

IN THE CASE OF: ██████████

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230005286

APPLICANT REQUESTS:

- grade determination to be retired at the highest rank/grade he held which was chief warrant officer five (CW5)/W-5
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Meritorious Service Medal certificate, 31 July 2017
- Air Medal certificate, 23 January 2018
- Memorandums - Subject: Commander Recommendation of Filing Determination, 6 September and 4 October 2018
- Letters of Support for Applicant, 14 August, 19 and 22 November, 5 and 12 December 2019
- Officer Record Brief (ORB), 9 December 2019
- DA Forms 67-10-2 (Field Grade Plate (O4 - O5; CW3 - CW5) Officer Evaluation Report (OER)), 14 March 2016 through 30 April 2020
- White House email communication, 27 May 2020

FACTS:

1. The applicant states:

a. His retired list grade on his DD Form 214 needs to be changed from chief warrant officer four (CW4)/W-4 to CW5. He believes his grade determination was incorrectly determined for retirement. He elevated this error to the Commander in Chief; at the time it was ██████████. His office replied to his request and said they would forward to the correct office for action (see attached letter).

b. He believes the records are in error because, grade determination for warrant officers is covered under paragraph 4-2 in Army Regulation (AR) 15-80 (Army Grade Determination Review Board and Grade Determinations). It states that "Unless entitled to a higher grade under some other provision of law, a warrant officer retires in the

permanent or reserve warrant officer grade, if any, that he or she held on the day before the date of his or her retirement." He was a CW5 on the day before his retirement. That provision of the regulation aside and reviewing his service as a CW5 using the guidance for grade determination considerations in paragraph 2-4 of AR 15-80, he met the requirements to retire as a CW5.

c. The following is how he met the requirements. For lengths of Time in Grade (TIG), he served 3 and a half years total as a CW5. He was promoted to CW5 on 9 November 2016. The incident for which he received a reprimand for was on 8 October 2017. That equates to 11 months he served as a CW5 prior to the incident. Evidence exhibiting his service was satisfactory during that 11 months are two awards and one OER. The Air Medal he received covered multiple overseas deployments, during the last period for the Air Medal he was promoted to CW5. The Meritorious Service Medal covered a four-year period with the last eight months as a CW5 (awards are attached). For the annual OER, he served 4 months as a CW5. This evidence far exceeds the 31 days or more for a warrant officer listed in paragraph 2-4c of AR 15-80.

d. Addressing the nature and severity of misconduct (paragraph 2-4f), he made a single mistake after being attacked. This mistake was completely out of character for him. His Company and Battalion Commander affirmed this was out of character for him and recommended local filing of his reprimand (see attached filing recommendation). This was the third time this individual had attacked him. His Regimental Commander confirms this in his comments for filing recommendation of the reprimand (see attached) by stating, "where there was a demonstrated history of this wife assaulting him." His punishment for this mistake was a reprimand that led to termination from active duty.

e. The standard for the grade determination is the "highest grade satisfactorily served." It is not whether the individual was sufficiently punished. He served satisfactorily as a CW5 for greater than 31 days prior to this incident. After this incident he served for 2 and a half more years as a CW5. Most of that time he was under investigation for the event, but he continued to contribute to his unit as stated in his OERs during that period. His last two OERs showed outstanding performance, both the raters knew all the details of the incident (OERs are attached). All of his raters and senior raters for his OERs as a CW5 provided him letters of recommendation to retire as a CW5 (see attached).

f. Additionally, he attended counseling session with the Battalion Clinic Psychologist for support navigating the events after the incident in addition to self-reflecting on his behavior (support letter included as last page with letters of recommendation). In conclusion, despite this single incident his overall service as a CW5 was above satisfactory as supported by the evidence given. In addition, AR 15-80 states that grade determination for warrant officers are to be retired in the grade "held on the day before

the date of his or her retirement." He is requesting that his DD Form 214 retired list grade be corrected from CW4 to CW5.

