

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240001963

APPLICANT REQUESTS:

- correction to his service record to show he was retired at the highest grade held of captain (CPT)/O-3 with retired pay computed at the higher rank held
- 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 for Promotion as a Reserve Commissioned Officer of the Army, dated 22 March 1990
- Memorandum for Promotion, dated 1 March 1994
- Memorandum for Promotion as a Reserve Commissioned Officer of the Army, dated 24 July 1998
- Orders Number D-10-240022, dated 3 October 2002
- DA Form 256A (Honorable Discharge Certificate), dated 1 January 2003
- Orders Number MM-1229-0006, dated 17 August 2021
- Orders Number 041-0125, dated 10 February 2022
- Orders Number MM-1229-00006A01, dated 23 February 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 26 February 2022
- DD Form 2656 (Data for Payment of Retired Personnel), dated 28 March 2022
- DD Form 108 (Application for Retired Pay Benefits), dated 28 March 2022
- DA Form 5016 (Chronological Statement of Retirement Points), dated 24 March 2022
- U.S. Army Human Resources Command (HRC) Memorandum for Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter), dated 24 March 2022
- HRC Letter, dated 14 March 2023
- Email correspondence

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, in pertinent part, he was a former commissioned officer with an honorable discharge as CPT on 1 January 2003, with an effective date of rank 1 March 1997. He reenlisted in the Army Reserve in 2009, as a sergeant (SGT)/E-5, and eventually retired as a sergeant first class (SFC)/E-7, after multiple attempts to get re-appointed as an officer. He was advised to submit his application to the Army Board for Correction of Military Records (ABCMR) by lieutenant colonel L- at the U.S. Army Human Resources Command (HRC), Fort Knox, Kentucky as that would be the only way to correct his rank to reflect CPT with proper retirement pay and benefits.
3. The applicant provides the following:
 - a. Memorandum for Promotion as a Reserve Commissioned Officer of the Army, dated 22 March 1990 showing his promotion to the grade of first lieutenant (1LT).
 - b. Memorandum for Promotion, dated 1 March 1994 showing his promotion to the grade of first lieutenant (1LT).
 - c. Orders Number D-10-240022, dated 3 October 2002 showing he was honorably discharged from the USAR in the grade of CPT, effective 1 January 2003.
 - d. DA Form 256A (Honorable Discharge Certificate), dated 1 January 2003 showing his discharge from the USAR in the grade of CPT, effective 1 January 2003.
 - e. Orders Number MM-1229-0006, dated 17 August 2021 showing he was retained on active duty for a period of 179 days in the rank of SFC.
 - f. Orders Number 041-0125, dated 10 February 2022 showing he was being released from active duty for physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent disability in the rank of SFC.
 - g. Orders Number MM-1229-00006A01, dated 23 February 2022 amending Orders Number MM-1229-00006 changing the tour length from 179 days to 175 days.
 - h. DD Form 2656 (Data for Payment of Retired Personnel), dated 28 March 2022 showing he applied for retirement pay requesting compensation calculated at the highest 3 years of service.

i. DD Form 108 (Application for Retired Pay Benefits), dated 28 March 2022 showing he requested retired compensation in the grade of CPT.

j. DA Form 5016 (Chronological Statement of Retirement Points), dated 24 March 2022 showing his enlisted and commissioned status with the Regular Army, USAR, and Army National Guard totaling 21 years, 2 months, and 18 days for qualifying service.

k. HRC Letter, dated 14 March 2023 showing the applicant applied for concurrent retirement and disability pay and was denied due to ineligibility from being placed on the permanent disability retired list.

l. Email correspondence wherein he responds to the Army Review Boards Agency Analyst noting he will try to send additional documentation.

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

a. Having had prior service in the Regular Army, he enlisted in the U.S. Army Reserve (USAR) as a Cadet with the Cumberland College Reserve Officers Training Corps (ROTC) on 10 February 1986.

b. On 9 May 1987, he accepted a Reserve commissioned and executed an oath of office.

c. NGB Form 337 (Oaths of Office), dated 12 September 1991 shows he accepted commission with the Michigan Army National Guard (MIARNG) and executed an oath of office in the grade of first lieutenant (1LT)/O-2.

d. Special Orders Number 214 AR, dated 19 December 1991 was issued for Federal recognition of his appointment with the Army National Guard from the USAR with a retroactive effective date of 12 September 1991.

