

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20240000854

APPLICANT REQUESTS: to be retired at the rank/grade of captain (CPT)/O-3E vice sergeant first class (SFC)/E-7.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 would like to receive retired pay based upon the legacy retirement system at the highest pay grade that he held while in military service. He contests that he served 20 years with honor and other service members who are forced to retire receive their retired pay based on "High 3." He further notes that he accepts being retired as a non-commissioned officer. However, he would like to have his retired pay calculated based upon the pay grade of O-3E rather than E-7.
3. A review of the applicant's service record shows:
 - a. On 14 May 1997, the applicant enlisted in the Regular Army.
 - b. On 1 January 2007, the applicant was promoted to the rank/grade of SFC/E-7.
 - c. On 8 September 2011, the applicant was honorably discharged in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Paragraph 16-1A in order to accept a commission.
 - d. On 9 September 2011, the applicant was appointed a Regular Army Commission as a 65D (Physician Assistant).

e. On 22 August 2013, Headquarters, U.S. Army Human Resources Command issued Orders Number 234-036 announcing the applicant's promotion to the rank/grade of CPT/O-3, effective 1 September 2013.

f. On 27 February 2017, the applicant's request for an unqualified resignation was approved for the purpose of enlistment/reenlistment in the Regular Army for the purposes of retirement.

g. On 16 March 2017, the applicant was advised that his request for reenlistment for the purpose of retirement as an enlisted Soldier was approved. The applicant was authorized to reenlist as a SFC/68W in accordance with AR 601-280 (Army Retention Program), Table E-1 on 29 June 2017, for a term of 24 months for the purpose of attaining retirement eligibility. The applicant would be retired on 30 June 2017 and placed on the retired list, effective 1 July 2017.

h. On 27 March 2017, the U.S. Army Installation Management Command issued Orders Number 086-1302 reassigning the applicant to the transition point pending separation processing. The U.S. Army Installation Management Command also issued Orders Number 086-134 on the same date, retiring the applicant from military service, effective 30 June 2017, at the rank of SFC.

i. On 28 June 2017, the applicant was honorably discharged at the rank of CPT in accordance with AR 600-8-24 (Officer Transfers and Discharges), Paragraph 3-7 (Resignation for the Purpose of Enlistment/Reenlistment in the Active Army). DD Form 214 (Certificate of Release or Discharge from Active Duty), item 11 (Primary Specialty) shows 65D Physician Assistant – 5 years and 10 months.

j. On 29 June 2017, the applicant enlisted in the Regular Army at the rank of SFC for 2 years.

k. On 30 June 2017, the applicant was honorably retired from active duty at the rank of SFC in accordance with AR 635-200, Chapter 12 (Retirement for Length of Service).

BOARD DISCUSSION:

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. The evidence of record shows the applicant was promoted to the rank/grade of sergeant first class (SFC)/E-7 on 1 January 2007. He was discharged to accept a commission on 8 September 2011 and commissioned on 9 September 2011. On 1

September 2013, he was promoted to captain (CPT)/O-3. He subsequently voluntarily requested resignation for the purpose of enlistment in the Regular Army, which was approved on 27 February 2017. On 16 March 2017, the applicant's request for reenlistment for the purpose of retirement as an enlisted Soldier was approved and he was honorably retired as a SFC/E-7 as a result of this request on 28 June 2017. The Board considered the applicant's commissioned service; however, determined the applicant did not serve 10 years of commissioned service as required by law and therefore denied his request to retire as a CPT/O-3.

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.

■ [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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 600-8-24 (Officer Transfers and Discharges):

a. Paragraph 1-13 (Counseling) provides that when a commissioned officer with less than 10 years active Federal commissioned service submits a request for a voluntary release from active duty under chapter 2 or an unqualified resignation under chapter 3, the judge advocates, chaplains, and Army Medical Department officers will be counseled by a senior officer of their branch in the chain of technical supervision or as specifically designated by their branch.

b. Section II (Voluntary Retirement) provides that Regular Army Officer with 20 years Active Federal Service (of which 10 years is active commissioned service) may on their request and the approval of Secretary of the Army be retired (10 U.S.C. 3911).

c. Chapter 6 (Retirements) provides that a commissioned officer, in the rank of major and below may retire in the highest rank served satisfactorily on active duty for 6 or more months unless entitled by law to a higher grade.

d. Paragraph 6-2 (Computation of Service) provides that Retired pay is computed according to pay formulas in Title 10, USC, chapters 71 and 371; provisions contained in the retirement law; and according to Title 37, USC.

e. Paragraph 3-7 (Resignation for the Purpose of Enlistment/Reenlistment in the Active Army) provides that any former enlisted member of the Regular Army on active-duty as an officer or warrant officer (without statutory entitlement to reenlist) who is not eligible to retire as an officer or warrant officer but has sufficient creditable service to retire in an enlisted status may be enlisted for the purpose of retirement. The individual may apply for enlistment in the rank of SGT; however, individual qualifications will determine the grade to be awarded.

3. AR 601-280 (Army Reenlistment Program) provides that Soldiers immediately reenlisting after separation from current active service as an Army commissioned or warrant officer will be eligible to reenlist for periods of 2, 3, 4, 5, or 6 years. However, if a retention control point will be exceeded before termination of contracted service, then the new period of service will not exceed 3 years.

4. Title 10, USC, Section 3911 (Twenty Years or More: Regular or Reserve Commissioned Officers) provides that the Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who has at least 20 years of service computed under section 3926 of this title, at least 10 years of which have been active service as a commissioned officer. The Secretary of Defense may authorize the Secretary of the Army, during the period specified in paragraph (2), to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Army) of not less than eight years. The period specified in this paragraph is the period beginning on 7 January 2011, and ending on 30 September 2018.

5. Department of Defense 7000.14 (Financial Management Regulation) provides that for members who entered the military service on or after 8 September 1980, the retired pay base is generally the average of the highest three years (36 months) of basic pay the member received for any 36 months, whether consecutive or not, of active service. Section 0102 (Service Creditable for Retirement Eligibility) provides upon completion of 20 years of creditable service, a member may request to be transferred to a retired or retainer status. A regular or reserve commissioned officer may voluntarily be retired after completion of 20 years of active service, at least 10 years of which is active commissioned service.

//NOTHING FOLLOWS//