

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230011984

APPLICANT REQUESTS: correction of his records to show he entered commissioned service as an O-1E vice O-1 with associated back pay.

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

- DD Form 149 (Application for Correction of Military Record)
- Defense Finance and Accounting Services (DFAS) Leave and Earning Statement (LES), 5 March 2004
- National Guard Bureau (NGB) Form 22, (Report of Separation and Record of Service - Air Force National Guard), 18 July 2011
- DD Form 1A (Commission Certificate), 29 March 2012
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 9 September 2016
- DD Form 215 (Correction to DD Form 214), 9 September 2016

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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:

a. He was processed as an O-1 but it should have been O-1E. He completed 7 years, 4 months, and 4 days of prior enlisted service. He made this discovery in the U.S. Air Force in 2022 when they corrected his rank to O-3E.

b. He received his commission on 27 March 2012 and on 9 September 2022 went into the Inactive Army Reserve Component. He then transferred into the U.S. Air Force Air National Guard without a break. He is currently on active duty orders.

3. The applicant provides:

a. A DFAS LES, 5 March 2004, showing he was paid at the O-3E grade with a check dated 24 June 2022, as an adjustment for over 4 years of enlisted warrant officer service.

b. A NGB Form 22, 18 July 2011, showing on 5 March 2004 he enlisted in the Air Force Air National Guard and on 18 July 2011, he was honorably released after completing 7 years, 4 months, and 14 days of net service.

c. A DD Form 1A, showing he was appointed as a second lieutenant second lieutenant (2LT)/O-1 on 29 March 2012.

4. A review of the applicant's service records show:

a. On 19 July 2011, the applicant enlisted in the Army in the rank/grade of sergeant/E-5, following a period of enlisted service in the Air Force Army National Guard.

b. In connection with this enlistment, he agreed to undergo U.S. Army Officer/Warrant Officer Enlistment Program 9D training and attend Officer Candidate School.

c. On 29 March 2012, he was commissioned as a 2LT/O-1 in the Regular Army.

d. A U.S. Army Human Resource Command (HRC) memorandum, dated 17 May 2016, subject: Release from Active Duty for Officers with a Remaining Military Service Obligation or those Desiring a Reserve Appointment, authorized his separation from active duty, effective 9 September 2016.

e. His Officer Record Brief, dated 8 July 2016, shows his permanent date of rank for first lieutenant as of 29 September 2013.

f. A DA Form 1506 (Statement of Service - For Computation of Length of Service for Pay Purposes) shows service credit for his Air Force Air National Guard service for the following periods:

- active, 5 March 2004 to 8 September 2004, 6 months and 4 days
- inactive, 9 September 2004 to 4 March 2005, 5 months and 26 days
- active, 5 March 2005 to 22 March 2005, 18 days
- inactive, 23 March 2005 to 4 March 2006, 11 months and 12 days
- active, 5 March 2006 to 16 March 2006, 12 days
- inactive, 17 March 2006 to 4 March 2007, 11 months and 18 days
- active, 5 March 2007 to 8 April 2007, 1 months and 4 days

g. On 9 September 2016, he was honorably released from active duty. His DD Form 214, as amended by his DD Form 215, shows in:

- item 4a (Grade, Rate or Rank): first lieutenant (1LT) (P) [Promotable]
- item 4b (Pay Grade): O02
- item 12i (Effective Date of Pay Grade): 29 September 2013

h. A DA Form 5016 (Retirement Accounting Statement), dated 3 April 2024, shows he was credited with 4571 active duty points, 13 years of qualifying service for retirement purposes, and 4683 points earned from 5 March 2004 to 4 March 2024.

5. On 10 April 2024, the Office of the Deputy Chief of Staff, G-1 provided an advisory opinion in the processing of this case. A program analyst with the compensation and entitlements division, after careful review recommends disapproval of the applicant's request.

a. The Department of Defense Financial Management Regulation, volume 7A, Chapter 1, paragraph 2.3.1.2 states that "Commissioned officers in pay grades O-1, O-2, or O-3, who are credited with over 4 years (i.e., at least 4 years and 1 day) of prior active service as an enlisted member are entitled to the special rate of basic pay for pay grade O-1 E, O-2E, or O-3E." For retirement points to count they must have more than 1,460 points credited to the officer per law (Title 10, USC, Section 12732(a)(2)).

b. The Air Force provided the applicant's enlisted service history record, which is equivalent to the Department of the Army Form 5016. As of the date of his commission in 2012, he did not have more than 1,460 points as required, therefore, he is not entitled to the special rate of basic pay for pay grade O-1 E, O-2E, or O-3E.

