

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230010759

APPLICANT REQUESTS:

1. Reversal of the Army Grade Determination Review Board (AGDRB) determination and to retire him at the highest rank/grade held of major (MAJ)/O-4 vice captain (CPT)/O-3 with applicable back pay in the amount of \$21,852.00.
2. Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 31 July 2020, to show in item 18 (Remarks) retired list grade MAJ.
3. A personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 67-10-2 (Field Grade Plate (O4-O5; CW3-CW5) Officer Evaluation Report (OER)), covering 27 December 2015 - 25 December 2016
- DA Form 67-10-2, covering 26 December 2016 - 23 May 2017
- Memorandum, Subject: Closing of Elimination Action, 8 February 2018
- DA Form 67-10-2, covering 24 May 2017 - 23 May 2018
- Memorandum, Subject: Mandatory Removal Date (MRD) due to Non-Selection for Promotion, 31 July 2018
- DA Form 67-10-2, covering 24 May 2018 - 22 October 2018
- DA Form 67-10-2, covering 23 October 2018 - 24 March 2019
- Letters of Endorsement:
  - Memorandum, Subject: Letter of Endorsement – Major General (MG) D- G-
  - Memorandum, Subject: Memorandum of Endorsement – Brigadier General (BG) M- L-
  - Memorandum, Subject: Recommendation – Colonel (COL) R- K-
  - Memorandum, Subject: Recommendation - COL S- S-
  - Memorandum, Subject: Recommendation - MG S- S-

FACTS:

1. The applicant states, in pertinent part, at the time of his retirement on 31 July 2020, it was determined through the AGDRB process that he should be retired as a CPT/O-3, as opposed to the grade he was serving in as a MAJ/O-4. He is requesting to correct his DD Form 214 to reflect a retired grade of O-4 for administrative and retirement pay purposes, amounting to approximately \$21,852.00 of back payments as of 31 July 2023. He believes a multitude of factors demonstrate that he served satisfactorily as an O-4. Strong performance in developmental and nominative positions. General Officer (GO) letters of support from the officers that issued the General Officer Memorandum of Reprimand (GOMOR) and the Field Board of Inquiry (FBOI). He was selected for Selective Continuation (SELCON) by the 2018 Lieutenant Colonel (LTC) Promotion Board, which per Headquarters Department of the Army Policy Number 600-4, is a method for providing experienced and capable officers of a specific grade and skill to meet the needs of the Army.

This indicates that he was serving in a satisfactory manner and could still compete for promotion to LTC. Per Army Regulation 15-80 (Army Grade Determination Review Board), a factor in determining satisfactory service should include the length of otherwise satisfactory service in the grade in question, before and after the misconduct. In his case, he served as an O-4 for a total of 10 years and 6 months, with service prior and post incident being exemplary (Below Zone selection to LTC on the 2016 Promotion Board). He has provided additional letters of recommendation from some amazing officers that can attest to his performance and character after the incident and BOI. He humbly requests the Board consider the totality of his 10 years and 6 months in service as an O-4, and the items presented, including the letters of endorsement from his raters and the very GO that issued the reprimand and presided over the BOI, all of which either recommended that he was promoted to LTC or at least be allowed to retire as a MAJ.

2. A review of the applicant's available service record reflects the following:

a. On 15 May 1999, he was appointed as a Reserve commissioned officer and executed an oath of office with a subsequent call to active duty.

b. On 20 October 2004, the U.S. Army Human Resources Command (HRC) issued Order Number 294-128 promoting him to the rank/grade of CPT/O-3, effective on with a Date of Rank (DOR) of 1 November 2004.

c. On 20 January 2011, HRC issued Order Number 020-008 promoting him to the rank/grade of MAJ, effective on with a DOR of 1 February 2011.

d. On 1 December 2015, the Headquarters, 21st Theater Sustainment Command,

Commanding General, issued a GOMOR to the applicant for adultery, dereliction of duty, and violating a no contact order.

e. On 7 December 2015, a Memorandum, Subject: Acknowledgement of Receipt of Reprimand was signed by the applicant.

f. On 6 January 2016, a Memorandum, Subject: GOMOR Rebuttal Points of Consideration was completed wherein the applicant provided his rebuttal to the GOMOR for adultery, dereliction of duty, and violating a no contact order.

g. On 1 February 2016, the Headquarters, 21st Theater Sustainment Command, Commanding General directed the GOMOR be permanently filed in his Army Military Human Resource Record.

h. DA Form 67-10-2, covering the period of 27 December 2015 – 25 December 2016 shows his rating as most qualified in the position of Brigade Executive Officer with Headquarters and Headquarters Company and Special, Smith Barracks at the rank of MAJ, with the recommendation for immediate promotion to the rank LTC.

i. DA Form 67-10-2, covering the period of 26 December 2016 - 23 May 2017 shows his rating as most qualified in the position of Brigade Executive Officer with the 16th Sustainment Brigade, at the rank of MAJ, with recommendation for immediate promotion to the rank of LTC.

j. On 27 February 2017, a Memorandum, Subject: Promotion Review Board was issued removing him from the fiscal year 2016 LTC, Medical Service Corps, promotion list and directed initiation of elimination proceedings.