2. A review of the applicant's military record shows the following:

a. Having prior Regular Army enlisted service, DA Forms 71 (Oath of Office - Military Personnel) show –

- 3 July 1997, he was appointed as a Reserve warrant officer and executed an oath of office
- 19 January 2001, he was appointed as a chief warrant officer two and executed an oath of office
- 1 June 2005, he was appointed as a chief warrant officer three in Regular Army and executed an oath of office

b. Orders Number 014-037 published by the U.S. Army Human Resources Command (HRC) promoted the applicant to CW4, effective on with a Date of Rank (DOR) of 1 February 2010.

c. Orders Number 337-008 published by HRC promoted the applicant to CW5, effective on with a DOR of 9 November 2016.

d. On 7 August 2018, the applicant was reprimanded and received a General Officer Memorandum of Reprimand (GOMOR) from the Commanding General (CG), Headquarters, I Corps, Joint Base Lewis-McChord, WA, for domestic violence. Specifically, on 8 October 2017, he was involved in a verbal altercation with his wife that turned physical, during which he conducted a foot sweep maneuver on her, knocking her down, and choked her.

e. On 9 August 2018, the applicant acknowledged receipt of the GOMOR and elected to submit written matters within seven calendar days.

f. His regimental commander recommended permanently filing the reprimand in the applicant's Army Military Human Resource Record (AMHRR), and his immediate and intermediate commanders recommended placing the reprimand temporarily in his local unit file for a period of 18 months or until he is reassigned outside his General Court-Martial Convening Authority's jurisdiction. Members of his chain of command noted, he had been honest and forthcoming throughout the investigation, and he accepted responsibility and genuinely regretted his actions. It was an isolated incident because of a dysfunctional relationship. The applicant made a mistake and deserved a second chance.

g. On 12 October 2018, after carefully considering the GOMOR, circumstances of the misconduct, and all matters by the applicant in defense, extenuation, or mitigation, if any, along with recommendations of subordinate commanders; the CG, Headquarters, I Corps, Joint Base Lewis-McChord directed the GOMOR be placed in the applicant's AMHRR, with all enclosures.

h. On 4 December 2018, by memorandum, the CG, Headquarters, I Corps, Joint Base Lewis-McChord notified the applicant that elimination action had been initiated against him and he was required to Show Cause for retention on Active Duty under the provisions of Army Regulation (AR) 600-8-24 (Officer Transfer and Discharges), dated 13 September 2011, paragraph 4-2b(5) acts of personal misconduct and 4-2c due to adverse information filed in the Official Military Personnel File in accordance with AR 600-37.

i. On 7 January 2019, the applicant responded to the Initiation of Elimination memorandum and elected to submit a declination statement and request appearance before a field Board of Inquiry (BOI).

j. On 27 February 2019, DA Form 1574-2 (Report of Proceedings by Board of Officers) shows –

(1) The Board found the allegation that, on or about 8 October 2017, the applicant was involved in a verbal altercation with his wife that turned physical, during which the applicant conducted a foot sweep maneuver on her, knocking her down, and then choked her is supported by a preponderance of the evidence. "This finding does warrant the elimination of CW5 [redacted] [applicant]."

(2) The allegation that the applicant has substantiated derogatory activity that was filed in his AMHRR, as a result of a GOMOR, dated 7 August 2018, which was filed in his AMHRR is supported by a preponderance of the evidence. "This finding does warrant the elimination of CW5 [redacted] [applicant]."

(3) The Board recommended that the applicant be eliminated from the Army.

k. On 12 March 2019, the applicant responded to the BOI's recommendation for elimination from active duty and requested to remain on active duty despite his mistake during the altercation on 8 October 2017.

l. On 15 March 2019, after reviewing the record of proceedings for the BOI under the standards set forth in AR 600-8-24, the Administrative Law Attorney found the board's proceedings to be legally sufficient.

m. On 25 April 2019, the Commanding General, Headquarters, I Corps, Joint Base Lewis-McChord reviewed the applicant's officer elimination packet, supporting evidence, the applicant's rebuttal matters, and recommended he be eliminated from the Army. The CG also stated he considered the applicant's rebuttal matters and found the allegations could have been raised by the applicant during the board proceedings, but the applicant failed to do so. Additionally, he found the allegation that the board did not deliberate long enough was baseless.

n. On 4 October 2019, the Army Review Boards Agency (ARBA), Deputy Assistant Secretary of the Army (DASA), determined the applicant would be involuntarily eliminated from the Army. By operation of law this action converted to a Retirement in Lieu of Elimination. The DASA directed the case be referred to the Army Grade Determination Review Board (AGDRB).

