

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230008223

APPLICANT REQUESTS: in effect

- correction of his rank/grade upon commissioning to major (MAJ)/O-4 instead of captain (CPT)/O-3, with the appropriate retroactive Date of Rank (DOR) given his credentials and clinical experience
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's statement
- University of Minnesota Doctor of Medicine diploma, 7 May 2011
- DD Form 4 (Enlistment/Reenlistment Document - Armed Forces of the United States), 12 August 2015
- The American Board of Surgery Certificate in the specialty of Surgery, 15 November 2016
- Statement for Commissioning Army Medical Department (AMEDD) Officer United States Army Reserve (USAR), 14 June 2019
- Northwell Health Residency in General Surgery Certificate, 30 June 2016
- University of Illinois Metropolitan Group Hospitals Residency in General Surgery Certificate for Surgical Critical Care Fellowship, 31 July 2019
- The American Board of Surgery Certificate in Surgical Critical Care, 16 September 2019
- Office of the Inspector General (IG) letter to applicant, 17 May 2023

FACTS:

1. The applicant states:

a. He requests a review of his rank by the Army Board of Correction of Military Records (ABCMR) for him to be afforded the appropriate rank in the USAR. He had previously submitted a review request to the Department of the Army Inspector General and he was referred to the ABCMR for further appeal.

b. He joined the USAR under the AMEDD Military Accessions Vital to National Interest (MAVNI) program (as a non-U.S. citizen visa holder) on 12 August 2015 as a 61J (General Surgeon). He graduated medical school in 2011 and he was in his fifth (final year) of general surgery residency training when he signed his initial enlistment contract in 2015. At that time, he was told by his recruiter that he would be commissioned as a CPT/O-3 within 6 months after he had obtained his U.S. citizenship and received his security clearance. In the meantime, he would start drilling as a specialist (SPC)/E-4 (which he did from 2016-2019). His processing took much longer than 6 months and he finally became a U.S. citizen in 2017.

c. Following a lengthy process, he ultimately received a SECRET security clearance, and he was finally commissioned into the USAR as a CPT on 14 June 2019, with a DOR of 14 June 2014. Given that 4 years had passed since the day he signed his initial contract (2015) to the day of his commissioning (2019), he had accumulated 4 years of practice experience, and given that Medical Corps (MC) officers receive ranks based on their years in practice, he believes he should have been commissioned as a MAJ/O-4 instead of CPT/O-3.

d. After the next 3 years since his commissioning, he has been passed over by the MAJ Promotion Board three times for situations beyond his control. Each time he received a Selective Continuation (SELCON) which he accepted because he truly would like to continue his service. He registered for the AMEDD Direct Commissioning Course (DCC) for April 2020, however that class was subsequently cancelled due to the COVID19 pandemic. He somehow was placed on the MAJ Promotion Board in 2020 (perhaps because it has now been 6 years from his DOR); however, he was passed over. He attended and graduated the AMEDD DCC in April 2021 (and made the Commandant's List). He was again placed on the MAJ Promotion Board in 2021 and was passed over for the second year. He received and accepted a SELCON.

e. He attended and graduated the AMEDD Basic Officer Leader Course (BOLC) in September 2022. He was again placed on the MAJ Promotion Board in 2022 and was passed over for the third time. He received a SELCON, and after he had initially declined the SELCON, he elected to accept it to go on a mobilization with his home unit (1st Forward Resuscitative Surgical Detachment) in support of Operation Enduring Freedom – Horn of Africa. He is currently on mobilization in the Horn of Africa. He is also an Assistant Professor of Surgery, an acute care/trauma surgeon, and a surgical critical care physician at the Icahn School of Medicine at Mount Sinai in New York. He holds dual board certifications in General Surgery and Surgical Critical Care.

f. Over the course of his professional military education courses and the current deployment, he met many AMEDD MC officers who were surprised that he is a CPT as a 61J despite having been in surgical practice for many years more than them. Everyone pointed out to him that since he has graduated from medical school for eight

years (2011), he should have been commissioned as a MAJ in 2019. By then, he had finished a 5-year General Surgery residency and a 1-year Trauma/ Surgical Critical Care Fellowship.

g. He met a lieutenant colonel (LTC)/O-5 who had graduated medical school just one year earlier than he did, and he met a MAJ who graduated medical school 5 years later than him. He holds the same rank as his unit's field surgeon currently on deployment, who graduated medical school just 4 years ago (he graduated medical school 12 years ago!). In conclusion, he is requesting the Board's assistance to correct his rank upon commissioning to Major (with the appropriate retroactive DOR) given his credentials and clinical experiences.

