

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 November 2023

DOCKET NUMBER: AR20220011340

APPLICANT REQUESTS: in effect, reinstatement of his rank/grade of sergeant first class (SFC)/E-7 with a date of rank of 1 March 2020.

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

- DD Form 149 (Application for Correction of Military Record)
- Promotion Order to E-7
- DA Form 68 (Report to Suspend Favorable Personnel Actions)
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- Revocation of E-7 promotion orders
- Memorandum, 22 September 2020, Administrative Removal
- Memorandum, 7 October 2022, Administrative Appeal for Erroneous Demotion
- Enlisted Record Brief
- Death Certificate

FACTS:

1. The applicant states he requests the rank of sergeant first class (SFC)/E-7, effective date 1 March 2020, as stated on his Soldier Record Brief to reflect in all Army records and the removal of the duplicate Article 15. He was denied reenlistment to retain his promotion to the rank of SFC without proper documentation and substantial evidence to deny reenlistment. His command team misused the flagging system to prevent reenlistment and improperly used HRC (U.S. Army Human Resources Command) administrative removal from the SFC list, as well as to reduce him from SFC to sergeant (SGT)/E-5, reduction of more than one rank.

a. In accordance with Army Regulation (AR) 601-280 (Army Retention Program), "a Soldier must be flagged for unfavorable action to be considered ineligible for reenlistment. If a commander denies a Soldier opportunity to re-enlist, the Soldier must be counseled on the reason and barred." The information enclosed in his IPERMS, such as promotion orders, Soldier Record Brief with effective Date of Rank of 1 March 2020, and flag are not in accordance with AR 600-8-2 (Suspension of Favorable Personnel Action), proved that he was promoted before being flagged and was withheld from re-

enlisting to retain the rank of SFC. At the time of promotion and requirement to re-enlist, there was no flag or Bar to Continued Service. As a result of the improper use of this flag, he was reduced to more than one grade in rank.

b. Promotion Order Number 51-25, dated 20 February 2020 with an effective Date of Rank of 1 March 2020, promoted him to SFC. He needed to have 36 months' time in service remaining to retain the rank of SFC. He only had 34 months' time in service. He was not allowed to reenlist because his commander, Captain [Name] stated he (the applicant) was flagged for a commander's investigation, however there was no indication of a flag within his records. On 2 March 2020, a flag was initiated with a back date of 2 December 2019. This flag was not in accordance with AR 600-8-2; the flag did not have a commander's authenticated signature; the flag enclosed is not authenticated in in accordance with AR 600-8-2. The SRB in his IPERMS, submitted with the flag, has a brief date of 24 February 2020; this date is after the flag's effective date, 2 December 2019. The Date of Rank [incomplete sentence].

2. Review of the applicant's service records shows:

a. He enlisted in the Regular Army on 8 November 2007. He served through multiple reenlistments in a variety of assignments, including Iraq and Afghanistan, and held military occupational specialty (MOS) 13B, Cannon Crewmember.

b. The applicant was promoted to SGT/E-5 on 1 Marc 2012 and to SSG/E-6 on 1 August 2015. round June 2018, he was assigned to the Atlanta Recruiting Company, Atlanta, GA, as a recruiter.

c. On 9 December 2019, an investigating officer (IO) conducted an investigation to gather information pertaining to the current and past modus operandi associated with government vehicle logs (USAREC Form 700-5.3), key control, and possible misuse of GSA fleet credit card for G13-0852W. The IO found/recommended:

(1) Findings: The preponderance of evidence overwhelmingly supports gross misconduct on the part of SSG(P) [Applicant] and negligence on the part of SSG M***** (Station Commander), and SSG Mc***** (Station Truck Master). Evidence and information collected identified the following abnormalities: vehicle logs were/are not being filled out properly and created at the end of each month, accountability of vehicle keys and GSA fleet credit cards, misuse of GSA fleet credit cards, and oversight by leadership to verify processes and procedures were being utilized.

(2) Recommendations: With the nature of SSG(P) [Applicant's] deliberate and consistent misconduct it is recommended that he receives an Article 15 reduction to SGT, repayment of fiscal assets stolen, and immediately removed from POSTA. With the nature of SSG Mc**** negligence it is recommended that she receives a battalion

commander's letter of reprimand in her local file. With the nature of SSG M**** negligence it is recommended that he receives a counseling from his senior rater related to his lack of general oversight associated with the conduct of his subordinate Soldiers.

d. The record contains an unsigned DA Form 268, Report to Suspended Favorable Personnel Actions, effective 2 December 2019, due to a commander's investigation.

e. Meanwhile, being unaware of the ongoing investigation, on 20 February 2020, the senior enlisted branch at HRC published Orders 51-25 promoting the applicant to SFC effective 1 March 2020, in MOS 13B.

f. On 13 May 2020, the applicant (in the rank/grade of staff sergeant (SSG)) accepted nonjudicial punishment under Article 15 for on or about 7 October 2019 and on or about 26 November 2019, knowingly and with the intent to defraud, use a General Service Administration Flier credit card without authorization, to obtain fuel for his personal vehicle. His punishment consisted of reduction to SGT/E-5 and forfeiture of \$1,750 pay. The imposing battalion commander ordered the Article 15 filed in the performance section of his AMHRR.