o. On 15 October 2019, by memorandum, ARBA notified the applicant that his Officer Elimination Case had been converted by operation of law to an Army Grade Determination. His Elimination Packet, AMHRR, and ORB was forwarded to the AGDRB under the provisions of AR 15-80.

p. On 5 December 2019, the applicant requested that he be retired in his current grade of CW5 and stated in pertinent part, he humbly requests that he be retired in his current rank of CW5. He was given the privilege of receiving CW5 from his above standard performance during his 27 years of service to this great Nation. He has served honorably and above satisfactorily for three years as a CW5 despite his single mistake one year into his service as a CW5. One year into his service as a CW5 he made a mistake in handling a physical attack from [REDACTED] [spouse]. This was the third time [REDACTED] had assaulted him.

q. On 12 December 2019, U.S. Army Trial Defense Service - West, Fort Lewis Field Office, Senior Defense Counsel submitted matters for the applicant's Army Grade Determination Review and requested that he be retained in his current grade as the retired grade. Counsel enclosed the applicant's statement, his OERs and awards as a CW5, and numerous letters in support of rank retention.

r. On 12 February 2020, the ARBA DASA approved the applicant's Retirement in Lieu of Elimination and placement on the Retired List in the grade of CW4. The DASA determined the applicant's service in the grade of CW5 was not satisfactory.

s. On 24 February 2020, the HRC, Chief, Leader Development Division notified the applicant that the DASA (Review Boards) approved his Retirement in Lieu of Elimination and directed he be retired in the grade of CW4. The DASA determined his service in the grade of CW5 was not satisfactory. The effective date of his retirement would be 30 April 2020 and he would be placed on the retired list on 1 May 2020.

t. On 12 March 2020, the Installation Management Command, Directorate of Personnel and Family Readiness, Joint Base Lewis-McChord published Orders Number 072-0007, which retired the applicant, effective 30 April 2020, and place him on the retired list, in the retired grade of CW4, effective 1 May 2020.

u. On 30 April 2020, DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was honorably retired by reason of "unacceptable conduct." He completed 22 years, 9 months, and 28 days net active service this period and 4 years, 8 months, and 18 days total prior active service. Item 4a (Grade, Rate or Rank) shows CW5 and item 18 (Remarks) states "Retired List Grade CW4."

3. In support of his case, the applicant provides:

a. Meritorious Service Medal certificate dated 31 July 2017, which shows he was awarded the Meritorious Service Medal while serving as the MH-47G Fully Mission Qualified Pilot-in-Command, Standardization Pilot, and Instrument Examiner.

b. Air Medal certificate dated 23 January 2018, which shows he was awarded the Air Medal for exceptionally meritorious achievement during aerial flight as a MH-47G fully mission qualified pilot-in-command for a Joint Task Force in support of Operation Enduring Freedom and Operation Freedom's Sentinel.

c. Letters of Support for Applicant, dated 14 August, 19 and 22 November, 5 and 12 December 2019, which state in pertinent part:

- the applicant actively sought executive coaching services as part of his Future Flight Lead progression
- he served effectively in all positions for which he was rated
- the applicant demonstrated meaningful remorse and a desire to make restitution for his clear error in judgement and action
- his service in the Army was overwhelmingly honorable in nature
- the applicant should be retired in the rank of CW5

d. An Officer Record Brief dated 9 December 2019, which shows the applicant's personnel, personal, assignment, awards and decorations, training, and education data.

e. DA Forms 67-10-2 (OERs), covering the period of 14 March 2016 through 30 April 2020, which show he was rated in the rank of CW5 and received favorable ratings from his rater and senior, such as "proficient" and "excels."

f. White House email communication dated 27 May 2020, which states the applicant's correspondence was reviewed and forwarded to the appropriate Federal agency for further action.

4. The applicant's complete BOI with all enclosures can be reviewed in its entirety within the supporting documents.

5. AR 15-80 (Army Grade Determination Review Board and Grade Determinations), paragraph 2-5 (Unsatisfactory service) states that, service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when reversion to a lower grade was —

- "Expressly for prejudice or cause"
- Owing to misconduct
- Caused by nonjudicial punishment pursuant to Uniform Code of Military Justice, Article 15
- The result of the sentence of a court-martial

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. Based upon the misconduct found in the applicant's record which resulted in the applicant's reduction in rank, the Board concluded there was insufficient evidence of an error or injustice warranting a correction to the applicant's retirement rank.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

5/14/2024

X Gretchen P. Gaub

CHAIRPERSON

Signed by: USA

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 15-185 (Army Board for Correction of Military Records (ABCMR)), states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states that 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.

