

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 16 January 2024

DOCKET NUMBER: AR20230006366

APPLICANT REQUESTS: entitlement to retirement pay at the rank of major (MAJ)/O-4 rather than captain (CPT)/O-3. He also requests a personal appearance via video or telephone.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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, he was retired at the rank of MAJ, however, his pay and entitlements are based on the rank of CPT due to a General Officer Memorandum of Reprimand (GOMOR) he received. He contests he served as a MAJ for the last 7 years of his military service prior to retirement and the GOMOR issued was due to an alleged sexual assault occurring in 2012 which was later dismissed (2014) because the victim denied the incident took place. His GOMOR addressed him being inappropriately intoxicated at the 2012 event. This personnel action precluded him from advancing in grade.
3. A review of the applicant's available service records reflects the following:
 - a. On 15 June 1997, the applicant was appointed a Reserve commission at the rank of second lieutenant (2LT)/O-1.
 - b. On 27 August 2001, the applicant was ordered to active duty to serve as a 65D (Physician Assistant).
 - c. On 13 April 2009, the U.S. Army Human Resources Command issued Orders Number 103-033 announcing the applicant's promotion to MAJ, effective 1 May 2009.

d. On or about 28 January 2015, the applicant was issued a GOMOR citing that on or about 26 October 2012, while the applicant was attending the flight surgeon course, he went to a party at a residence on post. During the party, the applicant drank heavily and was observed flirting with an Army CPT, even though he was married. The applicant was observed putting his arm around the CPT, moved his hand under the CPT's shirt, and touched her breast. This inappropriate conduct was public and observed by others at the party. Although the CPT related to the Criminal Investigation Division that she would prefer the investigation be closed and that a crime did not occur, his conduct was reprehensible and would not be tolerated.

e. On 6 March 2015, the GOMOR issuing Officer directed that this document be placed in the applicant's permanent Army Military Human Resources Record.

f. On 15 August 2016, Headquarters, Tripler Army Medical Center issued Orders Number 228-0003 reassigning the applicant pending separation processing for retirement, effective 31 August 2016. The applicant would be retired at the rank of CPT with a DOR of 1 May 2009.

g. On 31 August 2016, the applicant was honorably retired from military service due to his non-selection for promotion in accordance with Army Regulation (AR) 600-8-24 (Officer Transfers and Discharges), Chapter 6 and Paragraph 5-9F. DD Form 214 (Certificate of Release or Discharge from Active Duty), item 4a./b. (Grade, Rate or Rank/Pay Grade) reflects "MAJ/O-4."

3. Army Grade Determination Review Board (AGDRB) Docket Number AR20160010484 reviewed the U.S. Army Human Resources Command request for a grade determination on behalf of the applicant. The Deputy Assistant Secretary of the Army-Review Boards directed that the applicant be placed on the Retired list and receive pay and entitlements at the rank of CPT noting that his service at the rank of MAJ was not satisfactory.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant was promoted to major in May 2009. He received a GOMOR for sexual assault in January 2015. He had a mandatory retirement date of 31 August 2016. As a result, his case was sent to the AGDRB to determine the highest grade in which he has served satisfactorily for retirement purposes. The AGDRB determined his service as a major was not satisfactory. The DASA (RB) approved his retirement in the grade of CPT.

b. The Board noted that the derogatory information – GOMOR – necessitated the AGDRB review. The Board, however, found the applicant’s contention credible: He has served as a MAJ for the last 7 years of his military service prior to retirement and the GOMOR issued was due to an alleged sexual assault occurring in 2012 which was later dismissed (2014) because the victim denied the incident took place. As a result, the Board determined his service in the grade of MAJ was satisfactory.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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 by:

- showing the Army Grade Determination Review Board (AGDRB) found the applicant’s service in the grade of Major was satisfactory
- showing the Deputy Assistant Secretary of the Army-Review Boards directed that the applicant be placed on the Retired list and receive pay and entitlements at the rank of Major

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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 600-8-24 (Officer Transfers and Discharges) Chapter 6 (Retirements) provides that an officer who receives a notification memorandum of impending elimination may request retirement in lieu of elimination, if the officer has 19 years and 6 months or more active Federal service on the date of such application. If the officer elects to retire and the elimination action involved misconduct or moral or professional dereliction, CG, HRC, will forward the retirement application and memorandum of notification for elimination with all supporting documentation to the AGDRB. The AGDRB will make recommendation as to the highest grade that the officer has served on active duty satisfactorily. Paragraph 5-9F provides that an officer or warrant officer eligible for retirement under chapter 6 may apply for retirement to be effective not later than the first day of the seventh month beginning after the month in which the President or Secretary of the Army (as applicable) approves the report of the board that considered the officer or warrant officer the second time.
3. Title 10 USC Section 1370 (Regular Commissioned Officers) provides that unless entitled to a different retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, Marine Corps, or Space Force who retires under any provision of law other than chapter 61 or 1223 of this title shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily. If the Secretary of a military department or the Secretary of Defense, as applicable, determines that an officer committed misconduct in a lower grade than the retirement grade otherwise provided for the officer by this section such Secretary may deem the officer to have not served satisfactorily in any grade equal to or higher than such lower grade for purposes of determining the retirement grade of the officer under this section; and the grade next lower to such lower grade shall be the retired grade of the officer under this section.
4. 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent

evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

//NOTHING FOLLOWS//