

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230014277

APPLICANT REQUESTS:

- a Special Selection Board (SSB) for promotion to the rank/grade of captain (CPT)/O-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)
- Memorandum, Subject: Appointment as a Reserve Commissioned Officer of the Army, 10 May 1997
- Order Number 340-053, 6 December 2001
- Officer Record Brief (ORB), 19 June 2002

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, in pertinent part, he is requesting a SSB to rectify the error by the U.S. Army Reserve (USAR) in failing to promote him to first lieutenant (1LT) timely which caused him to miss the correct promotion board to CPT. His Date of Rank to second lieutenant (2LT)/O-1 [sic] was 9 May 1999 by way of Orders Number 340-053, dated 6 December 2001. Had the USAR promoted him in a timely fashion to 1LT, he would have been eligible for consideration to CPT with an effective date of 8 May 2001. Additionally, the promotion to CPT would increase the compensation for his dependent spouse on his Survivor Benefit Plan.

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

a. Having had prior enlisted service in the Regular Army (January 1988 to August 1995), the applicant accepted a Reserve commission and executed an oath of office on 10 May 1997, as a second lieutenant/O-1.

b. On 20 September 2000, the U.S. Army Reserve Personnel Command issued a Memorandum for Promotion as a Reserve Commissioned Officer of the Army promoting him to the rank/grade of 1LT/O-2 with a retroactive effective date of 9 May 1999.

c. On 10 September 2001, he entered active duty as a Regular Army officer.

d. On 6 December 2001, the U.S. Total Army Personnel Command issued Orders Number 340-053 promoting him to the rank/grade of 1LT/O-2 with a retroactive effective active DOR of 9 May 1999.

e. On 16 October 2002, a physical evaluation board convened and found him physically unfit and recommended a combined rating of 20 percent disability and that he be separated with severance pay. He concurred with the board's findings and waived a formal hearing of his case on 21 October 2002.

f. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 25 December 2002 reflects an honorable discharge for disability, severance pay.

- Item 4a (Grade, Rate, or Rank) shows 1LT and Item 4b (Pay Grade) O-2.
- Item 12 (Record of Service) shows service from 10 September 2001 to 25 December 2002 for a net active service this period of 1 year, 3 months, and 16 days and total prior active service of 8 years and 9 days.
- Item 12h (Effective Date of Pay Grade) shows 9 May 1999.
- Item 18 (Remarks) shows "Disability Severance Pay -- \$67,840.20"

g. On 29 April 2013, following his application to the Department of Defense (DOD) Physical Disability Board of Review (PDBR), the Deputy Secretary of the Army (Review Boards) accepted the recommendation of the DoD PDBR to recharacterize his separation as a disability retirement with the combined disability rating of 30 percent effective the date of the applicant's medical separation for disability with severance pay.

h. On 23 May 2013, as a result of the PDBR/ABCMR's decision, the U.S. Army Installation Management Command, Headquarters, U.S. Army Garrison, Fort Sill, issued Orders Number 143-1310 releasing him from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability, at 30 percent disability, in the retired rank/grade of 1LT/O-2, effective 5 December 2002.

i. DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty), dated 18 July 2013, shows amendment to the following:

- Item 18 (Remarks) delete "Disability Severance Pay -- \$67.840.20.
- Item 23 (Type of Separation) to show Retirement.
- Item 28 (Narrative Reason for Separation) to show Disability, Permanent.

j. ABCMR Docket Number AR20190013006, decided on 21 December 2021 wherein he repetitiously petitioned the Board to correct his DOR to be backdated to 8 May 2001. The Board denied his request stating, in effect, the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of the case are insufficient as a basis for correction of the records of the individual concerned.

4. The applicant provides his ORB, dated 19 June 2002 showing his DOR for 1LT as 9 May 1999.

5. On 5 June 2024, the U.S. Army Human Resources Command, Team Lead, Officer Promotions Special Actions, provided an advisory opinion recommending disapproval of the applicant's request stating, in effect, based on a review of their records and the information provided, they found that based on the applicant's DOR of 9 May 1999, he would not have been eligible for promotion consideration for captain (CPT) until the Fiscal Year 2002 (FY02), CPT, Army Promotion List (APL) criteria. The FY02 CPT, APL zones for consideration were for officers with a DOR to 1LT earlier than 30 June 1999. That promotion board convened on 4 November 2002 and recessed on 4 December 2002. Their records indicate that he went before that promotion board but because he was removed from the Reserve Active Status List (RASL) prior to that promotion board being approved on 17 March 2003, he would not have been eligible for promotion to CPT.