k. DA Form 67-10-2, covering the period of 24 May 2017 – 23 May 2018 shows his rating as highly qualified in the position of Chief, Commander's Initiative Group with the Headquarters and Headquarters Company Theater Sustainment, at the rank of MAJ, with recommendation for promotion.

l. DA Form 67-10-2, covering the period of 24 May 2018 – 22 October 2018 shows his rating as highly qualified in the position of Chief, Commander's Initiative Group with the Headquarters and Headquarters Company Theater Sustainment, at the rank of MAJ, with recommendation for promotion now.

m. DA Form 67-10-2, covering the period of 23 October 2018 – 24 March 2019 shows his rating as most qualified in the position of Chief, Operations and Readiness Division with the Landstuhl Regional Medical Center, at the rank of MAJ, with recommendation for immediate promotion to the rank of LTC.

n. AGDRB Docket Number AR20200000067, decided on 24 March 2020 shows the AGDRB reviewed the voluntarily retirement submitted by the applicant and the grade determination submitted by the U.S. Army Human Resources Command, and the Deputy Assistant Secretary - Army Review Boards directed his placement on the retired list in the rank of CPT/O-3 as his service in the grade of MAJ/O-4 was unsatisfactory.

o. On 25 March 2020, the Installation Management Command - Europe, Kaiserslautern Transition Center issued Orders Number 085-0005 honorably retiring him at the rank/grade of CPT/O-3, effective 31 July 2020, noting that his service was not satisfactory in the grade of MAJ. His mandatory retirement reflects 21 years, 2 months, and 16 days.

p. DD Form 214, ending 31 July 2020 reflects an honorable retirement for Non-Selection, Permanent Promotion.

(1) Item 4a (Grade, Rate or Rank) shows MAJ.

(2) Item 12 (Record of Service) shows service from 15 May 1999 to 31 July 2020 for a net active service of 21 years, 2 months, and 16 days.

(3) Item 18 (Remarks) shows retired list grade CPT.

3. The applicant provides the following:

a. Memorandum, Subject: Closing of Elimination Action, dated 8 February 2018 wherein the U.S. Army Human Resources Command notified him that a FBOI was conducted due to misconduct, moral or professional, or dereliction of duty and determined that he would be retained on active duty without reassignment.

b. Memorandum, Subject: Notification of MRD due to Non-Selection for Promotion, dated 31 July 2018 wherein HRC notified him that he was not selected for promotion and would be mandatorily retired on 31 July 2020.

c. Letters of Endorsement from various leadership within his chain of command, recommending he be given leniency from his actions for which he received a GOMOR, and that he be either retained in the Army, promoted to LTC, and or retired at the rank of MAJ.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 and available military records, the Board determined there is insufficient evidence warrants reversal of the Army Grade Determination Review Board (AGDRB) determination and to retire him at the highest rank/grade held of major (MAJ)/O-4 vice-captain (CPT)/O-3 with applicable back pay in the amount of \$21,852.00. The Board found the misconduct did occur and the applicant provided no evidence of an error or injustice. Furthermore, the Board agreed correction to the applicant's DD Form 214 to show in item 18 (Remarks) his retired grade as MAJ is without merit.

2. The Board considered the applicant's totality of his 10 years and 6 months in service as a major, and the items presented, including the letters of endorsement from his raters and the general officer that issued the reprimand and presided over the board of inquiry. However, the Board determined the applicant was a senior commissioned officer at the time, he had adequate training and experience necessary to avoid the inappropriate misconduct and was entrusted to set the example for subordinate Soldiers and junior officers to emulate, and therefore reversal of the Army Grade Determination Review Board (AGDRB) determination is not warranted. Therefore, the Board denied relief.

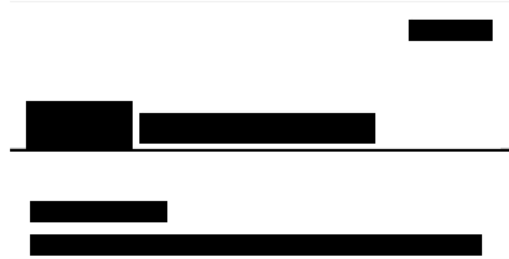
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 United States Code, section 1370 (Regular commissioned officers) states, 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— (A) 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 (B) the grade next lower to such lower grade shall be the retired grade of the officer under this section.

2. Army Regulation (AR) 15-80 (AGDRB) establishes policies, procedures, and responsibilities of the AGDRB and other organizations delegated authority to make grade determinations on behalf of the Secretary of the Army (SA).

a. Paragraph 2-5 (Unsatisfactory Service) states, service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when (c) there is sufficient unfavorable information to establish that the Soldier's service in the grade in question was unsatisfactory. One specific act of misconduct may or may not form the basis for a determination that the overall service in that grade was unsatisfactory, regardless of the period of time served in grade. However, service retirement in lieu of or as the result of elimination action will not, by itself, preclude retirement in the highest grade.

b. Paragraph 2-6 (Service in Lower Grade) states if service in the highest grade held was unsatisfactory, the Soldier can be deemed to have served satisfactorily in the next lower grade actually held, unless paragraph 2–5 applies.

3. AR 15-185 (Army Board for Correction of Military Records (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 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//