

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240003259

APPLICANT REQUESTS: in effect:

- retired pay in the rank/grade of major (MAJ)/O-4
- retroactive pay due to the correction of his record

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 24 May 1982
- Office of the Adjutant General, U.S. Army Reserve (USAR) Components Personnel and Administration Center Memorandum - Subject: Promotion as a Reserve Commissioned Officer of the Army under Title 10 of the U.S. Code (USC) (Army Regulation (AR) 135-155, 18 January 1983
- U.S. Army Retired Identification Card, 26 July 2018
- Retiree Account Statement, 8 December 2023
- Department of Veterans Affairs Disability Rating Document

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 recently discovered that Defense Finance and Accounting Service (DFAS) has been paying his military retirement at the rank/grade of captain (CPT)/O-3, but he is a MAJ/O-4. He was promoted on 18 January 1983 to MAJ while as a Reserve commissioned officer "under Title 10 of USC and AR 135-155." The rank of MAJ is not reflected on his DFAS profile or retirement monthly payments. This has just come to his attention from an open season letter that he received. He wants to make sure that his rank is changed on his DFAS profile, as well as past and future retirement payments reflect the rank of MAJ.

3. A review of the applicant's service records show:

a. Having prior enlisted and USAR commissioned officer service, National Guard Bureau (NGB) Form 337 (Oaths of Office) shows he was appointed as a CPT in the Georgia Army National Guard (GAARNG) and executed his oath of office on 27 July 1978.

b. On 25 June 1979, the Office of the Adjutant General GAARNG published Orders Number 122-3, which ordered the applicant to full time training duty from 25 June 1979 through 24 June 1981, with a report date of 25 June 1979.

c. On 6 August 1979, the Office of the Adjutant General, Reserve Components Personnel and Administration Center notified the Chief, NGB that the applicant had been selected for promotion to MAJ, under the provisions of AR 135-155 (Promotion of Commissioned Officers and Warrant Officers Other Than General Officers), with a promotion eligibility date of 29 June 1979.

d. The applicant declined the promotion to MAJ and his chain of command recommended approval.

e. On 4 October 1979, the Chief of Staff, GAARNG approved the applicant's declination of promotion as a Reserve commissioned officer (not on Active Duty), under the provisions of AR 135-155, until 24 May 1982.

f. On 14 May 1981, the Office of the Adjutant General, GAARNG published Orders Number 95-6, which ordered the applicant to active duty in an Active Guard/Reserve status for 2 years with a report date of 25 June 1981.

g. On 24 May 1982, the applicant was released from active duty and was transferred to the USAR Control Group (Reinforcement). DD Form 214 shows he completed 2 years and 11 months of active service this period. Item 4a (Grade, Rate or Rank) shows CPT.

h. On 16 June 1982, the NGB published Special Orders Number 115 AR, which withdrew the applicant's Federal Recognition (FEDREC), effective 24 May 1982.

i. On 18 January 1983, by memorandum, the Office of the Adjutant General, U.S. Army Reserve Components Personnel and Administration Center notified the applicant that he was promoted as a Reserve commissioned officer to MAJ, effective 25 May 1982.

j. On 15 March 1985, the U.S. Army Reserve Personnel Center, Professional Development Officer, notified the applicant that his request for branch transfer from the Signal Branch to the Aviation Branch was approved, effective 15 March 1985.

k. On 31 October 1986, NGB Form 337 shows the applicant was appointed as a chief warrant officer two (CW2) in the GAARNG and executed his oath of office.

l. On 27 March 1987, the NGB published Special Orders Number 57 AR, which extended FEDREC in the ARNG for the applicant's appointment from the USAR, effective 31 October 1986.

m. On 31 October 1990, the applicant was released from the GAARNG and was transferred to the USAR Control Group (Retired). NGB Form 22 (Report of Separation and Record of Service) shows in item 5a (Rank) CW2.

4. In support of his case the applicant provides:

a. U.S. Army Retired identification card issued on 26 July 2018, showing his rank as MAJ.

b. Retiree Account Statement dated 8 December 2023, which shows his rank as CPT. It also shows his gross retirement pay in the amount of \$3,627.00.

c. Disability rating document showing he is rated 100 percent service connected.

BOARD DISCUSSION:

1. 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. Upon review of the applicant's petition and military records, the Board determined the applicant did not provide evidence that shows there was an error or injustice. The Board noted the applicant's retiree identification card; however found no record of service as a major (MAJ)/O-4. Based on a preponderance of the evidence, the Board denied relief.

2. The Board noted the applicant's request for retroactive pay due to the correction of his retired orders to reflect MAJ/O-4; however, based on their denial of the underlying request also denied retroactive pay.

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.

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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, 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. Title 31, USC, section 3702, also known as the barring act, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, USC, is relieving the government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.
3. Title 10, USC, section 1370a (Officers entitled to retired pay for non-regular service) subsection (a) (Retirement in Highest Grade Held Satisfactorily) states, unless entitled to a different grade, or to credit for satisfactory service in a different grade under some other provision of law, a person who is entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest permanent grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary of the military department concerned in accordance with this section. Subsection (b) (Service-in-grade Requirement for Officers in Grades Below O-5) states, in order to be credited with satisfactory service in an officer grade (other than a warrant officer grade) below the grade of lieutenant colonel a person covered by subsection (a) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than six months.
4. Army Regulation (AR) 135-180 (ARNG and Army Reserve – Qualifying Service for Retired Pay Non-Regular Service) prescribes policy and procedures governing the granting of retired pay for non-regular service to Soldiers in the Army National Guard (ARNG), Army National Guard of the United States (ARNGUS), and the U.S. Army Reserve (USAR).
 - a. Paragraph 4-6a (Computation of retired pay) states, Retired pay will be computed by the Retired and Annuitant Pay Division, DFAS, Cleveland, OH, upon receipt of orders and data prescribed in paragraph 4-3 from the Commanding General, Human Resources Command (HRC) (see Department of Defense Financial Management Regulation 7000.14-R, Volume 7b).

b. Paragraph 4-6c states, HRC will screen each retirement applicant's record to determine the highest grade (see table 4-2) held in the Armed Forces. In arriving at the highest grade satisfactorily held the regulation provides that, if the Soldier was transferred to the Retired Reserve or discharged on or after 25 February 1975, retired grade will be that grade which a commissioned officer or enlisted Soldier held while on active duty or in an Active Reserve status for at least 185 days or 6 calendar months.

c. Paragraph 4-7a (Date retired pay begins) states, Retired pay will begin on the day in which the individual meets the requirements for age and service or the first day of any later month that the retiree may elect on DD Form 108. Paragraph 4-7b states, there is a 6-year statute of limitations for back pay of retired pay (see Title 31, USC, section 3702(b)). A claim for retired pay must be filed within 6 years after the date of eligibility for retired pay. If not filed within the 6-year limitation, 1 day's retired pay will be lost for each day of delay in filing the claim application. For example, if eligibility was attained on 2 July 1989 and the application for retired pay is not recorded by Defense Finance and Accounting Service until 2 September 1995, payment can be made only from 2 September 1989.

//NOTHING FOLLOWS//