6. On 12 April 2024, the applicant was provided a copy of this advisory opinion to give him an opportunity to submit a response/rebuttal. He responded as follows:

a. The referenced Title 10 USC reference 12732(a)(2) speaks of retirement points in the reserve, and clearly requires 50 a year minimum, which he has. The statement of the clerk has nothing to do with my situation. Also, the clerk failed to identify (2) of 2.3.1.5. This section states: 2.3.1.5: Creditable Service for Certain Reserve Commissioned Officers. Effective January 1, 2002, commissioned officers in pay grades O-1, O-2, and O-3 who are paid from funds appropriated for Reserve personnel and credited with 1,460 points for retirement computed under 2BDoD 7000.14-R Financial Management Regulation Volume 7A, Chapter 1 *April 2023 1-12 10 U.S.C. § 12732(a)(2) service as a warrant officer and/or enlisted member, which requires a minimum of 50 points annually, are entitled to the special rate of basic pay for pay grade O-1E, O-2E, or O-3E.

b. The 50-points rule for Reservists repeats itself in this section. He is good to go. By the clerk's logic of Active Duty 1460 points (forgetting about the Reservist rules) then no reservist was ever prior Enlisted, nor will they ever be even after 20 years. Which is certainly not the case. It is a common misconception to replace "Active Duty" with "Active Service" and to forget about the Reservist's requirement of 50 point for a "good year" toward retirement or to count an (E) Prior Enlisted. Anyway, bottom line is that rule (2) makes it clear. Also evidenced by the fact that he was since corrected to O3E and was getting paid properly while in Title 10 "Active Duty" service. Which he is T10 now, just no longer an O3E (O4). The only ones left to acknowledge the standard is the Army. The Congress and Air Force are good.

BOARD DISCUSSION:

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 Board note that according to the DOD FMR Volume 7A, commissioned officers in pay grades O-1, O-2, or O-3, who are credited with over 4 years of prior active service as an enlisted member are entitled to the special rate of basic pay for pay grade O-1 E, O-2E, or O-3E. For retirement points to count they must have more than 1,460 points credited to the officer per law (Title 10, USC, Section 12732(a)(2)). The Board reviewed and agreed with the advisory official's finding that the Air Force provided the applicant's enlisted service history record, which is equivalent to the DA Form 5016, Chronological Statement of Retirement Points. As of the date of his commission in 2012, he did not have more than 1,460 points as required, therefore, the Board agreed with the advisory office's determination that he is not entitled to the special rate of basic pay for pay grade O-1 E, O-2E, or O-3E.

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.

█

█ █

█

█

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, U.S. Code, 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. DoD Financial Management Regulation 7000.14-R, Chapter 1, prescribes the criteria for determining creditable service for military members, provides examples for computing valid creditable service; states periods of service that are not creditable for pay purposes; cites conditions for the payment of military pay entitlements; explains the computation of leave and conditions for leave accrual; and provides for situations where enlistments are not valid.

a. Section 2.3.1.2. Creditable Prior Enlisted Service. Commissioned officers in pay grades O-1, O-2, or O-3 who are credited with over 4 years (i.e., at least 4 years and 1 day) of prior active service as an enlisted member are entitled to the special rate of basic pay for pay grade O-1E, O-2E, or O-3E.

b. Section 2.3.1.6. Creditable Service for Certain Commissioned Officers. Effective November 24, 2003, the restriction that members must be paid from reserve appropriated funds to qualify for the special rate of basic pay for pay grades O-1E, O-2E, and O-3E based upon creditable service points is eliminated. Therefore, effective that date, commissioned officers in pay grades O-1 through O-3 with more than 1,460 points computed under 10 U.S.C. § 12732(a)(2) for service as a warrant officer and/or an enlisted member, which requires a minimum of 50 points annually, are entitled to the special rate of pay.

//NOTHING FOLLOWS//