

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 November 2023

DOCKET NUMBER: AR20220011766

APPLICANT REQUESTS: reconsideration of his previous request for retroactive promotion to staff sergeant (SSG)/E-6 and placement on the retired list in this grade.

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

- Reconsideration Letter
- All Army Activities (ALARACT) 018-2008, DA directed Promotion List Integration to SSG, date/time group 0513002 February 2008
- July, August, and September 2008 Promotion Cut Off Scores

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190009209 on 4 November 2021.

2. The applicant states:

a. The Board should reconsider the previous board's decision to deny his request for retirement grade determination and retroactively promote him to SSG for the purposes of his retirement. He was unjustly prevented from attending promotion boards even though his records reflect that he was a reliable performer with the ability to serve at higher grades. This error is in violation of the intent behind the Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions). Also, he met all the requirements outlined in the ALARACT 018/2008, thereby, he should have been automatically promoted to SSG as directed in the ALARACT 018/2008.

b. He was unjustly prevented from attending promotion boards even though his records reflect that he was a highly qualified performer with the ability to serve at a higher grade and in a position of greater responsibility. The failure of his unit leadership to properly mentor, counsel, and guide him not only prevented him getting promoted but resulted in his retirement from the service with less qualifying retirement pay benefit after 20 years of active duty service. The lack of promotion prevented his career progression and precluded him from receiving a higher percentage of retirement pay

that is a substantial retirement benefit he is currently not receiving, indirectly as a result of his command's failure to act in accordance with the Army regulations.

c. The ALARACT message was not previously submitted to the board because he was not aware of its existence. In accordance with ALARACT 018/2008, "all SGTs, meeting the following conditions, will be otherwise eligible for promotion to SSG following automatic list integration with a minimum promotion point score of 450 points:"

- Eighty - three (83) months' time in service
- Eleven (11) months' time in grade
- Minimum three months remaining in service
- Graduate of the Warrior Leaders Course
- Otherwise Not Ineligible IAW AR 600-8-19
- Not otherwise denied by the commander

d. When the ALARACT 018/2008 was published, he not only was under the Army's STAR program for understrength MOS's (21J), but he also met each one of the ALARACT'S requirements to have been automatically promoted to the rank of SSG, yet he was not promoted. He enlisted on 24 September 1996 and had over 13 years or 156 months' time in service when the ALARACT was effective. He was promoted to SGT on 1 August 2007; hence as of August 2008 he met the 11 months' time in grade requirement. He also completed the Warrior Leaders Course in February 2002 and was eligible for promotion with over 450 promotion points.

e. He was denied the opportunity to attend the promotion board without justification- There is no evidence of any adverse action, not a DA 4856 counseling statement or any other document in his official military record. His commander denied him the opportunity to attend the promotion board even though he met all the requirements for promotion per the ALARACT. The chain of command never counseled or established an action plan to improve his perceived deficiencies and better prepare him for a future board. This is a clear violation of the AR 600-8-19; "first-line leaders of promotable Soldiers who are not recommended to attend a board are required to formally counsel those Soldiers quarterly until the Soldier is recommended or loses promotable status." (AR 600-8-19, 2008, para. 1-26a.). By not giving him the tools, he needed to grow and improve his unit failed in its duty of leadership.

f. After a thorough review of his official military record, it is noted that the only NCOER (Noncommissioned Officer Evaluation Report) is missing on his record is the NCOER for the rating period he was assigned to "3IN, HHC, BSBT" (Headquarter and Headquarters Company, Special Troops Battalion, 3rd Brigade, 1st Infantry Division) from 5 September 2008 thru 8 October 2009-the same unit that denied his promotion and prevented him from attending a later promotion board. Moreover, the ratings and

wording of (Fully Capable) in all the NCOERS were inconsistent with his commander's adverse decision.

g. Exceptional Military Career. He honorably served the Army and our great nation for twenty years. During his tenure in the service, he successfully completed multiple tours both CONUS and OCONUS and deployed five times to include combat tours to Bosnia in 1997 and Iraq and Afghanistan after 9/11 . He never had a derogatory mark on his record throughout his entire time in the service. In conclusion, the failure of his command to follow an ALARACT directive, to properly counsel and recommend his promotion constitutes an injustice, violating both the word and spirit of AR 600-8-19 and the ALARACT 018/2008 directive. As such, his subsequent grade determination upon retirement was also unjust. He should be retroactively promoted to SSG for purposes of his retirement grade. The least the Army should do for this great patriot is take another look and reconsider the previous board's decision in this matter.

