

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 August 2024

DOCKET NUMBER: AR20230015065

APPLICANT REQUESTS: in effect, reversal of the Army Grade Determination Review Board (AGDRB) decision to retire him at his highest grade held satisfactorily of major (MAJ)/O-4 and retire him in the rank/grade of lieutenant colonel (LTC)/O-5.

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

- Self-authored Statement in lieu of DD Form 149 (Application for Correction of Military Records)
- DA Form 67-9 (Officer Evaluation Report (OER))

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 he requests the AGDRB decision be overturned, and he be allowed to retire in the rank/grade of LTC/O-5. He understands that he did not satisfactorily perform his service as a colonel (COL)/O-6, but his service was best qualified and above center mass as a LTC/O-5. During the time of the incident, he suffered from undiagnosed post-traumatic stress disorder from his first and second deployments which had been diagnosed by the Department of Veterans Affairs in 2021. Unbeknownst to him, it affected his decision making process and his way of reasoning and thinking which caused him to use his Department of Homeland Security (DHS) badge to access an airport security area without authority. The investigating DHS agent acted with racial motivation and bias when he referred a DHS situation to a military command. He believed his race or ethnicity was a factor in this decision. He would like for the Board to take into consideration, his performance and conduct as a LTC was exceptional up until the incident.

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

- a. With prior U.S. Army Reserve (USAR) cadet service, on 7 August 1987, the applicant executed his oath of office and was appointed as a Reserve commissioned officer in the rank/grade of second lieutenant (2LT)/O-1.
- b. On 31 December 1991, the applicant was honorably released from the PRARNG. NGB Form 22 (Report of Separation and Record of Service) shows he completed 2 years, 3 months and 27 days of service.
- c. On 1 January 1992, the applicant executed his oath of office and was appointed in the AZARNG and was extended a temporary Federal recognition.
- d. On 11 March 1992, Orders Number 47-4, issued by the Puerto Rico State Area Command ARNG, the applicant was honorably released from the PRARNG, effective 31 December 1991.
- e. On 1 March 1993, Special Orders Number 25, issued by the NGB, the applicant's Federal recognition was withdrawn, effective 12 January 1993.
- f. On 16 September 1993, the applicant executed his oath of office and was appointed in the PRARNG and was extended a temporary Federal recognition.
- g. On 2 May 1995, Special Orders Number 47, issued by the NGB, the applicant's Federal recognition was withdrawn, effective 7 February 1995.
- h. On 18 March 2002, HQs, U.S. Army Special Operations Command, notified the applicant he was promoted to the rank/grade of MAJ/O-4, effective on with a date of rank of 1 August 2001.
- i. On 28 December 2002, Orders Number R362-34, issued by HQs, U.S. Army Special Operations Command the applicant was ordered to active duty in support of Operation Enduring Freedom, effective 9 January 2003.
- j. On 21 October 2003, the applicant was honorably released from active duty. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 9-months and 13-days of active service. It also shows he served in Afghanistan during the period of 12 February to 13 September 2003.
- k. On 9 January 2008, Orders Number B-01-800193, issued by the U.S. Army Human Resources Command (AHRC), the applicant was promoted to the rank/grade of LTC/O-5, effective on with a date of rank of 21 December 2007.

l. On 30 March 2010, Orders Number 10-089-00040, issued by the 200th Military Police Command, the applicant was ordered to active duty in support of Operation Enduring Freedom, effective 15 May 2010.

m. The applicant's DA Form 67-9 for the rating period of 7 March 2010 through 6 March 2011 shows he was rated as the battalion commander of the 96th Military Police Battalion. The applicant's rater rated his performance as satisfactory, and he had the potential for promotion. The rater commented the applicant's unit had discipline issues when initially arriving in theater, but with a new command sergeant major they were able to correct the course of the unit and they performed well since. He needed to spend more time on a brigade staff and he could serve in positions of greater responsibility. His senior rater rated his promotion potential as best qualified and was center of mass compared to other officers in his grade. The senior rater commented to promote him when eligible.

n. On 21 June 2011, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 1 year, 1 month and 7 days of active service. It also shows he served in Kyrgyzstan/Afghanistan during the period of 10 July 2010 to 8 May 2011.

o. On 13 March 2014, Orders Number B-03-401021, issued by AHRC, the applicant was promoted to the rank/grade of COL/O-6, effective on with a date of rank of 28 February 2014.

p. On 28 May 2014, the commander of the 311th ESC revoked Permanent Orders Number 14-106-10, 14 April 2014, HQs, 311 ESC, Meritorious Service Medal, 1 October 2011 through 15 February 2014 under the authority of Army Regulation (AR) 600-8-105 (Military Orders), paragraph 2-21 (Amendments, revocations, and rescissions).

q. On 9 July 2014, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for misuse of his civilian credentials and position, failing to self-report and exhibiting a lack of candor in an interview. He misused his airport identification badge issued to him as a Customs Officer to access the Air Operations Area of the Yuma International Airport on 9 February 2014 while he was on military orders. He arrived at the airport after check-in for his flight, instead of making alternate travel arrangements, he utilized his airport identification to enter the Customs Office and then the Air Operations Area, bypassing Transportation Security Administration security screening checkpoint, in an attempt to board the departing aircraft. During an interview with the DHS investigating officer, he stated he entered the secure area to ask the ground crew a question about making alternate arrangements for his travel to Los Angeles, CA, not to board the aircraft. Witnesses contradicted his recollection, stating

he was trying to board the aircraft. His lack of candor was reprehensible and embarrassed the command. He also failed to report the incident to his security office.