2. AR 15-80 (Army Grade Determination Review Board and Grade Determinations) establishes policies, procedures, and responsibilities of the Army Grade Determination Review Board (AGDRB) and other organizations delegated authority to make grade determinations on behalf of the Secretary of the Army. In pertinent part:

a. Paragraph 2-1 (AGDRB establishment) states, the AGDRB operates within the Office of the Secretary of the Army under the supervision of and as a component board of the ARBA. The AGDRB consists of military officers senior in rank to and in at least a grade equal to the highest grade held by the individual whose grade is being considered. Additionally, at least one member of the AGDRB will be at least one grade higher than the highest grade held by the individual whose grade is being considered.

b. Paragraph 2-2 (AGDRB) states, the AGDRB considers individual cases that are referred to it in accordance with this regulation. It directs or recommends the final grade determination that affects an individual's separation or retired pay. The AGDRB decides cases on the evidence of record. It is not an investigative body. AGDRB discussions and individual votes of members are privileged and confidential and will be disclosed only to those individuals in the decision-making process with a need to know.

c. Paragraph 2-4 (Grade determination considerations) states, a grade determination is an administrative decision to determine appropriate retirement grade, retirement pay, or other separation pay. Although a lower grade determination may affect an individual adversely, such determinations under this regulation are not punitive. The AGDRB will consider each case on its own merits. Generally, determination will be based on the Soldier's overall service in the grade in question, either on active duty or other service qualifying the Soldier for retirement, receipt of retired pay, or separation for physical disability. Circumstances pertinent to whether such service is found satisfactory include, but are not limited to, the following:

(1) Medical reasons, which may have been a contributing or decisive factor in a reduction in grade, misconduct, or substandard performance.

(2) Compassionate circumstances.

(3) Length of otherwise satisfactory service in the grade in question, before and after the misconduct. Additionally, the AGDRB cannot waive statutory Time-In-Grade (TIG) requirements for retirement at the current grade, such as the 31 or more days of service required at a previously held higher grade for a warrant officer to retire at the higher grade under the provisions of Title 10, U.S. Code, section 1371. For instance, TIG requirements can be negated by operation of law in disability cases under provisions 10 USC 1372.

(4) Performance level, as reflected in evaluation reports and other portions of the service record that reflect performance. In reviewing these matters, the AGDRB will consider whether reporting officials were aware of the performance giving rise to the grade determination.

(5) Nature and severity of misconduct, if any. Although the punishment an individual has received may be one factor in determining the seriousness of misconduct, the amount of punishment will not be considered in determining whether the individual has been "punished enough." Grade determinations are not considered punitive, and the standard for grade determinations is "highest grade satisfactorily served," not whether the individual has been sufficiently punished.

(6) The grade at which the misconduct was committed.

(7) The grade at which the misconduct was addressed by proper authorities.

d. Paragraph 2-5 (Unsatisfactory service) states that, service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when:

(1) Reversion to a lower grade was —

- "Expressly for prejudice or cause"
- Owing to misconduct
- Caused by nonjudicial punishment pursuant to Uniform Code of Military Justice, Article 15
- The result of the sentence of a court-martial

(2) There is sufficient unfavorable information to establish that the Soldier's service in the grade in question was unsatisfactory. One specific act of misconduct may or may not form the basis for a determination that the overall service in that grade was unsatisfactory, regardless of the period of time served in grade. Retirement in lieu of or as the result of elimination action will not, by itself, preclude retirement in the highest grade; however, the underlying misconduct and/or substandard performance can result in a determination that service in grade was unsatisfactory.

e. Paragraph 2-6 (Service in lower grade) states, if service in the highest grade held was unsatisfactory, the Soldier can be deemed to have served satisfactorily in the next lower grade actually held, unless paragraph 2-5 applies with regard to that next lower grade.

//NOTHING FOLLOWS//