

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 October 2024

DOCKET NUMBER: AR20230005294

APPLICANT REQUESTS:

- Back pay for her promotion to major (MAJ)
- Personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from [REDACTED] Military Department Inspector General (IG)
- Memorandum for Record (MFR) Nonrated Statement

FACTS:

1. The applicant states she is requesting back pay of her promotion from captain (CPT) to MAJ which was delayed due to multiple investigations into sexual assault and reprisal based on her speaking out regarding her sexual assault. Those investigations halted her career. This correction should be made as she was delayed for promotion, given poor evaluations (which have since been removed from her record), she was mentally distraught (for which she is seeking counseling), and harassed (personally and professionally), all for speaking out against her assailant after years of enduring the sexual harassment in silence. Her promotion was finally given to her on 21 August 2022.

2. The applicant provides a letter from [REDACTED] Military Department IG, 9 March 2022, which states:

a. The letter was in response to her 11 September 2019 letter to the IG concerning misconduct of Army officials. IG conducted a thorough investigation into her allegations. Their investigation determined that the allegations of:

(1) MAJ [REDACTED] retaliated against her, a victim of sexual assault, based on the reporting of a criminal offense was substantiated.

(2) MAJ [REDACTED] failed to treat her with dignity, fairness, and respect was substantiated.

(3) MAJ [REDACTED] did not act in accordance with the good faith standard as directed in the Department of Defense Instruction 6490.04 Mental Health Evaluation of Member of the Military Services, when MAJ [REDACTED] initiated procedures to command to direct the mentioned victim of sexual assault for a mental health evaluation and fit for duty evaluation was not substantiated.

(4) Lieutenant Colonel (LTC) [REDACTED] retaliated against her, a victim of sexual assault, based on the victim's report of a criminal offense was not substantiated.

(5) LTC [REDACTED] failed to treat her with dignity, fairness, and respect was substantiated.

(6) CPT [REDACTED] abused his authority when he flagged her for an Army Physical Fitness Test failure, was not substantiated.

b. The IG office would take no further action pertaining to the allegations.

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

a. NGB Form 337 (Oaths of Office) shows she took the oath of office in [REDACTED] Army National Guard (ARNG) on 17 March 2007.

b. MFR from U.S. Army Human Resources Command (AHRC) nonrated statement, 24 August 2022, shows she had nonrated time from 24 May 2018 through 8 July 2019.

c. Memorandum Promotion as a Reserve Commissioned Officer from National Guard Bureau (NGB), 22 September 2022 shows she was promoted to the rank of MAJ effective 10 June 2022 with a date of rank of 14 December 2018.

d. Orders 002087713.00, published by [REDACTED] ARNG, 12 October 2022, shows she was promoted to MAJ effective 10 June 2022 with a date of rank of 14 December 2018. On 27 October 2022, her promotion orders were amended to correct her date of rank to 21 August 2018.

e. Special Orders Number 91, published by NGB, 25 October 2022, corrected her date of rank to 21 August 2018.

f. The applicant's service record is void of a sexual assault or retaliation investigation.

4. On 18 July 2024, the Chief, Officer Promotion Board Announcements, Support and Promotion Orders, AHRC provided an advisory opinion, which states:

a. In lieu of the applicant's promotion and entitlements authority being that of NGB, a review of the documents received, AHRC's current records, laws, regulation, policies, and the systems available to AHRC Officer Promotions Branch, they find her request for an earlier date of rank does not have merit.

b. Her current date of rank of 21 August 2018, ARNG or otherwise, is the earliest date of rank (board approved date) that could have been awarded.

5. On 19 July 2024, the advisory opinion was provided to the applicant to allow her the opportunity to respond. On 1 August 2024, she responded stating she is requesting retroactive pay to her date of rank due to no fault of her own. She was unable to be promoted with her peers. She was being held in a holding pattern as her sexual assault and retaliation from the sexual assault investigations were being completed. Due to the length of the investigations taking four plus years, she was unable to be promoted. Both investigations came back substantiated and it was then that she was promoted.

6. The ABCMR may, in its discretion, hold a hearing. 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.

#### BOARD DISCUSSION:

1. The Board carefully considered the applicant's contentions, her military record, the results of the IG inspection, the conclusions of the advising officials and regulatory guidance. The Board found that IG found multiple substantiated claims of retaliation against her and that her promotion to Major was delayed due to investigations. The Board found that she was promoted to Major with authorization for pay and allowances in the higher-grade effective 10 June 2022. Her time in grade for promotion to the next grade was established as 21 August 2018. The Board determined that the delay of her promotion to Major was unjust and due to that delay, her effective date of promotion should also be 21 August 2018 and that she should be entitled to pay and benefits as a Major for the period of service between 21 August 2018 and 10 June 2022.

2. Based on a preponderance of the Board found that relief was warranted to correct an injustice in the applicant's record.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3



GRANT FULL RELIEF

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:

GRANT PARTIAL RELIEF

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GRANT FORMAL HEARING

:

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:

DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show:

- The applicant's effective date of promotion to Major as 21 August 2018, and;
- Her entitlement to any pay and allowances due between 21 August 2018 and 10 June 2022 as a result of this correction.

4/28/2025

X



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. Title 10, U.S. Code, section 1552, the law which provides for the Board, states that The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or 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 to the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be.
2. Army Regulation 15-185 (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. 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.

//NOTHING FOLLOWS//