

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]
[REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230008193

APPLICANT REQUESTS: in effect –

1. Correction of her:
 - DD Form 214 (Certificate of Release or Discharge from Active Duty) ending on 2 July 2019 to show her rank/grade as major (MAJ)/O-4 instead of captain (CPT)/O-3
 - retirement orders to show she was placed on Temporary Disability Retired List (TDRL) and permanently retired in the rank of MAJ
2. A personal appearance before the Board via telephone/video.

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

- DD Form 149 (Application for Correction of Military Record)
- Promotion/scroll list to MAJ

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 she requests for her retired rank/grade to be upgraded to MAJ/O-4, which reflects the rank she was selected for prior to her permanent retirement.

a. Promotion lists are generally approved by the Senate approximately 45 days prior to publication. On 2 July 2019, she was placed on the Temporary Disability Retired List (TDRL). Around 27 July 2019, the MAJ Active Guard/Reserve (AGR) promotion list was published, where she believes she was sequence number 5 for promotion to MAJ. She had been a CPT for over 7 years. She is requesting that her retired rank be changed to

MAJ, to reflect the promotion she had earned and was approved for while still on AGR status.

b. Until 15 April 2023, she was unaware that she could make this request. This correction in rank will not affect her current Department of Veterans Affairs (VA) disability rating, and she would have met the requirement of holding the rank for six months prior to being placed on permanent retirement.

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

a. Having prior U.S. Navy and U.S. Army Reserve enlisted service, DA Form 71 (Oath of Office - Military Personnel) shows she was appointed as a Reserve commissioned officer and executed an oath of office on 11 September 2008.

b. Orders Number A-06-917207 and A-05-015328, published by the U.S. Army Human Resources (HRC), St. Louis, MO, ordered the applicant to Active Duty for Operational Support for 365 days with report dates on 13 July 2009 and 2010.

c. On 19 May 2011, Orders Number R-05-186903, published by HRC, Fort Knox, KY, ordered the applicant to active duty in an AGR status for 3 years with a report date of 13 July 2011.

d. On 26 March 2012, HRC published Orders Number B-03-202330, which promoted the applicant to the rank/grade of CPT/O-3, with an effective date of rank of 1 April 2012.

e. On 30 December 2013, HRC published Orders Number R-05-186903A01, which amended Orders Number R-05-186903 to read "Effective: 30 December 2013, Period (Active Duty Commitment): Indefinite; REFRAD [Release from Active Duty]: N/A".

f. On 17 September 2015, Orders Number R-09-591084, published by HRC, ordered the applicant to active duty in an AGR status with a report date of 4 January 2016.

g. DA Form 1059 (Service School Academic Evaluation Report) shows she achieved course standards and completed the Logistics Captains Career Course on 24 November 2015.

h. On 1 May 2019, a Formal Physical Evaluation Board (PEB) found the applicant physically unfit and recommended a disability rating of 60 percent and that her disposition be placement on the TDRL with a reexamination during January 2020. She concurred and did not request reconsideration of her VA ratings.

i. On 15 May 2019, Orders Number C-05-906165, published by HRC, attached the applicant to Fort Hood for separation processing with a report date of 23 May 2019.

j. On 2 July 2019, the applicant was retired. DD Form 214 shows she completed 7 years, 11 months, and 20 days net active service this period with 6 years, 5 months, and 26 days total prior active service. It also shows in:

- item 4a (Grade, Rate or Rank) – CPT
- item 4b (Pay Grade) – O3
- item 23 (Type of Separation) – Retirement
- item 28 (Narrative Reason for Separation) – Disability, Temporary (Enhanced)

k. On 20 August 2021, an Informal PEB found the applicant physically unfit and recommended a disability rating of 50 percent and that her disposition be permanent disability retirement.

l. On 5 October 2021, Headquarters, U.S. Army Physical Disability Agency published Orders Number D278-31, which removed the applicant from the TDRL because of permanent physical disability and permanently retired her in the rank of CPT on 5 October 2021. In pertinent part, the orders show:

- Percentage of disability: 50 percent
- Retirement type and allotment code: Permanent 11
- Component: USAR
- Statute authorizing retirement: 1201 [Title 10, USC, section 1201]

m. Her official military personnel file did not contain orders placing her on the TDRL.

4. In support of her case, the applicant provided a copy of the promotion/scroll list, which appointed her to the rank of MAJ in the Reserve of the Army under Title 10, USC, section 12203. The document does not show a date.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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

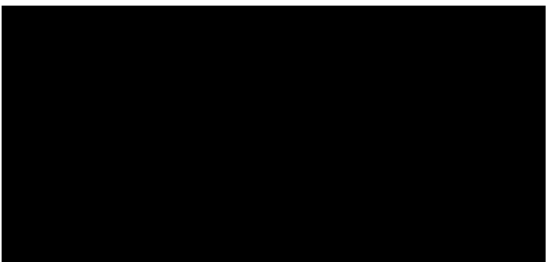
evidence of record shows the applicant was promoted to CPT on 1 April 2012. A formal PEB found her medically unit and recommended a 60% disability rating with her disposition as placement on the TDRL. She retired on 2 July 2019 in the rank of CPT. Since she did not hold the rank of Major at the time of retirement, her DD Form 214 correctly reflects the rank she held at the time of retirement. She provides a document titled promotion/scroll list, which appointed her to the rank of MAJ in the Reserve of the Army under Title 10, USC, section 12203. The document does not show which promotion board selected her for promotion, or the approval date of a promotion board that selected her for promotion, or the date her scroll was approved.

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.



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 (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 ABCMR may grant a formal hearing whenever justice requires.
3. Title 10, USC, section 1372 states unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the TDRL under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:
 - The grade or rank in which he or she is serving on the date when his or her name is placed on the temporary disability retired list or, if his or her name was not carried on that list, on the date when he or she is retired
 - The highest temporary grade or rank in which he or she served satisfactorily, as determined by the Secretary of the armed force from which he or she is retired
 - The permanent regular or Reserve grade to which he or she would have been promoted had it not been for the physical disability for which he or she is retired and which was found to exist as a result of a physical examination
 - The temporary grade to which he or she would have been promoted had it not been for the physical disability for which he or she is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination
4. AR 600-8-105 (Military Orders) states only the organization that published the original order may amend, rescind, or revoke the order. Commanders may revoke award orders if issued by another headquarters only when authorized under AR 600-8-22.

//NOTHING FOLLOWS//