

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230003803

APPLICANT REQUESTS:

- initial appointment rank reconsideration to the rank/grade of captain (CPT)/O-3
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum – Subject: Direct Commissioning Process, 9 March 2023

FACTS:

1. The applicant states in pertinent part that in 2021, the Personnel Policy Memorandum (PPOM) 20-245 (Army National Guard Direct Appointments) directed that all currently serving servicemembers must apply on 1 of 3 online platforms. She contests that each of these platforms appeared to be in development and therefore she was advised to submit her application utilizing the prior policy guidance and initiate her commissioning process at the State level. During this process, the office of responsibility changed resulting in the proponent being unable to accurately review her application, limiting her ability to be considered for appointment of a commission at a higher grade. She notes that she holds a Doctorate degree in Fine Arts with 10 years of experience as a music educator. In addition, she holds four music degrees and previously served as an enlisted Army musician since 2008. She was appointed a commission within the Adjutant General Corps of which Army musicians fall under, and based on her prior credentials and experience she argues that she should have been appointed a commission at the rank of CPT.

2. A review of the applicant's available service records reflects the following:

- a. On 28 April 2008, the applicant enlisted in the U.S. Army Reserve.
- b. On or about 10 August 2019, the applicant was awarded a Doctor of Philosophy in Fine Arts from Texas Tech University.

c. On 11 February 2021, the applicant applied for appointment as a commissioned officer at the rank/grade of second lieutenant (2LT)/O-1.

d. After serving as an enlisted Soldier within the Reserve Component and the Army National Guard (ARNG) in both a Title 10 and Title 32 status, the ARNG issued Orders Number 1431314 (30 September 2021) announcing the applicant's appointment as a commissioned officer within the Adjutant General (AG) Corps at the rank/grade of 2LT/O-1, effective 28 September 2021.

e. On 17 December 2021, the applicant completed the AG Basic Officer Leader Course.

f. On 26 July 2023, the National Guard Bureau (NGB) issued Special Orders Number 241 AR announcing the extension of Federal recognition of the applicant's initial appointment in the NMARNG at the rank/grade of 2LT/O-1 with a Date of Rank (DOR) of 28 September 2021.

g. On 28 December 2023, the NGB issued Special Orders Number 437 AR announcing the extension of Federal recognition of the applicant's promotion to the rank/grade of first lieutenant (1LT)/O-2, effective 28 March 2023.

3. The applicant provides a Memorandum – Subject: Direct Commissioning Process, dated 9 March 2023, reflective of CPT J\_ B\_ , 615th Battalion Operations officer's opinion regarding the applicant's initial appointment as a commissioned officer. CPT J\_ B\_ provides that system deficiencies, within the directed process to apply for a direct commission, prevented her application from being reviewed by the proponent and limited her ability to be considered for a direct appointment at a higher grade. At the time of the applicant's application for appointment, CPT J\_ B\_ was assigned as the Officer Strength Manager for the NMARNG (September 2019 until April 2022). He notes that during the application process, upon visiting the websites provided, he identified that a means did not exist for the applicant to submit her application. He contests that within all 3 websites there were no basic branch job availabilities in the ARNG. It appeared that the websites were still in development and were not able to meet the intent of PPOM 20-045. Noting this, he reached out to the NGB to seek guidance on how to proceed with her direct commission process. The guidance received was to process her direct commission according to prior policy and initiate at the state level.

4. On 14 November 2023, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending disapproval of the applicant's request noting that a review of the applicant's claim by the NMARNG concluded that her educational records were taken into consideration but had no bearing on the decision of the proponent to appoint her as a 2LT in the ARNG, as she was not in a specialty branch. In accordance with Army Regulation (AR) 135-100 (Appointment of Commissioned and

Warrant Officer of the Army) paragraph 1-9 (Grade on Appointment) applicants for direct appointment will not be appointed above the grade of 2LT, unless they qualify for appointment in the Chaplain Branch or Judge Advocate General (JAG) Corps.

5. On 29 November 2023, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments.

6. On 5 December 2023, the applicant responded to the advisory opinion arguing that in accordance with policy, any branch is eligible for commission at a higher rank. She notes that this is not limited to specialty branches, e.g., chaplain or JAG. She notes that Army Directive 2019-27 (Direct Appointment of Officers Up to the Grade of Colonel (Other Than Special Branches)), dated 12 September 2019 authorizes the ARNG to appoint civilians into any branch or Functional Area. Further, PPOM 20-045 provides that current service members are eligible to commission under this policy and will be considered on a case-by-case basis. A copy of this document is provided in its entirety within the supporting documents for the Board's review.

7. In support of the above rebuttal, the applicant also provides (2) DD Forms 214 (Certificate of Release or Discharge from Active Duty) providing evidence of her service on active duty from 2 August 2019 – 27 September 2021 and 16 September 2022 – 30 September 2023.

#### BOARD DISCUSSION:

1. 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and applicable regulatory guidance. The applicant contends that based on her experience and length of service she should have been appointed a commission at the rank of captain (CPT)/O-6. Army regulation pertaining to the appointment of Commissioned and Warrant Officer of the Army does not permit appointment above the grade of 2LT unless they qualify for appointment in the Chaplain Branch or Judge Advocate General Corps. As the applicant was not affiliated with either, she was ineligible for consideration for the rank/grade of captain (CPT)/O-3. After due consideration of the applicant's request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

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 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.

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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. AR 135-100 (Appointment of Commissioned and Warrant Officer of the Army) paragraph 1-9 (Grade on Appointment) in effect, provides that applicants for direct appointment will not be appointed above the grade of 2LT unless eligible for appointment within the Chaplain or Judge Advocate General Corps.
2. 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 that applicant's 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. Army Directive 2019-27 (Direct Appointment of Officers Up to the Grade of Colonel (Other than Special Branches) states:
  - a. This directive establishes policy for the direct appointment of officers up to the grade of colonel. This directive supersedes relevant provisions in Army directives; Army regulations; and Deputy Chief of Staff, G-1 entry grade credit guidance that control direct appointments for officers.
  - b. Entry Grade Credit:
    - (1) Credit will be awarded pursuant to Title 10, United States Code (USC), sections 533 and 12207 (Title 10, USC, section 533 and 12207) and Department of Defense Instruction 1312.03 (Entry Grade Credit for Commissioned Officers and Warrant Officers).
    - (2) A period of time will be counted only once when calculating entry grade credit.
    - (3) Qualifying periods of less than 1 full year will be proportionally credited to the nearest day.
    - (4) Prior commissioned service credit will be calculated before constructive service credit.
  - c. Constructive Service Credit. Constructive service credit is awarded when commissioned service begins after the additional education, training, or experience required for appointment, designation, or assignment in a professional specialty or a specifically designated field is obtained. Constructive service credit provides a person the grade and date of rank comparable to a contemporary who began commissioned

service immediately after obtaining a bachelor's degree. Constructive service credit will be granted pursuant to guidance in DoD Instruction 1312.03, paragraph 3.4.

4. Title 10, USC, section 533 (Service Credit Upon Original Appointment as a Commissioned Officer) states, under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Space Force and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

a. One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed, designated, or assigned in officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

b. For special training or experience in a particular officer field as designated by the Secretary concerned, if such training or experience is directly related to the operational needs of the armed force concerned.

c. During fiscal years 2021 through 2025, for advanced education in an officer field so designated, if such education is directly related to the operational needs of the armed force concerned.

//NOTHING FOLLOWS//