

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230004898

APPLICANT REQUESTS: adjustment of his Date of Rank (DOR) to captain (CPT)/O-3 in the U.S. Army Reserve.

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

- DD Form 149 (Application for Correction of Military Record)
- Tour of Duty information
- Orders Number 010446, 31 October 2017
- Orders Number 011388, 2 November 2017
- Orders Number 020556, 4 December 2017
- Orders Number 025436, 18 December 2017
- DA Form 4651 (Request for Reserve Component Assignment or Attachment), 29 March 2018
- Orders Number 18-152-00042, 1 June 2018
- Email communication
- Headquarters Army Human Resources Command (AHRC) Form 56-R (Promotion Qualification and Verification Statement), 9 October 2018

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 in pertinent part that his promotion to CPT was inappropriately delayed due to the administrative ineffectiveness of others. He contests that this action has placed him in an entire year-group behind his peers due to the published eligibility for consideration cut-off dates for subsequent promotions. He notes that in October 2017, after returning from 2 consecutive deployments, he elected to be placed on active-duty orders (Active Duty Operational Support – Reserve Component (ADOS-RC)). While serving on active duty, he transferred units of assignment in June 2018 in efforts to properly position himself for his upcoming promotion consideration. In August 2018 following the release of the board results, he contacted his unit and was advised

that all promotable first lieutenants (1LT) were not properly assigned to valid positions due to a reorganization of the Unit Manning Roster occurring in August 2018. Despite advising his administrative personnel of his proper position assignment per his ADOS-RC orders, he was later advised (August 2018) that he was not placed into a proper position as a CPT until 20 September 2018. This date will therefore become his DOR. At that time, he did not seek an adjustment or backpay. However, in Spring 2022, when the eligibility for promotion consideration for major (MAJ) was released indicating that 31 August was the eligibility cut-off date for consideration. In anticipation of the 2023 eligibility criteria stating the same, he began seeking correction of his DOR which was ultimately denied due to a lack of record of him being assigned to a valid position prior to the promotion date.

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

a. On 9 May 2013, the applicant was appointed a Reserve commission at the rank/grade of second lieutenant and subsequently assigned to a Troop Program Unit (TPU).

b. On 20 November 2014, the U.S. Army Human Resources (AHRC) issued Orders Number B-11-406801 announcing the applicant's promotion to 1LT/O-2, effective on with a DOR of 24 November 2014.

c. On 29 October 2017, the applicant was ordered to active duty in support of Operation Enduring Freedom (Spartan Shield).

d. On 1 June 2018, Headquarters, 81st Readiness Division issued Orders Number 18-152-00042 reassigning the applicant from the 874th Forward Surgical Team to the 332nd Medical Brigade, effective 8 June 2018.

e. On 19 September 2018, the 332nd Medical Brigade issued Orders Number 18-262-00014 reassigning the applicant within his assigned unit at the convenience of the government.

f. On 29 October 2018, AHRC issued Orders Number B-10-809396 announcing the applicant's promotion to the rank/grade of CPT/O-3, effective on with a DOR of 20 September 2018.

g. On 14 May 2020, the applicant was released from active duty.

4. The applicant provides the following:

a. Tour of Duty information reflective of the applicant's acceptance of an ADOS RC position for a period of 343 days (23 October 2017 – 30 September 2018). During this

period, the applicant would serve as the Individual Readiness Officer in Charge, a position identified as "military occupational specialty immaterial (00G) with an O-3/CPT projected rank requirement. This position is not annotated on a Mobilization Table of Distribution Allowance (TDA) nor a mission specific Deployment Manning Document (DMD).

b. Orders Number 010446 dated 31 October 2017, reflective of the applicant being ordered to active duty (ADOS-RC) for 337 days, effective 29 October 2017.

c. Orders Number 011388 dated 2 November 2017, reflective of Orders Number 010446 being amended to reflect changes in the previously provided additional instructions and accounting classification code.

d. Orders Number 020556 dated 4 December 2017, reflective of Orders Number 010446 being amended to reflect changes in the previously provided additional instructions and accounting classification code.

e. Orders Number 025436 dated 18 December 2017, reflective of Orders Number 010446 being amended to reflect changes in the previously provided additional instructions and accounting classification code.

f. DA Form 4651 dated 29 March 2018, reflective of a submitted request for the applicant to be transferred from the 874th Forward Surgical Team (1LT position) to the 332nd Medical Brigade (major (MAJ)/O-4 position), effective 1 April 2018.

g. Email communication reflective of communication concerning the applicant's promotion DOR concerns. The applicant was advised that a reorganization occurred which prompted some position assignment issues. However, prior to this action most of the 1LTs were double or triple slotted within positions. The applicant was advised by AHRC that his 29 September DOR was based on the AHRC Form 56-R submitted through his chain of command. Proof of his assignment to a valid position of higher grade prior to 29 September 2018 would be required for DOR adjustment consideration. A copy of this communication is provided in its entirety within the supporting documents for the Board's review.

h. AHRC Form 56-R dated 9 October 2018, reflective of the applicant being assigned to an authorized O-3 position, effective 20 September 2018.

5. On 18 October 2023, Headquarters, U.S. Army Reserve Command, Chief, military Personnel Division, provided an advisory opinion recommending disapproval of the applicant's request noting that the applicant was assigned to an O-3/CPT position on 20 September 2018, therefore his DOR to CPT is the same date of his assignment to position. In accordance with reference 1b, paragraph 3-3a(2)(b), when the board

approval or, if required, Senate confirmation is before assignment to the position in the higher grade, the effective date and the date of promotion will be the date of assignment to the higher graded position.

6. On 20 October 2023, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments.

7. On 24 October 2023, the applicant submitted a rebuttal to the advisory opinion noting that he initiated his request for transfer to a valid TPU position. On 1 June 2018, he received reassignment orders to the 332nd Medical Brigade. The provided order did not contain a position of assignment. On 7 September 2018, he was officially notified that he was selected for promotion and that all selected Soldiers were slotted in valid positions. On 20 September 2018, after the unit reorganization and multiple discussions with his assigned unit, he was placed into a valid O-3 position. This document is further provided in its entirety for the Board's review within the supporting documents.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board reviewed and concurred with the advisory opinion provided by the U.S. Army Reserve Command recommending disapproval of the applicant's request noting that the applicant was assigned to an CPT/O-3 position on 20 September 2018, therefore his DOR to CPT is the same date of his assignment to position. Senate confirmation is before assignment to the position in the higher grade, the effective date and the date of promotion will be the date of assignment to the higher graded position.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

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

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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. Army Regulation 135-155 (Promotion of Commissioned Officers and Warrant Officers) provides policy, operating rules and steps governing promotion of Army Officers on the Reserve Active Status List. Paragraph 4-21 (Effective Dates) provides that unit officers selected by a mandatory board will have a promotion date and effective date no earlier than the date the board is approved or the date of Senate confirmation (if required), provided they are assigned to a position in the higher grade. When the board approval or, if required, Senate confirmation is before assignment to the position in the higher grade, the effective date and the date of promotion will be the date of assignment to the higher graded.

//NOTHING FOLLOWS//