

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2023

DOCKET NUMBER: AR20230005893

APPLICANT REQUESTS: in effect –

- reinstatement into the Active Guard/Reserve (AGR) program
- backpay based on his promotion to the rank/grade of major (MAJ)/O-4 upon reinstatement to the AGR program
- a 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)
- Applicant's statement
- Previous Army Board for Correction of Military Records (ABCMR) Docket Number AR20190013353, 11 May 2020
- U.S. Army Human Resources Command (HRC) Memorandum - Subject: Special Selection Board (SSB) Results (SSB [REDACTED]) FY19 (Fiscal Year 2019), 15 June 2022
- HRC letter to congressional representative, 8 November 2022
- Email communication between the applicant and HRC, January 2023

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:

a. The SSB was given as a result of ABCMR Docket Number AR20190013353, and he was promoted to MAJ with a Date of Rank (DOR) of 1 August 2019. His position is the initial promotion board determined he was a non-select and he was separated yet the Army Review Boards Agency granted full relief in reference to the condition that was outside of his control and ordered him to be reconsidered for FY19 Major (MAJ) Promotion Board where he was selected for MAJ. Under the provisions of Army

Regulation (AR) 600-8-24 (Officer Transfers and Discharges) captains (CPT) not selected for promotion the second time have to be released from active duty. Officers will be discharged on the 120th calendar day after receipt of involuntary release notification. The SSB has promoted him to MAJ under the FY19 MAJ Board revoking grounds for his discharge.

b. He was separated due to the promotion board results 120 days after the FY19 MAJ Board Results in March 2020. The SSB promoted him to MAJ/O-4 under the FY19 MAJ board revoking discharge procedures that happened after the initial FY19 MAJ board. He cannot continue with his service due to his status of being already separated. He is requesting that the Board review this case promptly due to him already being separated over two years. He is also requesting to be brought back in the U.S. Army AGR program and back paid the amount he rates.

3. A review of the applicant's military records show the following:

a. He enlisted in the Regular Army on 20 August 2008.

b. On 3 December 2008, DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty under the provisions of AR 635-200 (Active Duty Enlisted Administrative Separations), paragraph 16-1A, to accept commission or warrant in the Army.

c. On 4 December 2008, DA Form 71 (Oath of Office - Military Personnel) shows he executed an oath office and was appointed as a commissioned officer in the Regular Army Medical Services in the rank/grade of second lieutenant (2LT)/O-1.

d. Orders Number 221-086 published by HRC promoted the applicant to the rank/grade of CPT/O-3, effective on with a DOR of 16 July 2012.

e. On 15 October 2016, DD Form 214 shows he was honorably discharged from active duty, under the provisions of AR 600-8-24, chapter 5, by reason of "early separation." He completed 7 years, 10 months, and 12 days net active service this period with 4 years, 4 months, and 14 days total prior active service.

f. On 16 October 2016, DA Form 71 shows he executed an oath office and was appointed as a Reserve commissioned officer in the rank/grade of CPT/O-3.

g. Orders Number R-03-808623 published by HRC ordered the applicant to active duty in an AGR status for an active-duty commitment of 3 years with a report date of 2 April 2018.

h. On 1 March 2020, the applicant was honorably discharged from active duty. DD Form 214 shows he was discharged under the provisions of AR 600-8-24 by reason of "non-selection, permanent promotion." He completed 1 year and 11 months net active service this period and he had 12 years, 4 months, and 24 days of total prior active service. Item 4a (Grade, Rate or Rank) shows CPT and item 12i (Effective Date of Pay Grade) shows 16 July 2012.

4. On 11 May 2020, in ABCMR Docket Number AR20190013353 the Board recommended approving the applicant's request for a SSB for reconsideration of his potential selection for promotion to MAJ for the FY19 Army Medical Department. The Board voted to grant full relief.

5. On 15 June 2022, by memorandum, the HRC, Lead, Officer Promotions Special Actions, notified the applicant that he was considered and selected for promotion by a SSB to MAJ, under the criteria and instructions established for the regularly constituted FY19, MAJ, Medical Services, Army Reserve AGR, promotion selection board. He was also notified:

a. To provide his local servicing Personnel Administrative Office and Command with a copy of this announcement so that proper customs and courtesies may be rendered. Applicable promotion orders will be produced separately by the Department of the Army's (Officer Promotions, RC) Special Orders Team, (DASO).

b. The applicant's personnel administrative office must provide a copy of its Unit Manning Report along with a complete AHRC Form 56R to the (RC) Officer Promotions DASO team at: [REDACTED]. (Not applicable for Officers whose promotion eligibility date (PED) has passed or those in an Individual Ready Reserve (IRR) status on the RASL). Failure to do so within a timely manner will result in an additional delay to process his orders. Production of promotion orders may take between 20 and 30 business days upon receipt of the above and verification that all promotion criteria have been met.

