

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE:

DOCKET NUMBER: AR20240007366

APPLICANT REQUESTS: her deceased father, a former service member (FSM):

- retroactive advancement to the retired reserve list at the rank and pay grade of Captain (CPT)/O-3 effective 1 November 1968
- remuneration of back pay to his heirs at the grade of CPT/O-3 from the date of his retroactive advancement to CPT/O-3 on the retired reserve list on 1 November 1968 to the date of his death in 2010

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

- DD Form 149 (Application for Correction of Military Record), 4 March 2024
- Birth Certificate, State of Maryland, 1950
- Birth Registration Notice, State of Maryland, 1950
- memorandum, Office of the Adjutant General, Headquarters (HQ), Department of the Army, 25 May 1959, subject: Promotion as a Reserve Commissioned Officer of the Army Under the Reserve Officer Personnel Act of 1954 (Paragraph 15, Army Regulation 135-155)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 31 October 1968
- Divorce Decree, State of Maryland, 1984 (Applicant)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 25 July 1985 (Applicant)
- memorandum, HQ, 24th Infantry Division, dated 15 April 1986, subject: Name Change
- Marriage Certificate, State of Georgia, 1986
- DD Form 214, 29 December 1991 (Applicant)
- Defense Finance Accounting Service (DFAS) U.S. Military Retirement Pay Statement, 2 December 2009
- Death Certificate, State of Georgia, 2015
- letter, Defense Logistical Agency (DLA), Defense Office of Hearings and Appeals (DOHA), 30 April 2021
- letter, DLA, DOHA, 8 June 2021
- letter, Army Review Boards Agency (ARBA), 19 May 2022

- email, ARBA, 8 February 2024
- congressional Privacy Act Form, 8 April 2024
- letter, ARBA, 28 May 2024
- Social Security Number Card (Applicant)

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 indicates on her DD Form 149 that other mental health issues/conditions are related to the FSM's request; however, the request for relief involving promotion and financial issues may be forwarded for Board consideration without a mental health opinion. The applicant states:

a. Her father retired from the Army as a reserve captain in 1968. She was notified by an attorney that DFAS paid him retirement at the incorrect rank of first lieutenant (1LT/O-2) instead of CPT/O-3.

b. He was paid at this rank from his retirement in 1968 until his death in 2010. He did not notice or correct the error because he was suffering from Alzheimer's disease which was the cause of his death.

c. He did everything he had to do to support his country during WWII. He was an African American man coming from poverty. He took advantage of every opportunity he could and worked hard to succeed. He became a company commander and an aviator and flew scout missions during the Korean War.

3. The applicant provided copies of:

a. A birth certificate and a birth registration notice, both dated November 1950; two DD Forms 214, reflecting her service on active duty and her last name as the same as the FSM, and later her last name changed to H____; a divorce decree reflecting her last name as H____; a marriage license, dated 1986, reflecting her married name as B____ and her present name as stated on her application; which shows she is the daughter of the FSM.

b. A DFAS, U.S. Military Retirement Pay statement, dated 2 December 2009 reflecting his gross pay, Survivor Benefit Plan allotment, and taxable income due as of 4 January 2010, at the retired rank of 1LT/O-2.

