

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2025

DOCKET NUMBER: AR20240002072

APPLICANT REQUESTS:

- correction of Orders Number D355-01 to show his rank upon medical retirement as major (MAJ)/O-4
- correction of retirement points for Retirement Year Ending (RYE) 2019 resulting in an additional qualifying year of service
- 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: Department of the Army (DA) Board Results FY18 Captain (CPT) to MAJ Army Promotion List (APL), 6 September 2018 – reflective of the applicant being selected for promotion to MAJ
- Email communication – reflective of communication concerning the applicant's selection for promotion; document to be placed in his official military records

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 that:

- He was selected for promotion to MAJ
- He has not received an Officer Evaluation Report since 2018; did not receive the correct amount of service credit and pay during that period
- He did not receive a qualifying year of service in 2019 due to his requirement to attend a doctor's appointment; signed out from Battle Assembly early
- He is short one retirement point

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

- On 6 April 2000 – he enlisted in the Army National Guard (ARNG) for 8 years
- On 10 September 2004 – he was honorably discharged from the ARNG in order to be appointed a Reserve commission
- On 27 October 2004 (Special Orders Number 272 AR) – he was extended Federal recognition of his initial appointment in the ARNG, effective 11 September 2004
- On 19 July 2011 (Special Orders Number 163 AR) – he was extended Federal recognition of his promotion to CPT/O-3, effective 21 June 2011
- On 12 September 2017 – the applicant was notified of his non-selection for promotion to MAJ by the FY17 CPT to MAJ APL/Selective Continuation Department of the Army Board Selection
- On 3 May 2022, the applicant received his Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years) letter
- On 15 December 2022 – an Informal Physical Evaluation Board was conducted finding the applicant physically unfit for continued military service with a recommendation that he be permanently medically retired
- On 21 December 2022 (Orders Number D 355-01) the applicant was permanently medically retired, effective 19 February 2023, at the rank of CPT, under the provisions of Title 10, USC, section 1204

4. A review of the applicant's DA Form 5016 (Retirement Accounting Statement) dated 5 May 2024, reflect that he received a total of 49 retirement points (34 Inactive Duty Training and 15 Membership points) for RYE 2019 covering the period of 6 April 2018 – 5 April 2019.

5. On 2 December 2024, the National Guard Bureau, Chief, Special Actions Branch provided an advisory opinion recommending partial approval of the applicant's request noting that his records reflect that he was transferred to the Medical Management Activity (MMA) unit on 19 April 2021. He was eventually retired and put on the permanent disability retirement list on 21 February 2023 while DA Select for promotion. Following the FY2018 CPT to MAJ APL DA Board, the applicant was selected for promotion to MAJ.

a. The board results memorandum state that his effective date of promotion and date of rank will be the date he is in a duty position as required by Army Regulation (AR) 135-155 (Promotion of Commissioned Officers and Warrant Officers other than General Officers) for his area of concentration, but no earlier than 21 August 2018, which was the approval date for the board. However, he was never put into a position of higher grade where he could be promoted. In accordance with AR 600-100, Title 10, USC, Section 1372 provides that an officer retired for physical disability who is DA Select will be placed on the retired list in the selected promotion grade, provided the reason for the physical disability is determined to be in the Line of Duty (LOD) and the officer is not serving under a suspension of favorable personnel action on the grade

entry date of transfer. Additionally, per Title 10, USC, Section 1372 (3), the grade on retirement for physical disability is the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired, and which was found to exist because of a physical examination. The applicant's disability was determined to be in the LOD, and he was not flagged at the time therefore his separation orders should be amended to reflect the rank of MAJ.

b. Regarding the retirement points correction, there is no documentation of his doctor's appointment for his missed retirement point. The applicant did not receive service credit for the year from 6 April 2018 to 5 April 2019, but he did receive credit for the year from 6 April 2019 to 5 April 2020. The applicant does not provide any supporting documentation for this request, and TXARNG cannot support his request for his bad year in 2019.

6. On 9 December 2024, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 public law, policy, and regulation. Upon review of the applicant's petition, available military records and the National Guard Bureau, Chief, Special Actions Branch advisory opinion, the Board concurred noting Per Title 10, United States Code, Section 1372(3), the grade on retirement for physical disability is the permanent regular or reserve grade to which a Soldier would have been promoted had it not been for the physical disability for which he is retired, and which was found to exist as a result of a physical examination. The Board noted that the applicant's disability was determined to be in the LOD, and that he was not flagged at the time. Therefore, his separation orders should be amended to reflect the rank of MAJ.

2. With respect to the applicant's request for retirement points correction, the Board found no supporting documentation of the claimed doctor's appointment for the missed retirement point. The applicant did not receive service credit for the year from 6 April 2018 to 5 April 2019, but did receive credit for the year from 6 April 2019 to 5 April 2020. As the applicant provided no supporting documentation for the missed year, the Board determined that no correction is warranted.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
XXX	XXX	XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by amending Orders Number D 355-01 to show his retired grade of rank as O-4, effective on 19 February 2023.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to correction of retirement points for RYE 2019 resulting in an additional qualifying year of service

X //SIGNED//

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, 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, USC, section 1372 (Grade on Retirement for Physical Disability: Members of the Armed Forces) provides that unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

a. The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

b. The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

c. The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired, and which was found to exist as a result of a physical examination.

d. The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination.

3. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) sets responsibilities and procedures to establish and maintain retirement records prescribing the types of training and activities for which retirement points are authorized.

a. Paragraph 1-7 (Service Requirement for Satisfactory Year of Service for Non-Regular Retirement) provides that a qualifying year of service for non-regular retired pay is a full year during which a RC member is credited with a minimum of 50 retirement points.

b. Paragraph 2-2 (Criteria for Earning Retirement Points) Retirement points may be earned by USAR Soldiers for active duty or duty in an active status for active duty for

training (ADT), initial active duty for training (IADT), involuntary active duty for training (involuntary ADT), voluntary IDT, annual training (AT), IDT, membership points, and for other activities specified in this regulation.

4. AR 15-185 (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 applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//