6. On 18 October 2022, the HRC, Chief, Office of Promotions Reserve Components issued a Memorandum, Subject: Promotion as a Reserve Commissioned [or] Warrant Officer of the Army (AR 135-155), which notified the applicant and states:

a. The applicant's promotion and pay allowances are effective on the date of this memorandum or the date shown after A (1 August 2019), above, whichever is later. Time in grade for promotion to the next grade will be computed from the date shown after A, above, which shows 1 August 2019.

b. No acceptance or oath of office is required. This promotion is not valid and will be revoked if the applicant is not in a promotable status on the effective date of promotion.

Unless the applicant expressly declines, or requests delay of this promotion within 60 days, his promotion will be effective as shown after A, above. If a request for delay of promotion beyond the date shown in A above is approved, the effective date of promotion will be the date the applicant accepts promotion during or at the end of the period of authorized delay.

7. The applicant provides the following:

a. HRC letter to congressional representative dated 8 November 2022, which states, the SSB for reconsideration for promotion to MAJ under the FY19 criteria based on the ABCMR decision has been complete. HRC records indicate that the officer was notified on 15 June 2022 and his promotion orders were processed on 18 October 2022 promoting him to MAJ with a DOR of 1 August 2019. The applicant may contact HRC directly at: [REDACTED] for any additional information pertaining to his promotion.

b. Email communication between the applicant and HRC in January 2023, which shows HRC and the applicant discussing the ABCMR decision granting full relief, his request for promotion orders, backpay, and reinstatement.

8. On 3 November 2023, the HRC, Chief, Personnel Services Division, provided an advisory opinion for this case and stated:

a. The applicant requested a correction to his record to reflect the rank of MAJ instead of CPT. His rank of MAJ was due to a subsequent SSB Board review conducted on 18 October 2022, which granted his request and retroactively promoted the applicant on 1 August 2019. Additionally, the applicant requested his records be corrected with the revocation of his discharge order due to being "erroneous" and identified as a two-time non-select for promotion. This "error stemmed from missing documents showing he was educationally qualified.

b. The HRC Retirements, Separations Services (RSS) Branch has verified the promotion request was granted, and the system of record correctly identifies the applicant's rank. The RSS branch will issue an amendment to the discharge order for the applicant to reflect the rank of MAJ at discharge accurately. Order number D-02-090005, if revoked, would have a negative financial impact in the form of a debt from Defense Finance and Accounting Services, because he was relocated to his home of record on the orders. However, an amendment to the discharge order D-02-090005 and format 454 travel order C-02-001854 to reflect the rank of MAJ at discharge is appropriate.

c. Copies of the Amended order(s) and a corresponding DD Form 215 will be provided to the applicant via Department of Defense Safe and traditional mail for his records.

9. On 8 November 2023 –

a. HRC issued a DD Form 215 (Correction to DD Form 214) which shows, in pertinent part, his DD Form 214 ending on 1 March 2020 was corrected to read in:

- item 4a (Grade, Rate or Rank) – MAJ
- item 4b (Pay Grade) – O4
- item 12i (Effective Date of Pay Grade) – 1 August 2019
- item 26 (Separation Code) – JND (miscellaneous/general reasons)
- item 28 (Narrative Reason for Separation) – "miscellaneous/general reasons"

b. The applicant was provided a copy of the HRC advisory opinion to allow for comments and/or rebuttal. He did not respond.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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. Upon review of the applicant's petition, available military records and the Human Resources Command, Chief, Personnel Services Division advisory opinion, the Board concurred with the advising official finding the applicant was erroneously identified as not being educationally qualified. The Board noted the applicant was promoted to Major and issued a corrected DD Form 215. The Board found there is sufficient evidence of in-service mitigating factors that warrant reinstatement into the Active Guard/Reserve (AGR) program and receive backpay based on his promotion to the rank/grade of major (MAJ)/O-4 upon reinstatement to the AGR program. Based on the HRC advisory and sufficient evidence, the Board granted relief.

