

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20230004007

APPLICANT REQUESTS: promotion to the rank of captain (CPT)

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum Consideration for CPT and major (MAJ) Army Medical Department (AMEDD) Selection Board
- Retirement Letter
- Memorandum Notification of Promotion Status
- Memorandum Notification of Opportunity to Apply for Adjustment of Date of Rank (DOR)
- Instructions for Completion of DD Form 149
- Memorandum Completion of ARPC Form 155-R

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 is seeking promotion to CPT. His consideration for mandatory promotion to CPT was delayed one year based on Army implementation of the Reserve Officer Personnel Management Act (ROPMA) provisions. By the time the delayed promotion board took place, he was involuntarily retired.

b. Later the Army corrected the DOR, but not for him since he did not get the promotion. He spent more than 16 years enlisted and the remainder as an officer. He believes he is the only officer in this situation.

c. Due to the delay in consideration for promotion because of ROPMA, he was unjustly denied his promotion to CPT. He enlisted in the Army on 9 May 1975 and

received a direct commission to second lieutenant (2LT) after his Persian Gulf service on 4 November 1991. He was promoted to first lieutenant (1LT) on 3 November 1994 and should have been promoted to CPT on 25 June 1998, which was delayed to 18 August 1999. He was involuntarily retired on 2 November 1998.

d. His package went before the CPT AMEDD Promotion Board, and he was selected on the first consideration and should have been promoted to CPT prior to his retirement. This is unique to him since he was an enlisted Soldier first. The Army corrected the injustice in 2000, with a change to CPT DORs; however, since he was not promoted his was not corrected.

e. He received a notice to apply for adjustment to his DOR, 15 November 2000, in February 2001. Pursuant to the instructions, he completed the ARPC Form 155-R for correction of his records pertaining to promotion to CPT and mailed it to the address on the instructions. He never received information on the outcome, positive or negative from the correction board. He assumed it was due to not having a CPT DOR to correct. During his retirement briefing, he asked about correcting his retirement rank and was told it was impossible. Recently, while researching his options, he discovered the Board could correct injustices like his.

3. The applicant provides the following documents:

a. Memorandum Consideration for CPT and MAJ AMEDD Selection Board, 23 October 1998 states, a Department of the Army Reserve Components Selection Board would convene from 11 January through 5 February 1999. 1LTs with a DOR of 16 May 1995 were eligible for review for promotion to CPT.

b. Letter from U.S. Army Reserve (USAR) Personnel Command, 2 November 1998, congratulating the applicant on his retirement.

c. Letter from U.S. Total Army Personnel Command, 8 September 1999, reflects the U.S. Army Reserve Components Selection Board selected him for promotion, with an eligibility date of 3 November 1998. To be promoted, he must remain in an active status, have a current security clearance, be medically qualified for retention, meet the standards of the Army Body Composition Program, and otherwise meet the promotion eligibility criteria set forth in AR 135-155. Failure to comply with these instructions, may result in his removal from the selection list.

d. Memorandum from U.S. Total Army Personnel Command, 15 November 2000, states:

(1) He was identified as an officer whose consideration for mandatory promotion

to CPT was delayed one year based on Army implementation of ROPMA. The policy change applied to his case since he was recommended on his first consideration. This policy change provided him with the opportunity to apply to the Army Board for Corrections of Military Records (ABCMR) to request an adjusted DOR to CPT.

(2) This document further states, "Officers affected by this policy change were considered by a mandatory selection board for promotion to CPT for the first time in November 1998... These officers would have been considered in November 1997, and January and March 1998, respectively, had Army policy implementing ROPMA grandfathered those officers who had served three years as a 2LT and not required them to serve eight total years as a LT. Officers who are affected by this policy now have a DOR not earlier than the final approval date for the board that considered them. Officers who apply for an adjusted DOR may be given an adjusted DOR of not earlier than the final approval date of the board that would have considered them had Army policy grandfathered their 2LT service. The complete memorandum has been provided to the Board for their complete review".

e. Self-authored memorandum of completion of ARPC Form 155-R, 5 October 2001, acknowledging he has the opportunity to apply to ABCMR to request an adjusted DOR to CPT.