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

a. His record contains a University of Minnesota transcript that shows he was awarded a Doctor of Medicine degree on 7 May 2011.

b. On 23 July 2015, by memorandum, the U.S. Army Human Resources Command (HRC) notified the applicant that he was appointed as a CPT in the USAR MC, effective on his acceptance and execution of his oath of office. The memorandum also shows:

- he was credited with 9 "years of service in an active status" (as of 14 June 2019)
- Scroll approval date: 23 June 2015
- Date of acceptance: 14 June 2019
- Effective date: 14 June 2019
- Date of Rank: 14 June 2014

c. DD Form 4 shows he enlisted in the USAR in the rank/grade of SPC/E-4 on 12 August 2015.

d. On 15 November 2016, the American Board of Surgery issued the applicant a certificate that certified he satisfied all the requirements and successfully passed the examination in the specialty of surgery.

e. On an unknown date, he was issued license number 036.XXXXXXX to practice as a physician and surgeon in the State of Illinois. The expiration date on the license is shown as 31 July 2020.

f. On 14 June 2019, the applicant completed and signed a Statement for Commissioning AMEDD Officer USAR, which shows, he commissioned for the Medical Corps and Area of Concentration 61J (General Surgeon) with a Special Pay incentive.

He understood that he would commission into the Troop Program Unit in the rank of CPT.

g. DA Form 71 (Oath of Office - Military Personnel) shows he was appointed as a CPT/O-3 in the MC of the USAR and executed his oath of office on 14 June 2019.

h. On 14 August 2019, HRC published Orders Number C-08-910328, which assigned the applicant to his USAR unit for appointment, effective 14 June 2019.

i. On 25 February 2021, HRC published Orders Number T-02-107079, which ordered the applicant to active duty for training for 20 days to attend the AMEDD Direct Commission Course at Fort Sill, OK, with a report date of 14 March 2021. On 3 March 2021, the period of the orders was amended to read "23 Days Plus Allowable Travel Time."

j. DA Form 1059 (Service School Academic Evaluation Report) shows he achieved course standards and completed the Basic Officer Leader Course - Reserve Component (RC) on 2 September 2022.

k. On 23 February 2023, Headquarters, U.S. Army Reserve Command published Orders Number UV-054-0002, which ordered the applicant to active duty as a member of his RC Unit for 140 days in support of Operation Enduring Freedom - Horn of Africa, with a report date of 3 May 2023.

l. Orders Number 0005576427.00, published by the Department of the Army, promoted the applicant to the rank/grade of MAJ/O-4, effective 5 July 2023.

m. He was released from active duty and was transferred to his USAR unit on 13 September 2023. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 months and 11 days net active service this period. Item 4a (Grade, Rate or Rank) shows MAJ and item 12i (Effective Date of Pay Grade) shows 5 July 2023.

3. In support of his case the applicant provides:

a. Northwell Health Residency in General Surgery Certificate dated 30 June 2016, which shows he served as a Resident in the Hofstra School of Medicine program at North Shore - LIJ from 1 July 2011 to 30 June 2016.

b. University of Illinois Metropolitan Group Hospitals Residency in General Surgery Certificate for Surgical Critical Care Fellowship dated 31 July 2019, which shows he successfully completed the academic and practicum requirements of the Surgical Critical Care Fellowship during the period of 1 August 2018 to 31 July 2019.

c. The American Board of Surgery Certificate in Surgical Critical Care issued on 16 September 2019, which shows he was certified in Surgical Critical Care.

d. Office of the IG letter dated 17 May 2023, which states, after careful review, the Office of the IG determined that these matters are outside the jurisdiction of the IG. The IG has no authority to change the applicant's rank at accession or to change the results of promotion boards.

4. On 20 June 2024, in the processing of this case an advisory opinion was provided by the U.S. Army Reserve Command, Director, Health Services Directorate, stating the following, after a thorough review of the applicant's record and DA Form 5074, he should be granted the rank of MAJ. He attended medical school from August 2007 to 7 May 2011. He attended internship from 1 July 2011 to 30 June 2012, residency was from 1 July 2012 to 30 June 2016. He should be awarded one half day credit for work experience from 1 July 2016 to 30 July 2018 per Department of Defense Instruction (DoDI) 6000.13 (Accession and Retention Policies, Programs, and Incentives for Military Health Professions Officers (HPOs)). He should be awarded day for day credit from 1 August 2018 to 14 June 2019 when he was commissioned. Providing him with constructive credit to be granted the rank of MAJ.