The applicant rebutted the GOMOR stating in his 27-years of service he complied with everything the Army had required of him. He deployed to Saudi Arabia in support of Operation Desert Storm and twice to Afghanistan where he served with distinction. He sought out the hardest positions to challenge himself and serve his country which was evident by his selection from company command three times and a battalion command. He is a humble public servant with the Customs and Border Protection for 23-years and he never had an incident that questioned his integrity. The GOMOR stated he failed to self-report and the lack of candor, these words affect his civilian job as they accuse him of lying. As the sole bread winner in his family with two children in college he respectfully requested the commander consider that the GOMOR be redacted as he did not lie nor was it his intention to board the aircraft. He also requested the words be amended to state; failed to self-report in a timely manner and lack of courage. As he did report the incident to his commander though he did not do it right away as he saw the incident as a Customs and Border Protection issue and not a military matter. He was not intending to justify his actions; it was foolish and a bad decision and appalling judgement call.

r. The applicant's DA Form 67-10-3 (Strategic Grade Plate (O-6) OER) for the rating period of 14 October 2013 through 31 August 2014 shows the applicant was rated as a Liaison Officer. His rater stated he was a detail oriented officer who knew how to organize and prioritize actions and events to yield optimal results. He displayed a strong potential for positions of increased scope and responsibility. His senior rater rated his potential compared with officer of the same grade as retain as a COL. The senior rater commented he had vision, confidence, critical thinking skills, and experience to mentor junior officers and to continue to serve the Army in positions of increased responsibility.

s. On 5 February 2016, Orders Number 16-036-00004, issued by HQs, USARC, the applicant was assigned to the USAR Control Group (Retired Reserve) for completion of 20 or more years of service, effective 4 March 2016, under the provisions of AR 135-175 (ARNG and Army Reserve Separation of Officers), paragraph 2-11 (Moral or professional dereliction). The additional instructions stated his retirement grade would be determined by the AGDRB.

t. On 31 March 2016, the Army Review Boards Agency, notified the applicant derogatory information in his Army Military Human Resource Record (AMHRR) which rendered him subject to a determination concerning the highest grade which he served satisfactorily for the purpose of retired pay when he would become eligible to receive non-regular retired pay. His AMHRR would be reviewed by the AGDRB to recommend the highest grade in which he served satisfactorily for retirement purposes to the Deputy

Assistant Secretary of the Army (DASA) (Review Boards) who would make the final determination.

u. On 10 April 2016, the applicant acknowledged the notification and stated he intended to submit documents on his own behalf for the AGDRB to consider. He stated he believed and requested the AGDRB should advance him on the retired list in the grade of LTC/O-5, the highest grade he satisfactorily held while on reserve duty because he believed the misconduct that was cited in the GOMOR did not have evidence to support an intentional omission or misstatement of facts in an official statement or records because he never created an official statement or record. The only possible official statement he submitted was his rebuttal to the GOMOR though it was not an official record nor a sworn statement but a plea for mercy to the commander. Furthermore, he submitted himself to a polygraph examination that concluded he told the truth to the investigators throughout the investigation. The applicant provided the polygraph results for the Board to review.

v. On 12 July 2016, the DASA (Review Boards) directed the applicant be placed on the retired list in the rank/grade of MAJ/O-4 as it was determined his service in the grades of COL/O-6 and LTC/O-5 were not satisfactory.

4. The applicant provides DA Form 67-9 for the rating period of 14 October 2012 through 13 October 2013 which shows he was rated as the Executive Officer for the 653rd Regional Support Command. His rater rated his performance as outstanding and must promote. The rater commented he was amongst the top one percent of the LTCs in the brigade. He had exceptional ability to analyze challenging situations and develop solutions. He was ready for brigade command. His senior rater rated his promotion potential as best qualified and he was above center mass compared to officers of the same grade. The senior rater commented he projects the vision, leadership and confidence to make an even grater impact as a COL.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, 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 military records, the Board considered the facts and circumstances surrounding the applicant's allegations. The Board determined the applicant did not provide evidence that shows that there was an error or injustice. The Army Grade Determination Review Board (AGDRB) reviewed the applicant's non-regular retirement and the request for a grade determination submitted

by the U.S. Army Human Resources Command and directed the applicant be placed on the retired list in the grade of major (MAJ)/O-4.