(1) The DA Form 2627 shows the applicant placed his initials in the block marked "I do not appeal."

(2) The back of the DA Form 2627 shows the next higher commander, the brigade commander, concurred with the reduction to SGT/E-5 but suspended the forfeiture of \$1,750 pay, for 6 months.

g. On 3 April 2020, HRC published Order Number 93-02 revoking the applicant's promotion to SFC as shown in Order Number 51-25.

h. On 22 September 2020, by memorandum, Subject: Administrative Removal, the Chief of Enlisted Promotions Branch at HRC informed the applicant that the Enlisted Promotions Branch has administratively removed him from the FY18 RA and AGR SFC Promotion Selection List based upon his field reduction to E-5. He will be eligible to compete in subsequent boards provided he is otherwise qualified.

i. On 7 October 2020, by memorandum, Subject: Administrative Appeal for Erroneous Demotion, the applicant responded to HRC's demotion and stated (his appeal in its entirety is enclosed for the Board to review):

(1) He received promotion orders to the rank of SFC (Promotion Order Number 51-25, dated 20 February 2020 with an effective Date of Rank of 1 March 2020). On 1 March 2020, HRC contacted and informed him that he was required to reenlist to

obtain the rank of SFC in accordance with AR 600-8-19 (Enlisted Promotions and Reductions), "a Soldier must have at least 36 months remaining in service to retain a senior enlisted promotion."

(2) On 2 March 2020, he received the initial reading of his Article 15. On 3 April 2020, HRC revoked the rank of SFC due to lack of reenlistment. Then, on 13 May 2020, he received his second reading of the Article 15 by Lieutenant Colonel (LTC) [Name] who imposed the punishment of: reduction to SGT and forfeiture of \$1,750.00. On 5 June 2020, the Article 15 appeal was reviewed by Major [Name]. On 6 June 2020, Colonel [Name] reviewed the Article 15 appeal and imposed punishment of: reduction to SGT and forfeiture of \$1,750.00 was suspended for six months. Throughout the Article 15 process, he was never flagged in accordance with AR 600-8-2 or had a Bar to Continued Service in accordance with AR 601-280.

(3) Upon arrival to Fort Carson, CO on 17 June 2022, 3rd Armored Brigade Combat Team, 4th Infantry Division S1 NCOIC, SFC [Name] informed him that the Article 15 he received, was in his records twice, and there were several discrepancies.

(4) He argued that: as a result of the improper use of the flag, he was reduced to more than one grade in rank, and due to not obtaining a flag or Bar to Continued Service, he should not have been denied the required reenlistment, to be promoted to SFC.

3. On 3 September 2021, the applicant reenlisted in the Regular Army indefinitely, in the rank of SGT/E-5.

4. On 18 September 2023, Chief of Enlisted Promotions at HRC provided an advisory opinion in the processing of this case

a. The advisory official referenced: AR 600-8-19 dated 16 May 2019, Enlisted Promotions and Reductions and AR 600-8-2, dated 5 April 2021, Suspension of Favorable Personnel Actions (Flag). After a review of the applicant's, HRC Enlisted Promotions Branch has determined administrative relief is not warranted and unsubstantiated.

b. In response to the applicant's Administrative Appeal dated 7 October 2022 and his list of facts, he is misinterpreting what happened along with the timeline. The applicant was notified on 26 February 2020 that his promotion on 1 March 2020 required either an extension or re-enlistment to meet the 3-year service remaining requirement (SRR) needed to accept the promotion to SFC. At this time, the applicant was not yet flagged. The unit flag entered the eMILPO system on 27 February 2020 rendered his promotion as erroneous in accordance with AR 600-8-19, paragraph 1-12 which states: "Soldiers who are flagged while on a centralized selection list are not

eligible for promotion selection and pin-on". Senior Enlisted Promotions was not aware of the unit flag until 3 April 2020, where the promotion branch promptly revoked the promotion order. Also on 3 April 2020, the applicant received an email from Mrs. V**** who attached his revocation order and stated in her email that the revocation was due to his flagging action on 27 February 2020 with an effective date of 2 December 2019.

c. AR 600-8-19 also states in paragraph 1-11a. Soldiers (SPC through master sergeant (MSG) except as noted) are non-promotable to a higher rank when one of the following conditions exists: (7) A Soldier is denied favorable personnel actions under the provisions of AR 600-8-2 (applicable for promotion to PV2 through SGM). (a) Failure to initiate DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) does not affect the Soldier's non-promotable status if a circumstance exists that requires imposition of a suspension of favorable personnel actions (Flag) under the provisions of AR 600-8-2. (b) The promotion status of a Soldier residing on a centralized selection list with an imposed Flag is controlled by paragraph 1-12. This justifies our revocation of promotion on 3 April 2020 when we found out about the flagging action. On 14 May 2020, the applicant (SSG) was reduced to SGT/E-5 by Article 15. Senior Enlisted Promotions did not find out about the Article 15 until 22 September 2020, where they promptly removed him from the FY18 SSG Promotion Board.