e. NGB Form 22 (Departments of the Army and the Air Force National Guard Bureau Report of Separation and Record of Service), dated 1 May 1993 shows he was honorably discharged from the MIARNG, in the grade of 1LT, and transferred to the Individual Ready Reserve (IRR) with service from 12 September 1991 to 1 May 1993 for a net service this period of 1 year, 7 months, and 20 days.

f. Special Orders Number 58 AR, dated 22 June 1993 was issued for Federal recognition withdrawn and transfer to the USAR with a retroactive effective date of 1 May 1993.

g. On 24 July 1998, the U.S. Army Total Personnel Command issued a Memorandum for Promotion as a Reserve Commissioned Officer of the Army promoting him to the grade of CPT with a retroactive effective date of 1 March 1997.

h. On 16 July 2002, the U.S. Army Total Personnel Command issued a Memorandum for Notification of Promotion Status informing him that the Department of the Army Reserve Components Selection Board convened on 4 March 2002 and did not select him for promotion to the grade of major (MAJ). As a result of the second non-selection he must be discharged in accordance with Title 10 USC, section 14523 or Army Regulation 140-10 with an established removal date no later than 1 January 2003 unless he is eligible for transfer to the Retired Reserve.

i. On 10 December 2009, he enlisted in the Reserve in the rank of SGT/E-5.

j. AGDRB Docket Number AR20130001761, dated 28 August 2013 shows they administratively closed the applicant's request for re-appointment to the grade of CPT upon reenlistment in the USAR stating, in pertinent part, they do not have the authority to grant his request. He was referred to contact the Army Board for Correction of Military Records for further assistance.

k. On 10 December 2015, he reenlisted in the Reserve for an indefinite period in the rank of staff sergeant (SSG)/E-6.

l. Orders Number 19-182-00129, dated 1 July 2019 was issued promoting him to the rank of SFC/E-7.

m. On 6 January 2022, a Physical Evaluation Board convened finding him unfit with a recommending rating of 60 percent and permanent disability retirement in the rank of SFC.

n. DD Form 214, ending 26 February 2022 reflects honorable retirement for disability, permanent in the rank of SFC. Item 12 (Record of Service) shows service from 6 December 2017 to 26 February 2022 for a net active service this period of 4 years, 2 months, and 21 days; total prior active service of 3 years, 9 months, and 16 days; and total prior inactive service of 24 years and 19 days.

o. On 24 March 2022, HRC issued a Memorandum for Notification of Eligibility for Retired pay at Non-Regular Retirement (20-Year Letter) showing his rank as SFC.

5. On 15 October 2024, the HRC, Chief, Personnel Services Division provide an advisory opinion to the applicant's request for correction to his rank for retirement stating:

a. The Gray Area Retirement Branch (GAR) reviewed the applicant's record. According to Title 10, United States Code (USC), 3964, if the Soldier is not serving in his or her highest grade or on an approved promotion list to what would have been the highest grade, the Physical Disability Agency should forward the disability case to the Army Grade Determination Review Board (AGDRB) for a determination of whether the Soldier served satisfactorily at a higher grade.

b. Therefore, it is the opinion of GAR that the applicant's case will fall under the purview of the AGDRB for consideration to a higher rank.

6. On 18 October 2024, the applicant was provided with a copy of the advisory opinion to provide a response. As of 1 November 2024, he did not respond.

7. Title 10 United States Code, section 3964 (Higher Grade after 30 Years of Service: Warrant Officers and Enlisted Members) provides that each retired member of the Army who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily as determined by the Secretary of the Army. This section applies to Warrant Officers, Enlisted Soldiers of the Regular Army and Reserve Enlisted Soldiers of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty).

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the guidance outlined in 10 USC 3964 stating retired members of the Regular Army and USAR who are retired with less than 30 years of active service are entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily as determined by the Secretary of the Army and the information reflected on the applicant's DA Form 5016 showing completion of 21 years, 2 months and 18 days of military service in February 2022, the Board concluded the applicant would not be eligible for advancement to the highest grade held until late 2030/early 2031.

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. Title 10 United States Code, section 3964 (Higher Grade after 30 Years of Service: Warrant Officers and Enlisted Members) provides that each retired member of the Army who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily as determined by the Secretary of the Army. This section applies to Warrant Officers, Enlisted Soldiers

of the Regular Army and Reserve Enlisted Soldiers of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty).

//NOTHING FOLLOWS//