Regulation 600-8-29 (Officer Promotions), in effect at the time, prescribes policies, operating rules, and steps governing promotion of Army commissioned and warrant officers on the active-duty list and the officer promotion function of military human resources support operations. It provides for career progression based upon recognition of an officer's potential to serve in positions of increased responsibility. Additionally, it precludes promoting officers who are not eligible or become disqualified, thus providing an equitable system for all officers.

a. Paragraph 2-7 (Promotion Eligibility) states to be considered for promotion by a selection board, an officer must be on the active-duty list (ADL) on the day the board convenes. Captains, majors, and lieutenant colonels must serve at least 3 years of time in grade to be considered for promotion. If selected, officers may be promoted without

regard to any additional time in grade (TIG) requirements. This requirement may be waived by the Secretary of the Army, for consideration from below the zone.

b. Chapter 7 (Special Selection Boards (SSB)), states a special selection board may be convened to consider, or reconsider commissioned officers for promotion when Headquarters, Department of the Army, determines that one or more of the following circumstances exists:

(1) Administrative error. An officer was not considered from in or above the promotion zone by a regularly scheduled board because of an administrative error.

(2) Material unfairness. The action of the promotion board that considered the officer from in or above the promotion zone was contrary to law in a material to the division of the board or involved material error or fact or material administrative error; or the board that considered the officer from in or above the promotion zone did not have before it for its consideration material information.

c. Authority to approve cases for referral to an SSB is delegated to the CG, HRC, or his or her designee, or the Army Review Boards Agency (ARBA). The same SSB may not consider an officer for the same grade under two successive boards' criteria.

18. Army Regulation 15-6 (Procedures for Administrative Investigations and Board of Officers) sets forth procedures for the conduct of informal and formal investigations. Informal investigations are those that usually have a single investigating officer who conducts interviews and collects evidence. In contrast, formal investigations normally involve due process hearings for a designated respondent. Formal procedures are required whenever a respondent is designated. Paragraph 3-7, Rules of evidence and proof of facts states:

a. Proceedings under this regulation are administrative, and not judicial. Therefore, investigating officers (IOs) and boards are not bound by the rules of evidence for court-martial or court proceedings generally. Subject only to the provisions of subparagraph d, below, anything that a reasonable person would consider relevant and material to an issue may be accepted as evidence. For example, medical records, counseling statements, police reports, and other records may be considered, regardless of whether the preparer of the record is available to give a statement or testify in person. All evidence will be given the weight warranted by the circumstances.

b. Access to documents, records, evidence, and other data. No officer, Department of the Army employee, or Service member may deny IOs and boards access to documents, records, or evidentiary materials needed to discharge their duties, to include data stored in official Department of the Army repositories, except as permitted by law and applicable regulations.

c. Official notice. Some facts are of such common knowledge that they need no specific evidence to prove them (for example, general facts and laws of nature, general facts of history, the location of major elements of the Army, and the organization of the Department of Defense and its components), including matters of which judicial notice may be taken.

19. Army Regulation 20-1 (Inspector General Activities and Procedures) prescribes policy and procedures concerning the mission and duties of The Inspector General (TIG). It also prescribes duties, missions, standards, and requirements for inspectors general (IGs) throughout the Army. Responsibilities are prescribed for commanders and heads of agencies, activities, centers, and installations for the support of IG activities.

a. Prohibited activity and punitive provisions. Prohibition on restricting lawful communication with an inspector general; Member of Congress; or a member of an audit, inspection, or law enforcement organization within the Department of Defense. Persons subject to this regulation will not restrict anyone in any manner from lawfully communicating with those individuals mentioned above. This prohibition includes communications with a DODIG and the IGs of other Services and Federal agencies. For appropriated fund civilians, the prohibition further includes disclosures to the special counsel, or another employee designated by the head of the agency to receive such disclosures (see 5 USC 2302). For non-appropriated fund (NAF) employees, the prohibition includes disclosures to any civilian employee or member of the Armed Forces designated by law or by the Secretary of Defense to receive such disclosures (see 10 USC 1587).

b. Prohibitions against reprisal. Military whistleblower. Persons subject to this regulation will not take (or threaten to take) an unfavorable personnel action or withhold (or threaten to withhold) a favorable personnel action with respect to a member of the armed forces for making or preparing a (lawful) protected communication. Lawful communications are those communications made to an IG; MC; member of a DOD audit, inspection, or investigation organization; law enforcement organization; or any other person or organization (including any person or organization in the chain of command starting at the immediate supervisor level) designated under regulations or other established administrative procedures (such as the equal opportunity advisor or safety officer) to receive such communications. The term "lawful communication" encompasses information that the Soldier reasonably believes provides evidence of a violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination, gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety.

//NOTHING FOLLOWS//