- c. A death certificate, showing the prior service member was deceased in June 2011.
 - d. Two letters from the DLA, DOHA, dated 30 April 2021 and 8 June 2021, reflecting the DLA responded to the applicant's earlier request for appeal review of a claim with the DLA for back pay on the issue of the deceased rank and underpayment of retired pay. The case was remanded back to DFAS for review on 30 April 2021.
 - e. A letter from ARBA, dated 19 May 2022, reflecting the applicant's request was returned for failure to exhaust for correction of pay with DFAS.
 - f. An email from ARBA, dated 8 February 2024, reflecting the applicant's case was still being reviewed by DFAS.
 - g. A Congressional Privacy Act Release Form, dated 4 August 2004, reflecting the applicant requested congressional assistance in her case.
 - h. The applicant's Social Security Number card.
4. A review of the FSM's service records reflect:
- a. On 19 May 1942, he enlisted in the Regular Army beginning at the rank of private. He was assigned to 22nd Chemical Decontamination Company, Camp Sibert.
 - b. On 10 July 1942, he was promoted to corporal.
 - c. On 24 November 1942, he was promoted to Sergeant (SGT).
 - d. On 19 April 1943, he was promoted to Staff Sergeant.
 - e. On 11 December 1945, he was released from active duty by reason of demobilization. His WD AGO Form 53-55 (Enlisted Record and Report of Separation-Honorable Discharge) for this period reflects his rank as Staff Sergeant (SSG).
 - f. On 31 December 1945, he enlisted in the Regular Army for 3 years beginning at rank SSG.
 - g. On 27 October 1948, he was discharged from the Regular Army by reason of reenlistment. His rank was shown as SGT.
 - h. On 28 October 1948, he reenlisted in the Regular Army for 3 years at the rank of SGT.

- i. On 13 October 1949, he was honorably discharged. His WD AGO Form 53-55 for this period reflects the rank of SGT and his discharge reason was to accept appointment as a commissioned officer and to attend Officer Candidate School.
- j. His WD AGO Form 71 (Oath of Office) dated 14 October 1949 shows he was appointed a second lieutenant (2LT) in the Officers Reserve Corps, Army of the United States, Ordnance Department, and he entered active duty on the same date.
- k. On 27 October 1952, he executed an oath of office at the commissioned grade of 2LT in the Officers Reserve Corps, Army of the United States.
- l. Special Orders Number 62, issued by Headquarters (HQ), Personnel Center, Fort Devens, dated 31 March 1954, reflect he was appointed a 1LT in the U.S. Army Reserve (USAR) effective 1 April 1954. The same orders reflect he was involuntarily released from active duty as a nonregular officer in the USAR Control Group (Reinforcement), effective 2 April 1954.
- m. His DD Form 214, for the period ending 2 April 1954 shows his rank as 1LT and his date of rank as 14 April 1951.
- n. On 30 April 1954, he enlisted in the Regular Army for 3 years beginning at rank sergeant first class (SFC)/E-6.
- o. On 1 April 1954, he executed an oath of office, and he was appointed as a Reserve commissioned officer at the rank of 1LT for an indefinite term.
- p. On 30 April 1954, he reenlisted in the Regular Army at the rank SFC for 3 years.
- q. On 29 March 1957, he voluntarily extended his enlistment of 3 years by 1 year.
- r. Special Orders Number 104, issued by U.S. Army Signal Missile Support Agency, dated 23 May 1958, promoted him to temporary (T) master sergeant (MSGT)/E-7 effective 23 May 1958.
- s. On 30 October 1958, he reenlisted in the Regular Army for 4 years as a MSGT/E-7.
- t. Special Orders Number 216 issued by U.S. Army Signal Missile Support Agency, dated 3 November 1958, discharged him from the Regular Army on 29 October 1958 for the purpose of reenlisting on 30 October 1958. These orders also appointed him to the rank of MSGT/E-7 (T), effective 23 May 1958.

u. On 25 May 1959, HQ, Department of the Army (HQDA) issued a memorandum promoting him as a Reserve Commissioned Officer in the grade of CPT/O-3 under the Reserve Officer Personnel Act of 1954. The effective date of promotion was 13 October 1956.

v. On 14 September 1962, he voluntarily extended his 4 year enlistment of 30 October 1958 by 11 months.

w. On 3 December 1962, HQDA notified him by memorandum he was in the zone of consideration for promotion by a recent Reserve selection board but was not selected.

x. On 29 September 1963 he was honorably discharged in order to reenlist. His DD Form 214, for this period reflects his rank/grade as MSGT/E-7 permanent (P).

y. Special Order Number 239, dated 30 September 1963, discharged him at the rank of MSGT/E-7 by reason of reenlistment.