2. 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.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show the applicant should be reinstatement into the Active Guard/Reserve (AGR) program and receive backpay based on his promotion to the rank/grade of major (MAJ)/O-4 upon reinstatement to the AGR program.

1/2/2024

X [REDACTED]

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CHAIRPERSON  
[REDACTED]

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. AR 15-185 (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.

3. AR 600-8-24 (Officer Transfers and Discharges) prescribes the officer transfers from Active Duty (AD) to the Reserve Component (RC) and discharge functions for all officers on active duty for 30 days or more. Paragraph 2-37 states, Reserve commissioned officers serving on AD as commissioned officers who fail a second time to be selected for promotion to permanent Reserve grade of captain, major, or lieutenant colonel will be released from AD. They will be discharged on the 120th calendar day after receipt of involuntary release notification.

4. AR 135-155 (Army National Guard and U.S. Army Reserve - Promotion of Commissioned Officers and Warrant Officers Other Than General Officers) prescribes policy and procedures used for selecting and promoting commissioned officers (other than commissioned warrant officers) of the Army National Guard of the United States (ARNGUS) and of commissioned and warrant officers (WO) of the U.S. Army Reserve (USAR).

5. AR 135-18 (The Active Guard Reserve (AGR) Program) prescribes the policy and procedures for the administration of the AGR Program. The objective of the AGR Program is to provide highly qualified officers, warrant officers, and enlisted Soldiers to meet the full-time support requirements for ARNG and USAR projects and programs. Chapter 2 (Entry into the Active Guard Reserve Program), Section I (Eligibility) states in:

a. Paragraph 2-1 (Qualifications for entry in the Active Guard Reserve Program), in pertinent part, for initial entry in the AGR Program, an applicant must possess the qualifications prescribed in table 2-1. Soldiers may submit applications for initial entry in the AGR Program, or subsequent reentry in the AGR Program following a break, in accordance with paragraph 2-1, to the appropriate authorities unless exempted by the CG, HRC or CNGB. These authorities will announce the procedures and the files or records required for inclusion with the application on the HRC website. Each application packet must include but is not limited to DA Form 5646 (Statement of Conditions of Service-AGR)). Applications from Soldiers who do not qualify under table 2-1 or table 2-2 or, for ARNGUS/ARNG Soldiers, who fail to meet any additional requirements prescribed by CNGB, will be disapproved and returned to the applicant. Soldiers who require a waiver for entry will submit a request for the appropriate waiver through their command in a memorandum format per AR 25-50 enclosed with their application. Soldiers applying for FTNGD in AGR status will apply as prescribed by procedures issued by CNGB. USAR Soldiers will submit requests for the appropriate waiver through their command in a memorandum format per AR 25-50 enclosed with their applications to HRC as directed in the board announcement on the HRC website. NGB or HRC will offer a conditional AGR position pending adjudication of the waiver request. Once the waiver is received, CNGB or HRC will either extend an offer to enter the AGR Program

or rescind the conditional offer. USAR recruiting duty applicants must meet the provisions of AR 601-1.

b. Paragraph 2-2 (Accession policy) states – (1) Orders will be published according to guidance issued by Chief, National Guard Bureau (CNGB) (ARNGUS and/or ARNG Soldiers) and Commanding General (CG), HRC (USAR Soldiers) and in accordance with the appropriate prescribed format in AR 600-8-105. (2) CNGB (ARNGUS and/or ARNG Soldiers) and CG, HRC (USAR Soldiers) will publish orders placing personnel on active duty AGR status. (3) The CNGB and Office of the Chief, Army Reserve (OCAR) will establish, by grade and skill, the maximum number of Soldiers that may enter the AGR Program each year based on statutory and budgetary constraints. (4) USAR enlisted Soldiers promoted prior to AGR entry may be considered for AGR duty at the higher grade without further board action, consistent with the needs of the AGR Program. Soldiers are required to furnish a copy of promotion orders to HRC before consideration at the higher grade. Advancement prior to AGR entry does not guarantee availability of an AGR position and may result in the Soldier not being offered an AGR position.

6. Title 10, USC, section 1552 states the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for 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 the claimant on account of his or another's service in the Army.

//NOTHING FOLLOWS//