4. The applicant's service record contains the following documents:

a. DA Form 71 shows he took the oath of office as a Reserve Commissioned officer in the rank of 2LT on 4 November 1991.

b. DA Form 2-1 shows he was promoted to 1LT on 3 November 1994 and he had enlisted service in the Army National Guard from 9 May 1975 to 31 December 1976, and in the U.S. Army Reserve from 3 May 1981 to 3 November 1991.

c. Memorandum from Headquarters, United States Army Reserve Command, 14 November 1994 promoted him to 1LT effective 3 November 1994.

d. Orders 96A-122-096, published by Headquarters, 88th Regional Support Command, 1 May 1996 voluntarily released him from 33rd General Hospital to United States Army Reserve Personnel Center (Reinforcement) in the rank of 1LT effective 1 May 1996.

e. Orders C10-690202, published by U.S. Army Human Resources Command, 19 October 2016 placed him on the retired list effective 9 January 2017 in the rank of 1LT.

f. The applicant's service record is void of information showing he was considered for promotion to CPT. It is also void of information showing he was involuntarily retired.

g. There is no evidence that the applicant ever applied to the ABCMR prior to his current application for a DOR correction to CPT.

BOARD DISCUSSION:

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 and standard review based on law, policy and regulation. The Board determined there is sufficient evidence to support the applicant contentions for his records to be submitted before the special selection board (SSB) for consideration to captain. The Board found the applicant was identified as an officer whose consideration for mandatory promotion to CPT was delayed one year based on Army implementation of ROPMA. The policy change applied to his case since he was recommended on his first consideration. This policy change provided the applicant with the opportunity to apply to the Army Board for Corrections of Military Records (ABCMR) to request an adjusted DOR to CPT. Based on this, the Board granted partial relief for his records to go before the SSB.

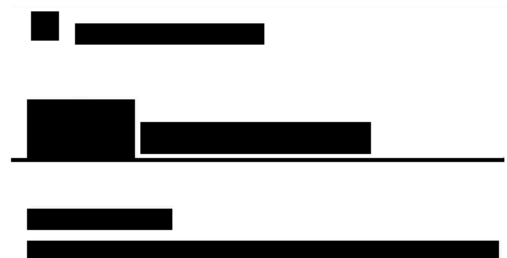
BOARD VOTE:

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 showing the applicant is eligible for promotion consideration to CPT, and submitting his records before an SSB for promotion consideration to CPT.
2. The Board further determined 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 promotion to captain.



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, U.S. Code, 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 135-155 (Promotion of Commissioned Officers and Warrant Officers Other than General Officers) prescribes policies and procedures governing promotion of Army Reserve commissioned and warrant officers on the active-duty list. Special Selection Boards (SSBs) are governed by the same instructions provided to the boards that considered or should have considered an officer for promotion.
 - a. It states that for promotion from 1LT to CPT, the minimum number of years in the lower grade is 2 years and the maximum number of years in the lower grade is 5 years.
 - b. SSBs may be convened under Title 10, U.S. Code, section 628 to consider or reconsider commissioned or warrant officers for promotion when HQDA discovers one

or more of the following: (1) An officer was not considered from in or above the promotion zone by a regularly-scheduled board because of administrative error; (2) The board that considered an officer from in or above the promotion zone acted contrary to law or made a material error; or (3) The board that considered an officer from in or above the promotion zone did not have before it some material information (SSB discretionary).

c. A material error is defined as being of such nature that in the judgment of the reviewing official (or body), had it been corrected at the time the officer was considered by the board that failed to recommend him/her for promotion, it would have resulted in a reasonable chance that the officer would have been recommended for promotion. Reconsideration may also be granted when material information was missing from the officer's file when seen by a promotion board.

3. The Reserve Officer Personnel Management Act (ROPMA), a public law enacted by Congress on 5 October 1994, prescribes the policies and procedures to consolidate and modernize the laws that govern Reserve component officers. The law was mandated 1 October 1996. ROPMA provides that in order to be eligible for promotion to CPT the minimum year in grade for a first lieutenant is 2 years, and that an officer selected for the first time for promotion to the next higher grade may be promoted on or before the date that he/she completed the maximum service.

a. ROPMA further specifies that the officer must be serving in a position requiring the higher grade unless assigned to the Individual Ready Reserve or Individual Mobilization Augmentee.

b. ROPMA also specifies that promotion dates are effective upon approval of the board results by the President.

4. 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. It states, 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.

//NOTHING FOLLOWS//