

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20230011381

APPLICANT REQUESTS: correction to her DD Form 214 (Certificate of Release or Discharge from Active Duty) to change her rank from Chief Warrant Officer 2 (CW2) to Chief Warrant Officer 3 (CW3).

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

- DD Form 149 (Application for Correction of Military Record)
- Continuation On Active Duty (COAD) approval email and memorandum
- Fiscal Year (FY) 2021 Chief Warrant Officer Promotion Selection Board Results

FACTS:

1. The applicant states:

a. On 10 July 2019 her request for COAD was approved. During her COAD period, she made the FY21 Promotion List, with a sequence number 0573. In January 2019, her retirement packet was submitted to the Fort Hood Retirement Section. As part of the packet requirement, she was instructed to submit a Promotion Declination Statement to Human Resource Command (HRC), which she did. Eventually, she received a phone call from Mr. B.P., Chief, Retention COAD Branch, informing her that she should have never submitted a regular retirement packet since she was a COAD Soldier.

b. During this period, she received misinformation from numerous agencies on Fort Hood, resulting in her filing an Interactive Customer Evaluation (ICE) complaint against Fort Hood Integrated Disability Evaluation System (IDES). One of the IDES supervisors called her to inform her that her Physical Evaluation Board Liaison Officer (PEBLO), Mr. E.B., removed her from the IDES System after her COAD was approved, which is why they weren't tracking her case. It was not until after reading AR 635-40, paragraph 4-30c(1) is when she realized the error.

2. The applicant provides:

a. Continuation On Active Duty (COAD) approval email and memorandum, dated 10 and 11 July 2019, both of which reflect the applicant's request for COAD was approved until 30 September 2022.

b. FY21 Chief Warrant Officer Promotion Selection Board Results, release date of 14 October 2021, contains the applicant's name with a sequence number of 0573.

3. A review of the applicant's service record shows:

a. On 30 September 2015, the applicant took the Oath of Office as a Reserve Warrant Office One (WO1).

b. DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings), date convened (blank), reflects the PEB found that the Soldier is physically unfit and recommends a rating of 60% and that the Soldier's disposition be placed on Temporary Disability Retirement List (TDRL) and with a re-examination during February 2020. On 21 May 2019, the applicant concurred with the findings and recommendations and elected not to request reconsideration of her Veterans Affairs (VA) ratings. Her rank on the form is reflected as "CW2."

c. DA Form 199-2 (Revised Physical Evaluation Board (PEB) Proceedings), date convened 22 April 2022, reflects the PEB found that the Soldier is physically unfit and recommends a rating of 60% and that the Soldier's disposition be placed on Temporary Disability Retirement List (TDRL) and with a re-examination during January 2023. As of note, this is an Administrative Correction.

d. Her DD Form 214 reflects she was honorably retired on 30 September 2022, under the provisions of Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), chapter 4, disability, temporary. She served 7 years and 1 day of active service; 13 years total prior active service; and, 1 year, 5 months, and 21 days of total prior inactive service. Items 4a (Grade, Rate or Rank) and 4b (Pay Grade) reflect "CW2" and "W02" respectively.

e. DA Form 199 (Informal Physical Evaluation Board Proceedings), date convened 29 March 2024, reflects the PEB found that the Soldier is physically unfit and recommends a rating of 60% and that the Soldier's disposition be Permanent Disability Retirement. The applicant concurred and waived a formal hearing of her case.

f. Headquarters, U.S. Army Physical Disability Agency Orders D093-0007, dated 2 April 2024, reflects the applicant's rank on her standard name line as "CW2." She was removed from the TDRL on 2 April 2024 and placed on Permanent Disability Retirement.

4. U.S. Army Human Resources Command advisory opinion, dated 30 May 2024, states:

a. Based on a review of the documents received, our current records, laws, regulations, policies, and the systems available to HRC Officer Promotions Branch we find that the applicant's request to retire at the grade of CW3 is not valid.

b. Per AR 600-8-29, Chapter 3, 3-5(3), when a Warrant Officer is promoted, they automatically incur an Active Duty Service Obligation (ADSO) and may not retire at the promoted grade until the ADSO has been completed.

