

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20230015307

APPLICANT REQUESTS: correction of his date of rank (DOR) to Chief Warrant Officer Four (CW4) with entitlement to applicable back pay and allowances.

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

- DD Form 149 (Application for Correction of Military Record)
- Sustainment Brigade Modernized Table of Organization and Equipment (MTOE) document
- Orders Number R-03-981175, 10 March 2009
- Orders Number B-07-004952, 27 July 2010
- Memorandum, Subject: Notification of Promotion, 13 December 2021
- Orders Number 314-0004, 10 November 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 30 June 2023

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, his DOR should be corrected due to administrative error during the process of promotion order to CW4 in 2009 promotion selection board result dated 14 April 2009. Therefore, he should get promoted immediately according to Army Regulation (AR) 135-155 (Promotion of Commissioned Officers other than General Officers), paragraph 4-21-d, which stated Active Guard/Reserve (AGR) Warrant Officers serving in a position of higher grade or in the process of Permanent Change of Station (PCS) into CW4 position. Individual that has been selected by a Department of the Army selection board can be promoted prior to their six-year anniversary date. Upon release of the promotion selection board promotion list, AGR Warrant Officers in a higher-grade position are eligible for immediate promotion. In 2009 when the selection board was released, he just completed a PCS, and was assigned to 96th Sustainment Brigade (UIC: WQ5LXX, Paragraph: 124, Line: 03, Grade: W4, Position: Senior

Ordinance Logistics Technician. This error also prevented his eligibility for early promotion selection board for chief warrant officer five. He initiated this request on 1 December 2019 when he was notified by the U.S. Army Human Resources Command (HRC). He has exhausted all his efforts to correct this issue with the HRC, career manager, and promotion branch.

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

a. Having prior enlisted service, on 23 August 1996, he was appointed as a Reserve warrant officer and executed an oath of office.

b. On 8 October 2003, the U.S. Army Reserve Personnel Command issued a Memorandum for Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter).

c. On 23 June 2004, HRC issued a Memorandum, Subject: Promotion as a Reserve Commissioned Warrant Officer of the Army promoting him to the rank of chief warrant officer three (CW3), effective 23 August 2004.

d. On 10 March 2009, HRC issued Orders Number R-03-981175 ordering him to active duty in an AGR status with assignment to Headquarters and Headquarters Company, 96th Sustainment Brigade, effective 29 June 2009, with placement in paragraph 124, line number 03.

e. On 27 July 2010, HRC issued Orders Number B-07-004952 promoting him to the rank of CW4, effective 23 August 2010.

f. On 13 December 2021, HRC issued a retroactive Memorandum, Subject: Notification of Promotion wherein the Department of the Army Reserve Components Selection board convened on 14 April 2009 selecting him for promotion to the rank of CW4, effective 23 August 2010.

g. ABCMR Docket Number AR20220001715, decided on 13 October 2022 wherein the applicant requested correction to his DOR to the rank of CW3. The Board determined the evidence presented was sufficient to warrant a recommendation for relief amending his DOR to CW3 to reflect 8 August 2003.

h. On 10 November 2022, HRC issued Orders Number 314-0004 for an honorable Retirement, effective 30 June 2023, in the rank of CW4 with effective DOR of 23 August 2010.

i. DD Form 214, ending 30 June 2023 reflects an honorable retirement for maximum age in the rank of CW4. Item 12 (Record of Service) shows service from

12 August 2001 to 30 June 2023 for a net active service this period of 21 years, 10 months, and 19 days with total prior active service of 5 years, 5 months, and 20 days.

4. The applicant provides the 96th Sustainment Brigade MTOE, effective 16 September 2008, document showing the 96th Sustainment Brigade with the CW4 Senior Ordnance Logistics Technician position (paragraph 124, line number 03) available with the Maintenance Branch as of 16 September 2008.

5. On 23 May 2024, the Chief, Officer Promotions Board Announcements, Support and Promotions Orders, HRC, provided an advisory opinion recommending approval of the applicant's request stating, in pertinent part:

a. Based on a review of the information provided, our records, laws, regulations, policies, and the systems available to HRC Officer Promotions, they find that the applicant's request for a change to his DOR does have merit.

b. Pertaining to the documents submitted in his request (Unit Manning Report, Assignment Orders (with CW4 Position), and the additional allied documents, there is more than a reasonable chance that he could have been assigned to the higher, CW4 position prior to the approval and release date of the Fiscal Year, 2009, Reserve Component, CW4 Promotion Selection Board results, even so, the earliest effective date he could have been promoted to CW4 will be based on the board's approval date (29 June 2009).

c. Therefore, in fairness, they recommend that the DOR and effective date be adjusted to 29 June 2009, unless proven otherwise ineligible. They also recommend that he be granted full relief with backpay and any other associated adjustments of record for entitlements. Understand that the final effective DOR to CW4 will be determined upon receipt of an approved ABCMR directive, under Title 10, USC, section 1552 and additional verification of promotion selection status and verification of the board's approval date.

d. Corrections of the DD Form 214 is not within their purview; therefore, they recommend that he delay submitting such a request, until after a favorable action has been approved and completed based on AR20230015307.

6. On 30 May 2024, the applicant was provided a copy of the advisory opinion and given an opportunity to respond.

7. On 31 May 2024, he concurred with the advisory opinion with no additional statements or documents to provide.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.
2. The Board concurred with the conclusion of the advisory official that the applicant's claim has merit. The Board determined the applicant's record should be corrected to show his DOR for CW4 is 29 June 2009, and he should be paid any additional pay and allowances he is due as a result of this correction.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing his DOR for CW4 is 29 June 2009, and he should be paid any additional pay and allowances he is due as a result of this correction.

2/26/2025

X

CHAIRPERSON

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. AR 135-155 (Promotion of Commissioned Officers other than General Officers) in effect at the time states in paragraph 4-21 (d) (Promotion of AGR Officers) AGR officers selected by a mandatory board will be promoted provided they are assigned/attached to a position in the higher grade. An AGR officer who is selected for promotion by a mandatory promotion board, but who is not assigned/attached to a position in the higher grade will be promoted on the date of assignment/attachment to a higher graded position or the day after release from AGR status. The date of rank will be the date the officer attained maximum time in grade or the date on which assigned/attached to a position in the higher grade, whichever is earlier.

3. Title 31, USC, section 3702, is the 6-year barring statute for payment of claims by the government. In essence, if an individual brings a claim against the government for monetary relief, the barring statute says that the government is only obligated to pay the individual 6 years from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the court held that the Board for Correction of Military Records (BCMR) is not bound by the barring act, that the BCMR decision creates a new entitlement to payment and the 6 years starts running over again, and that payment is automatic and not discretionary when a BCMR decision creates an entitlement.

//NOTHING FOLLOWS//