

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00538

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued 15 May 1991, be changed to reflect the rank/grade of senior master sergeant (E-8).

APPLICANT'S CONTENTIONS

He discovered the error in August 2021 after speaking to a veteran who retired as an E-8. He was told that if he had an order showing he was promoted, he could receive an identification card and E-8 retired pay. He did not look at his orders until he met with a representative from the Department of Veterans Affairs.

In support of his request, he provided a special order with promotion to E-8 and placement on the retired list of the [State] National Guard, effective 10 July 1995.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air National Guard (ANG) master sergeant (E-7) receiving retired pay.

On 15 May 1991, according to DD Form 214, provided by the applicant, the applicant completed a period of active duty from 15 December 1990 to 15 May 1991, in the grade of E-7. The narrative reason for separation reflects "ANGUS Member Released Due to Demobilization."

On 9 July 1995, the applicant was honorably discharged from the ANG, in the grade of E-7, and credited with 27 years, 6 months, and 11 days of total service for pay.

On 11 July 1995, according to Reserve Order XX-XXXX, dated 10 August 1995, the applicant was placed on the Air Force Reserve Retired List in the grade of E-7.

On 12 August 2005, according to Reserve Order XX-XXXX, dated 23 March 2005, the applicant was placed on the United States Air Force Retired List and authorized retired pay in the grade of E-7. The order also lists the highest grade satisfactorily held as E-7.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory opinions at Exhibits C and E.

AIR FORCE EVALUATION

NGB/A1PP (Force Management) recommends partially granting the applicant's request, indicating there is evidence of an error or injustice. The applicant was promoted to E-8 effective 9 July 1995, but the promotion was never updated in the Military Personnel Data System. Based on the promotion order to E-8, they deferred to the Air Reserve Personnel Center (ARPC) for determination of the highest grade held. However, they recommend denying the applicant's

request to change the grade on his DD Form 214. On the effective date of the DD Form 214, 15 May 1991, the applicant held the grade of E-7. He was not promoted to E-8 until 9 July 1995.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 30 June 2022 for comment (Exhibit D), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

In a revised advisory, NGB/A1PP recommends denying the application. Based on the documentation provided and analysis of the facts, there is no evidence of an error or injustice. The state processed two special orders, dated 10 July 1995, with conflicting information. One order retires the applicant in the grade of E-7, the other retires him in the grade of E-8. However, Air National Guard Instruction (ANGI) 36-2101, *Assignments Within the Air National Guard*, dated 20 December 1994, states that a member who accepts a promotion to E-8 incurs a service commitment of 24 months and the waiver authority for service commitments is the adjutant general (TAG). At the time the DD Form 214 was issued, the applicant held the grade of E-7. There is no evidence in his military personnel record that indicates he was promoted to E-8, nor is there evidence that TAG waived the service commitment.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the revised advisory opinion to the applicant on 30 November 2022 for comment (Exhibit F), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of NGB/A1PP's revised advisory opinion and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no evidence the applicant was selected for promotion to E-8 or that the promotion authority waived the service commitment in accordance with ANGI 36-2101. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00538 in Executive Session on 21 December 2022 and 14 December 2023:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 7 February 2022.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, NGB/A1PP, dated 27 June 2022.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 July 2022.
Exhibit C: Advisory Opinion, NGB/A1PP, w/atchs, dated 31 October 2022.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 November 2022.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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Board Operations Manager, AFBCMR