5. In response to the advisory opinion, the applicant states:

a. Although AR 600-8-29, Chapter 3, 3-35(3) indicates that a warrant officer incurs an active-duty service obligation (ADSO) upon promotion and may not retire at the promoted grade until this obligation is completed, this interpretation may not encompass all relevant aspects or exceptions of the regulation.

b. It is important to note that the regulation also includes provisions for waivers and exceptions. For example, AR 600-8-29, Chapter 3, 3-35(3)(b) states that 'an officer may request a waiver of ADSO under certain conditions.' This indicates that there are circumstances under which the ADSO requirement can be waived, allowing retirement at the promoted grade. The claim that "all promoted warrant officers must complete their ADSO before retiring" overlooks these waiver provisions.

c. Additionally, AR 635-40 c(1) states that "A member being processed for separation or retirement for physical disability may be promoted under this regulation. Active Army officers will be transferred in the higher grade whether or not the promotion sequence number has been reached on the date of transfer." This indicates that officers who are undergoing a medical evaluation process for a disability may still be eligible for promotion and can retire at the promoted grade if found to be unfit for duty.

d. On 10 July 2019 my Continuation on Active Duty (COAD) was approved with a no later than date of 30 September 2022. During this period I was selected on the FY21 promotion list sequence number 0573. This regulation is particularly relevant in cases where a warrant officer is unable to complete their ADSO due to a medical condition. In such cases, AR 635-40 4-30 c(1) allows for the possibility of retirement at the promoted grade without the completion of the ADSO.

e. In summary, while AR 600-8-29, Chapter 3, 3-35(3) outlines the general rule regarding ADSOs for promoted warrant officers, AR 635-40 4-30 c(1) provides a significant exception for those being processed for separation or retirement due to physical disability. Therefore, it is possible for a warrant officer to retire at the promoted

grade without completing their ADSO if they are found unfit for duty, challenging the assertion that all warrant officers must complete their ADSO before retiring at the promoted grade.

6. AR 600-8-29 (Officer Promotions) prescribes policies, operating rules, and steps governing promotion of Army commissioned and warrant officers on the active duty list. It incorporates provisions of the Defense Officer Personnel Management Act as specified in Title 10, United States Code, Chapters 35 and 36, and provisions of the Warrant Officer Management Act as specified in Title 10, United States Code, Chapter 33A.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined her record is absent evidence that shows she was promoted to chief warrant officer 3 (CW3). The Board reviewed and concurred with the U.S. Army Human Resources Command's advising official finding the applicant's request invalid. When a warrant officer is promoted, they automatically incur an active duty service obligation and may not retire at the promoted grade until the active duty service obligation has been completed. In the applicant's case, she was selected for promotion to CW3 on 14 October 2021; however, was retired from active duty prior to being promoted and prior to serving as a CW3. The Board noted the applicant's contention that she was retired due to physical disability; however, noted that her DD Form 214 is a summary of the most recent period of her continuous active duty service. Therefore, the Board determined her DD Form 214 accurately reflects her rank at the time of her retirement on 30 September 2022.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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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. Army Regulation 600-8-29 (Officer Promotions) prescribes policies, operating rules, and steps governing promotion of Army commissioned and warrant officers on the active duty list.

a. Paragraph 3–5a states, unless an officer declines a promotion in writing under the provisions of this regulation, he or she is considered to have accepted the promotion on the effective date announced in the promotion order.

b. Paragraph 3-5b states, the impact of promotions on active duty service obligation (ADSO) and retirement is as follows:

(1) The ADSO is a specific period of active duty an officer must serve before being eligible for voluntary separation or retirement. Officers accepting a promotion to any grade other than CW3, CW4, and CW5 do not incur an additional service obligation; however, to retire in the next higher grade, the officer must serve satisfactorily in the new grade as established in AR 350–100.

(2) Officers must serve for the following periods prior to retirement:

- GEN, LTG — no minimum period but requires the advice and consent of the Senate
- MG, BG, COL, LTC – 3 years
- MAJ, CPT, 1LT – 6 months
- CW2 — no minimum period required

(3) A warrant officer who accepts promotion to the grade of CW3, CW4, or CW5 will incur a 2–year active duty service obligation (ADSO) (see AR 350–100).

2. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

3. Title 10, USC, section 1372 (Grade on retirement physical disability, members of the Armed Forces), 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 temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

a. The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date he is retired.

b. The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

c. The permanent regular or Reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of a physical examination.

d. The temporary grade to which he would have been promoted had it not been for the physical disability for which he 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.

//NOTHING FOLLOWS//