5. On 20 June 2024, the applicant was provided with a copy of the advisory opinion for comment.

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 advisory opinion from the U.S. Army Reserve Command, Director, Health Services Directorate, the Board concurs with the recommendation for approval of correcting the applicant's rank/grade upon commissioning to major (MAJ)/O-4 instead of captain (CPT)/O-3, with the appropriate retroactive Date of Rank (DOR), based on his credentials and clinical experience.

2. The advisory opinion determined that the applicant attended medical school from August 2007 to 7 May 2011, followed by an internship from 1 July 2011 to 30 June 2012, and residency from 1 July 2012 to 30 June 2016. In accordance with Department of Defense Instruction (DoDI) 6000.13 (Accession and Retention Policies, Programs, and Incentives for Military Health Professions Officers), the applicant is eligible to receive one-half day credit for work experience from 1 July 2016 to 30 July 2018.

Additionally, he is entitled to day-for-day credit for the period from 1 August 2018 to 14 June 2019, when he was commissioned. Based on this constructive credit calculation, the Board granted relief by correcting the applicant's rank to MAJ with a retroactive date of rank of 14 June 2019.

3. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	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's rank/grade upon commissioning to major (MAJ)/O-4 instead of captain (CPT)/O-3, with the appropriate retroactive effective Date of Rank (DOR) as 14 June 2019, given his credentials and clinical experience.

//SIGNED//

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. Army Regulation (AR) 135-101 (Appointment of Reserve Commissioned Officers for Assignment to Army Medical Department Branches) prescribes policy, procedures, and eligibility criteria for appointment in the Reserve Components of the Army, with or without concurrent active duty, in the six branches of the AMEDD. In pertinent part:

a. Chapter 3 (Grade Determination), paragraph 3-1 (Entry grade credit for Reserve appointment grade determination) states, grade and DOR upon original appointment and assignment to an AMEDD branch will be determined by the number of years of entry grade credit awarded.

b. Except as limited by maximum credit limits (a below), entry grade credit granted will be the sum of constructive service credit and credit for prior active commissioned service. Entry grade credit awarded to AMEDD officers upon-appointment or assignment will be recorded on one of the following forms: DA Form 5074-R (Record of Award of Entry Grade Credit (Medical and Dental Officers)) for Medical Corps (MC) or Dental Corps (DC) officers (fig 3-1); or DA Form 5074-1-11 (Record of Award of Entry Grade Credit (Health Services Officers)) for Army Nurse Corps (ANC), Medical Service Corps (MSC), Army Medical Specialist Corps (AMSC), or Veterinary Corps (VC) officers (fig 3-2).

c. Computation will be completed at the US Army Medical Department Personnel Support Agency (USAMEDDPERSA); it will be approved by the procurement program manager. If used by other personnel, the forms must be reviewed and approved at USAMEDDPERSA before official notification of the applicant.

d. A period of time will be counted only once when computing entry grade credit. One copy of the appropriate form (reflecting approved computation) will be forwarded to the Chief, Army National Guard (ARNG) Personnel Center, for ARNG officers; or the Commanding General, U.S. Army Reserve Components Personnel and Administration Center (RCPAC), together with a request for orders and appointment, for USAR officers. For officers to be placed on the ADL, one copy will be sent to the Commander, U.S. Army Military Personnel Center, Alexandria, Virginia 22332 [U.S. Army Human Resources Command, Fort Knox, KY] for determination of DOR and filing in the official military personnel file; and one copy will be sent to the appropriate Career Activities Office in USAMEDDPERSA for filing in the CMIF.

e. The maximum entry grade credit for appointment in the MC or DC is 14 years. The Secretary of the Army or designee may waive the maximum credit limit in the situations shown below. An action requesting approval of waiver will be initiated by USAMEDDPERSA for each waiver requested. This action will be forwarded for consideration by The Office of the Surgeon General or designee. (1) When a manning

shortfall exists in the specialty within medicine or dentistry or within the other AMEDD specialty to which the individual will be assigned or appointed. (2) Where serious inequities would otherwise result.

f. Constructive service credit will be granted for periods of professional training and experience accrued after receipt of the basic qualifying degree. (See tables 3-1, 3-3, 3-4, and 3-5. Credit limitations are prescribed in table entries and footnotes.)

g. Paragraph 3-2a (Determination of entry grade for officers not ordered to active duty) states, the grade of an individual appointed as a Reserve officer without concurrent call to active duty will be determined by comparing the entry grade credit awarded with the phase points shown below. Table ERR shows, a Reserve officer without concurrent call to active duty with:

- less than 3 years entry grade will be appointed in the rank/grade of Second Lieutenant (2LT)/O-2
- 3 years or more, but less than 7 years, will be appointed in the rank/grade First Lieutenant (1LT)/O-2)
- 7 years or more, but less 14 years, will be appointed in the rank/grade of Captain (CPT)/O-3
- 14 years or more, but less than 21 years, will be appointed in the rank/grade of Major (MAJ)/O-4

2. DoDI Number 6000.13 (Accession and Retention Policies, Programs, and Incentives for Military Health Professions Officers (HPOs)) provides, in pertinent part:

a. Section 1 (Entry Grade Credit), a prospective HPO's entry grade and rank within grade will be determined by the number of years of entry grade credit awarded on original appointment, designation, or assignment as an HPO. This section does not apply to the original appointment of officers transferring between Services or between components of a Service pursuant to DoDI 1300.04 (Reference (m)) or DoDI 1205.05 (Reference (n)), except as provided in those instructions.

b. Section 1a (Administration) states:

(1) The entry grade credit will equal the sum of constructive service credit and prior commissioned service credit for service other than as a commissioned warrant officer up to the maximum credit allowed in paragraph 1e of this enclosure.

(2) A period of time will be counted only once when computing entry grade credit, and qualifying periods of less than 1 full year will be proportionately credited to the nearest day, except where noted otherwise. Credit will be awarded in accordance with this instruction and pursuant to sections 533 and 12207 of Reference (d).

c. Section 1c (Constructive Service Credit) states, this credit is awarded to a person who begins commissioned service after obtaining the additional education, training, or experience required for appointment, designation, or assignment as an HPO. The designation will be to the same grade and DOR comparable to that attained by officers who begin commissioned service after getting a baccalaureate degree and serve for the period of time it would take to obtain the additional education. Constructive service credit will only be used to determine initial grade, rank in grade, and service in grade for promotion eligibility.

d. Section 1c(3) states, one year of constructive service credit will be granted for each year of graduate level education toward the first professional degree completed when that degree is required for appointment in the professional specialty being entered. The maximum number of years of constructive service credit that may be awarded under this provision is the number of years of graduate level education required by a majority of institutions that award degrees in that professional field.

e. The Secretary concerned may direct that doctors of medicine (M.D.), doctors of osteopathic medicine (D.O.), doctors of dental surgery (D.D.S.) and doctors of dental medicine (D.M.D.), doctors of veterinary medicine (D.V.M. or V.M.D.), or other recipients of advanced health professional degrees that typically require 4 years to complete, be given sufficient constructive service credit to allow appointment to the grade of O-3 in a Regular or Reserve Component.

f. Additional day-for-day credit will be granted for the successful completion of postbaccalaureate internship, residency, fellowship, or equivalent graduate, medical, dental, or other formal health professions training required by the Military Department concerned. This credit may not exceed 1 year unless such graduate-level training or experience in excess of 1 year is required for certification in a specialty required by the Military Department concerned, in which case the additional day-for-day credit will be granted for the period required for certification.

g. Credit of one-half year for each year of experience, to a maximum of 3 years, may be granted for experience in a health profession.

h. Section 2 (Entry Grade), a person granted prior commissioned service credit or constructive service credit and placed on the Active Duty (AD) list or the Reserve active status list (RASL) of a Military Department may have an entry grade determined by comparing the entry grade credit established in accordance with section 1 of this enclosure to the currently established promotion phase points of the Military Department and officer category concerned.

(1) Entry grade credit in excess of the minimum years of entry grade credit required to establish a specific grade but less than the amount necessary to justify the next higher grade will be used to adjust the date of the entry grade.

(2) The maximum entry grade for a person receiving an original appointment as a Regular medical or dental officer is O-6 [Colonel].

(3) The maximum entry grade for a person being appointed as a Reserve officer is O-4 [Major] unless the person was formerly a commissioned officer of a Military Service or such an appointment is recommended by a board of officers convened by the Secretary concerned.

3. AR 135-155 (Promotion of Commissioned Officers and Warrant Officers), paragraph 4-6 (Requesting DOR determinations and corrections to the date of original appointment) states:

a. HRC will determine DOR and promotion eligibility date (PED) for all officers upon entry to the RASL. HRC will determine DOR and correct basic date of appointment in other than temporary component at the request of field commanders.

b. The field commander will provide the needed documents to Commander, U.S. Army Human Resources Command (AHRC-PDV-PO), 1600 Spearhead Division Avenue, Department 472, Fort Knox, KY 40122-5407.

c. The DOR of officers not managed by HRC is jointly determined by HRC, Office of the Surgeon General, The Judge Advocate General, or the Chief of Chaplains, as appropriate.

4. 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.

//NOTHING FOLLOWS//