6. On 7 June 2024, the applicant was provided a copy of the advisory opinion and given an opportunity to respond.

7. On 18 June 2024, he provided a rebuttal of the advisory opinion further reiterating his initial request, stating, in effect:

a. While in the Reserves from 1999 – 2001, he should have been promoted to CPT effective 8 May 2001, which was prior to going back on active duty on 10 September 2001. The Reserve Promotion Board approved his promotion to CPT, but due to his duty status change from Reserves to active duty, he was not promoted and had to wait for the next promotion board on 4 November 2002, as stated in the letter from the Team Lead, Officer Promotions, Special Actions. Due to the time frame to which he returned to active duty, he missed the ability to be considered for the November 2001 promotion

board and had to wait a full year for consideration on the 4 November 2002 promotion board even though he was already boarded and approved in the Reserve. Although the two components are different, he should not be punished for his desire to serve his country on active duty rather than on Reserve status. By the time the November 2002 board was completed on 17 March 2003, he would have had almost six years in the service and four years Time in Grade (TIG).

b. His situation is unique, and he believes a SSB would rectify the USAR's error in failing to timely promote him to 1LT and allow him to be promoted to CPT, with a DOR of 8 May 2001, as he rightfully earned.

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's date of rank to 1LT is 9 May 1999. Based on this date of rank, he would not have been eligible for promotion consideration for CPT until the FY2002 CPT, Army Promotion List (APL) criteria. The FY2002 CPT, APL zones for consideration were for officers with a DOR to 1LT earlier than 30 June 1999. That promotion board convened on 4 November 2002 and recessed on 4 December 2002. The records indicate that the applicant went before that promotion board but because he was removed from the Reserve Active Status List (RASL) prior to that promotion board being approved on 17 March 2003, he would not have been eligible for promotion to CPT. The Board agreed with the rationale provided by AHRC, and since there is no material error in his records, the Board determined he does not qualify for an SSB.

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. 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) 600-8-29 (Officer Promotions), prescribes the officer promotion function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support officer promotions. Chapter 7 provides for SSBs.

a. Paragraph 7-2 states the SSBs may be convened under Title 10, USC, section 628 to consider or reconsider commissioned or warrant officers for promotion when Headquarters Department of the Army discovers one or more of the following:

(1) An officer was not considered from in or above the promotion zone by a regularly scheduled board because of administrative error. This would include officers who missed a regularly scheduled board while on the temporary disability retired list and who have since been placed on the active duty list (SSB required).

(2) The board that considered an officer from in or above the promotion zone acted contrary to law or made a material error (SSB discretionary).

(3) The board that considered an officer from in or above the promotion zone did not have before it some material information (SSB discretionary).

b. Paragraph 7-3 (Cases not considered) states an officer will not be considered or reconsidered for promotion by an SSB when an administrative error was immaterial, or the officer, in exercising reasonable diligence, could have discovered and corrected the error in the officer record brief or OMPF. It is the officer's responsibility to review his or her ORB and Official Military Personnel File before the board convenes and to notify the board, in writing, of possible administrative deficiencies in them.

c. Paragraph 7-11, officers who discover that material error existed in their file at the time they were non-selected for promotion may request reconsideration.

3. Title 10 USC, section 628 (Special Selection Boards), (a) Persons Not Considered by Promotion Boards Due to Administrative Error. (1) If the Secretary of the military department concerned determines that because of administrative error a person who should have been considered for selection for promotion from in or above the promotion zone by a promotion board was not so considered, the Secretary shall convene a SSB under this subsection to determine whether that person should be recommended for promotion. (b) Persons Considered by Promotion Boards in Unfair Manner. (1) If the Secretary of the military department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene a SSB under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.

4. 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//