z. Special Orders Number 69, issued by U.S. Army Signal Center and School (USASCS), Fort Monmouth, dated 7 April 1964, reflect he was removed from the active USAR and transferred to the Retired Reserve by reason of non-selection for Reserve Promotion. This did not affect his concurrent active duty service in the rank MSG/E-7.

aa. Special Orders Number 207, dated 28 September 1966, honorable discharged him effective 29 September 1966.

bb. His DD Form 214 for the period ending 29 September 1966, shows his rank as MSG/E-7 (P).

cc. On 30 September 1966, he reenlisted in the Regular Army for 3 years at the rank MSG/E-7.

dd. Special Orders Number 215, issued by USASCS, Fort Monmouth, dated 10 October 1966, promoted him to MSG/E-8.

ee. On 3 June 1968, HQ, USASCS, Fort Monmouth forwarded his application for voluntary retirement for processing at HQDA.

ff. Special Orders Number 181, issued by HQDA, dated 16 September 1968, relieved him from active duty and placed him on the Retired Reserve list. His rank was shown as MSG/E-8.

gg. His DD Form 214, for the period ending 31 October 1968, reflects he was retired at the rank of MSG (P) and released to the USAR in the Grade of CPT/O-3.

hh. Special Orders Number 193, issued by HQDA amended, dated 2 October 1968, amended Special Orders Number 181 to show he was transferred to the USAR (Retired Reserve) in the commissioned grade of CPT/O-3.

ii. Letter Orders issued by the Office of the Adjutant General, USAR Components Personnel and Administration Center, dated 23 August 1973, shows he was retired at the rank of MSG/E-8 and he was advanced on the Retired List in the grade of 1LT/O-2.

5. On 7 May 1973, the FSM requested the Chief, Retired Pay Services, U.S. Army Financial Services, correct his pay records to place him on the Reserve retired list in the grade of captain; he was then receiving retired pay at the rank of MSG/E-8.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board concluded relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation showing the applicant honorably served in the highest rank held of CPT/03 and the information reflected on the advancement of rank memorandum dated 23 August 1973, showing he was only advanced to the rank of 1LT/02, the Board concluded there was sufficient evidence of an error warranting correction.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XXX	:XXX	:XXX	GRANT FULL RELIEF
:	:	:	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 relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the Department of the Army, Office of the Adjutant General, Letter Orders Number 2,007,122, dated 23 August 1973, by:

- REMOVING: Grade to which advanced on Retired List: First Lieutenant 0-2
- ADDING: Grade to which advanced on Retired lister: Captain 0-3

2. Additionally, the Board recommends forwarding the change and the FSM's record to DFAS to determine whether additional monies are to be paid out and to determine who the appropriate payee, if anyone, would be.

//SIGNED//

X

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. Army Regulation 135-155 (Reserve Components-Promotion of Commissioned Officers, Other Than General Officers), then in effect (12 August 1968), prescribed the policies and procedures for promoting commissioned officers in the Reserve components of the Army below the grade of general officer.

a. Paragraph 2-10. Promotion upon transfer to USAR. Officers of the Army National Guard of the United States with honorable service, transferring to the USAR, will be advanced to the highest temporary or permanent grade previously satisfactorily held in any component of the Army.

b. Paragraph 2-11. Promotion upon transfer to Retired Reserve. A Reserve officer upon transfer to the Retired Reserve, will be promoted to:

(1) Highest permanent or temporary grade satisfactorily held in the Army of the United States (including components thereof), or

(2) The Reserve grade for which selected for promotion when the transfer is being made because of physical disability or as a result of completing the number of years of service or reaching the age at which his retirement, transfer to the Retired Reserve, or discharge is required by law.

3. Title 10, U.S. Code, Section 1552, the law which governs the operation of the Board, states that "The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be."

4. Title 10, U.S. Code, Section 1552, states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

//NOTHING FOLLOWS//