

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20240002796

APPLICANT REQUESTS: correction of his retirement orders and DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he was retired in the rank and grade of lieutenant colonel (LTC)/O-5.

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from the Deputy Commander in Chief, U.S. Army Europe (USAREUR) and Seventh Army, 18 October 1990
- Letter from the U.S. Total Army Personnel Command (currently known as U.S. Army Human Resources Command) Chief, Armor Branch, 29 October 1990
- DD Form 214
- Ppermanent disability retirement orders, 23 October 1992
- Presidential Nomination 37 – Army, 102nd Congress (1991-1992) Nominee List to LTC

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 he should have been retired in the rank and grade of LTC/O-5 instead of major (MAJ)/O-4. He was selected for LTC on the October 1990 competitive list. His military personnel office was probably unaware of the provisions of Title 10, U.S. Code, section 1372 (Grade on retirement for physical disability: members of armed forces) and mistakenly retired him as a MAJ. He only recently learned of the law.
3. The applicant was commissioned in the Regular Army, Armor Branch, and entered active duty on 1 July 1974. He was promoted to MAJ/O-4 effective 1 October 1985.

4. The applicant provided letters from the Deputy Commander in Chief, USAREUR and Seventh Army and from the U.S. Total Army Personnel Command, Chief, Armor Branch, dated 18 October 1990 and 29 October 1990, respectively, congratulating him for his selection for promotion to LTC.

5. On 14 November 1990, a PEB found the applicant unfit for further military service due to a service-connected medical condition. The PEB recommended the applicant's placement on the Temporary Disability Retired List (TDRL) with reexamination during May 1992.

6. On 30 November 1990, the U.S. Total Army Personnel Command published Orders D234-9 ordering the applicant's release from assignment and duty because of physical disability incurred while entitled to basic pay and placing him on the TDRL in the rank of MAJ effective 4 January 1991.

7. The applicant's DD Form 214 shows he was retired on 4 January 1991 in the rank and grade of MAJ/O-4 by reason of physical disability – temporary. This DD Form 214 shows he completed 16 years, 6 months, and 4 days. It shows in:

- Blocks 4a (Grade, Rate or Rank) MAJ and 4b (Pay Grade) O-4
- Block 12h (Effective Date of Pay Grade) 1985-10-01

8. The PN37 – Army, 102nd Congress (1991-1992) Nominee List to LTC includes the applicant's name. This document shows the nominee list was received from the President by the Senate Armed Services Committee on 4 January 1991 and was confirmed by the Senate by unanimous consent on 6 February 1991.

9. On 24 September 1992, a PEB reevaluated the applicant's disabling condition and determined that for administrative adjudication purposes, the disability was considered to have stabilized and recommended his permanent disability retirement.

10. On 23 October 1992, the U.S. Total Army Personnel Command published Orders D209-10 ordering the applicant's removal from the TDRL and his permanent disability retirement, in the rank of MAJ, effective 23 October 1992.

11. The applicant's DA Form 3713-E (Data for Retired Pay) shows the statute authorizing retirement as Title 10, U.S. Code, section 1201.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant served on active duty from 1 July 1974 to 4 January 1991, attaining the rank of major in October 1985. He provides evidence of his selection for promotion to LTC that was confirmed by the Senate on 6 February 1991. However, he retired due to disability on 4 January 1991, prior to Senate confirmation. Because the applicant must be on the RASL (Reserve Active Status List) to be promoted, and based on the totality of the applicant's circumstances, and as a matter of fairness, the Board voted to grant relief in the form of adjusting the applicant's date of placement on the temporary disability list (TDRL) from 4 January 1991 to 7 February 1991, with entitlement to back pay and allowances, promoting him to lieutenant colonel (LTC), effective the date of Senate Approval (6 February 1991), and placing him on the retired list in the grade of LTC.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- Amending the applicant's TDRL retirement orders to show the effective date of retirement as 7 February 1991 vice 4 January 1991, with entitlement to back pay and allowances
- Promoting the applicant to lieutenant colonel (LTC)/O-5 effective 6 February 1991, the date of Senate confirmation
- Placing the applicant on the TDRL effective 7 February 1991 (vice 4 January 1991) in the grade of LTC/O-5 with entitlement to back retired pay at that grade
- Adjusting the applicant's DD Form 214 to reflect the grade of LTC with an effective date of rank as 6 February 1991
- Placing the applicant on the permanent disability retirement, in the rank of LTC/O-5, effective 23 October 1992, with entitlement to back retired pay at that grade

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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, 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, U.S. Code, section 1372 states 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 TDRL 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 TDRL 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.

//NOTHING FOLLOWS//