d. Senior Enlisted Promotions continuously scrubs databases for flagging actions by units, and the applicant was listed on a scrub we conducted on 3 March 2020 with an LA flag (Commander's Investigation), with an effective date of 2 December 2019 (attached). The promotion branch did not process this at the time as his rank was already listed as SFC and the scrub at the time was looking for SSG's.

e. The applicant was flagged prior to his promotion and the revocation of his promotion was due to this flag, not for not meeting his SRR; and on 14 May 2020 he was reduced by Article 15 one rank, from SSG to SGT, not the two ranks as he alleges.

5. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit a rebuttal. He did not respond.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows, while holding the rank/grade of SSG, the applicant was the subject of an investigation in December 2019 that overwhelmingly supported his gross misconduct in relation to government vehicle logs, accountability of vehicle keys and GSA fleet credit cards, and misuse of GSA fleet credit cards. As a result, in May 2020, he received an Article 15 from his commander that resulted in a forfeiture of pay and

reduction to E-5. The next higher commander approved a suspension of the forfeiture of pay for 6 month and approved the reduction to E-5. Meanwhile, since the applicant was a promotable SSG and since his sequence number came up, HRC – which manages senior enlisted promotion, and without having the knowledge of the investigation or the May 2020 Article 15 – published orders promotion him to SFC in April 2020. However, the HRC senior enlisted promotion branch revoked the orders immediately upon learning of the applicant’s investigation, subsequent Article 15, and resultant reduction. Equally important, while the applicant was pending an investigation, he was in a non-promotable status. The fact that a Flag was not initiated on time does not affect the Soldier's non-promotable status if a circumstance exists that requires imposition of a flag. The Board determined relief is not warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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:

Army Regulation 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system. It provides the objectives of the Army's Enlisted Promotions System, which include filling authorized enlisted spaces with the best qualified Soldiers.

a. Soldiers (SPC through master sergeant (MSG)) are non-promotable to a higher rank when one of the following conditions exists:

(1) A Soldier fails to reenlist or extend their current enlistment to meet the service remaining requirement within 30 days (RA) and 60 days (USAR) of the announced promotion effective date. The promotion authority will remove the names from the recommended list.

(2) A Soldier was punished under the Uniform Code of Military Justice (UCMJ), Article 15, including suspended punishment. Summarized proceedings imposed according to AR 27-10, are excluded and will not result in non-promotable status. The Soldier regains promotion eligibility on the day of completion of the period of correctional custody, suspension, restriction, extra duty, and/or suspended forfeiture of pay, whichever occurs later. For the purposes of determining non-promotable status, periods of forfeiture of pay will be determined as follows:

(a) Periods of forfeiture are to begin on the date that UCMJ, Article 15, punishment is imposed.

(b) For UCMJ, Article 15, forfeitures imposed by company grade commanders, 7 calendar days is the period of forfeiture. For example, punishment is imposed on 28 March 2005. The Soldier is in a non-promotable status from 28 March through 3 April and regains promotable status on 4 April.

(c) For UCMJ, Article 15, forfeitures of 1 month by field grade commanders, 15 calendar days is the period of forfeiture.

(d) For UCMJ, Article 15, forfeitures of 2 months imposed by field grade commanders, 45 calendar days is the period of forfeiture.

(3) A Soldier is denied favorable personnel actions under the provisions of AR 600-8-2. Failure to initiate DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) does not affect the Soldier's non-promotable status if a circumstance exists that requires imposition of a suspension of favorable personnel actions (Flag) under the provisions of AR 600-8-2.

b. Suspension of favorable personnel actions for Soldiers on a Headquarters, Department of the Army centralized promotion list (promotion to sergeant first class and above). Soldiers who are Flagged while on a centralized selection list are not eligible for promotion selection and pin-on, regardless of their sequence number.

(1) If the Flag is lifted with the disposition, case is closed favorably, and he or she would have been promoted while the Flag was in effect, provided otherwise qualified in accordance with paragraph 1–10 and other applicable provisions, he or she will be promoted. Effective date and date of rank (DOR) will be the date the Soldier would otherwise have been promoted.

(2) If the Soldier's final report is closed with "Disciplinary action taken," or "Other" (as it applies to the Army Body Composition Program, the APFT, and the ASAP), the Soldier will then be eligible for promotion (pin-on) against a future requirement as determined by HQDA.

(3) If action has been initiated to remove the Soldier from the recommended list, the Soldier will be Flagged in accordance with paragraph 1–29. The Soldier is ineligible for promotion until the Flag is lifted.

//NOTHING FOLLOWS//