2. The AGDRB noted the applicant, who, 3 weeks from pinning colonel (COL)/O-6, attempted to board a plane he had been told was full by using credentials from his civilian job and entering the tarmac without authority while in military uniform. This incident required a police response. The applicant did not immediately report to his chain of command. Although the incident occurred as a lieutenant colonel (LTC)/O-5, the issued reprimand was as a COL/O-6. The applicant did not have sufficient time in grade to retire as a COL/O-6.

3. The Board noted the applicant's assertion of his understanding that he did not satisfactorily complete his tenure as a COL/O-6; however, argues that his service as a LTC/O-5 remains satisfactory.

4. The Board determined the AGDRB's decision to retire the applicant as a MAJ/O-4 was not in error or unjust and found no basis to reverse the decision. The Board denied relief.

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 15-80 (Army Grade Determination Review Board and Grade Determinations), 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.

a. Paragraph 2-3 (Automatic grade determinations), a. Most grade determinations do not require action by the AGDRB or the exercise of discretion by other authorities because they are automatic grade determinations that result in the operation of law or this regulation. Circumstances requiring referral for discretionary grade determinations include (1) reversion to a lower grade was expressly for prejudice or cause, owing to misconduct, or punishment to Article 15 or court-martial. (2) In the cases involving officer, there is information to indicate that service in the highest grade served may not have been satisfactory.

b. Paragraph 2-4 (Grade determination considerations), a grade determination is an administrative decision to determine appropriate retirement grade, retirement pay, or other separation pay. Although a lower grade determination may affect an individual adversely, such determinations under this regulation are not punitive. The AGDRB will consider each case on its own merits. Generally, determination will be based on the Soldier's overall service in the grade in question, either on active duty or other service qualifying the Soldier for retirement, receipt of retired pay, or separation for physical disability. Circumstances pertinent to whether such service is found satisfactory include, but are not limited to, the following:

- medical reasons, which may have been a contributing or decisive factor in a reduction in grade, misconduct, or substandard performance
- compassionate circumstances
- length of otherwise satisfactory service in the grade in question, before and after the misconduct
- performance level, as reflected in evaluation reports and other portions of the service record that reflect performance. In reviewing these matters, the AGDRB will consider whether reporting officials were aware of the performance giving rise to the grade determination
- Nature and severity of misconduct
- grade at which the misconduct was committed

- grade at which the misconduct was addressed by proper authorities

c. Paragraph 2–5 (Unsatisfactory service), service in the highest grade normally will be considered to have been unsatisfactory when reversion to a lower grade was:

- expressly for prejudice or cause
- owing to misconduct
- caused by nonjudicial punishment
- result of the sentence of a court-martial

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 served in grade.

d. Paragraph 2-6 (Service in lower grade), if service in the highest grade held was unsatisfactory, the Soldier can be deemed to have served satisfactorily in the next lower grade held, unless paragraph 2-5 applies with regard to that next grade.

e. Paragraph 2-7 (Period of service), all active service may be considered as continuous or each period of duty may be considered separately if it is to the Soldier's benefit and there has been a break in service, unless a specific interpretation is required by statute. Such as "Served on active duty satisfactorily, as determined by the Secretary, for a period of more than 30-days."

f. Paragraph 4-1c, officer grade determinations are normally accomplished at time of retirement or disability separation, and the officer's grade is fixed at that time. A grade determination can be reopened or determined by the Army after separation, if:

- separation and/or accompanying grade determination was procured by fraud
- substantial new evidence discovered after, contemporaneously with, or within a short time before separation could result in a lower grade determination and there was insufficient time to complete the grade determination before retirement
- mistake of law or mathematical miscalculation led to an improper separation or grade determination
- it is a 30-year grade determination for a warrant officer

3. Title 10, USC, section 1370 (Regular commissioned officers), (a) (Retirement in Highest Grade in Which Served Satisfactorily), unless entitled to a different retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) who retires shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily. (2)

Determination of satisfactory service; the determination of satisfactory service of an officer in a grade shall be made as follows: by the Secretary of the military department concerned if the officer is serving in a grade at or below the grade of major general. (3) Effect of misconduct in lower grade in determination, 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 such Secretary may deem the officer to have not served satisfactorily of determining the retirement grade of the officer under this section; and the grade next lower to such lower grade shall be the retired grade of the officer under this section.

4. Title 10, USC, section 1407 (Retired pay base for member who first became members after 7 September 1980, (f) Exception for Officers Who Do Not Serve Satisfactorily in Highest Grade Held. (1) Computation based on pre-high-three rules. In the case of a member or former member described in paragraph (2), the retired pay base or retainer pay base is determined under section 1406 of this title in the same manner as if the member or former member first became a member of a uniformed service before September 8, 1980. (2)Affected members. A member or former member referred to in paragraph (1) is a member or former member who by reason of conduct occurring after October 30, 2000. (B) In the case of an officer, is retired in a grade lower than the highest grade in which served pursuant to section 1370 or 1370a of this title that the officer served on active duty satisfactorily in that grade.

//NOTHING FOLLOWS//