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

a. He enlisted in the Regular Army on 24 September 1996 and held military occupational specialty 21E (Construction Equipment Operator) (later 12N).

b. He served through multiple reenlistments in a variety of stateside or overseas assignments, including Germany, Bosnia, Iraq, and Afghanistan, and he was promoted to SGT/E-5 on 1 August 2007.

c. His service record contains a DA Form 1059 (Service School Academic Evaluation Report) that shows he successfully completed the Primary Leadership Development Course from 12 January 2010 through 12 March 2010.

d. He retired on 30 September 2016. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 20 years and 7 days of active service. It also shows in:

- Blocks 4a (Grade, Rate or Rank) and 4b (Pay Grade) SGT/E-5
- Block 12h (Effective Date of Pay Grade) 2007-08-01
- Block 18 (Remarks) Retired List Grade: SGT

e. There is no evidence the applicant was recommended for promotion to SSG or appeared before a semi-centralized promotion board, or that his name was incorporated into a unit's promotion standing list.

3. On 4 November 2021, the Board considered his request for retroactive promotion to SSG. After reviewing the application, the applicant's statement and all supporting documents, the Board determined relief was not warranted. The Board found insufficient

evidence to support the applicant's claim. Based upon a preponderance of evidence, to include the available documentation and the discretion of commanders to recommend personnel for promotion to SSG, the Board concluded there was insufficient evidence of an error or injustice which would warrant a retroactive promotion to SSG for the applicant.

4. On 16 October 2023, the U.S. Army Human Resources Command provided an advisory opinion in the processing of his case. An advisory official stated:

a. After review of the applicant's application for correction of military records, it has been determined that his request for correction of military records should be denied.

b. ALARACT 018/2008, DA-Directed Promotion List Integration to Staff Sergeant, was integrated into Army Regulation (AR) 600-8-19, dated 20 March 2008, in paragraph 3-17. Although the Soldier met the time-in-service, time-in-grade, and Warrior Leader Course requirements for automatic integration, there is no way to determine whether or not the commander denied the promotion. However, because the Soldier was never selected for promotion, it is reasonable to assume that he was denied for list integration.

c. The applicant was not a 21J, but rather a 21E as evidenced by the Noncommissioned Officer Evaluation Reports (NCOERs) filed in his Army Military Human Resources Record. The promotion points cutoff memorandums included do not indicate that 21E was a STAR MOS. He also failed to provide any DA Form 3355s (Promotion Point Worksheet) or automated Promotion Point Worksheets that showed the amount of promotion points he may have had for any period between 2008 and 2016. Therefore, even if he had been integrated, there is no way to determine if the Soldier would have met a cutoff score for his MOS.

d. Although his NCOERs indicate satisfactory performance, that is not indicative of the commander's view of his performance, as the commander was only a reviewer on the evaluations. If the Soldier was not counseled in accordance with Army policy, he should have taken a more active role in his own career progression and sought counseling to understand why he was not being recommended for promotion.

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

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board concurred with the conclusion of the advisory official that there is insufficient evidence to determine if the applicant ever accumulated sufficient promotion points to reach the cutoff score for promotion in his MOS, and based on the available evidence, it is reasonable to assume that he was denied for list integration. In the absence of additional evidence, the Board determined it must be presumed that the rank the applicant held upon retirement was not in error or unjust.


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 evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20190009209 on 4 November 2021.

2/16/2024



 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:

Army Regulation 600-8-10, Enlisted Promotions and Reductions, 11 July 2007, prescribes policies and procedures governing promotion and reduction of Army enlisted

personnel. It provides a semi-centralized promotion selection process for promotion to the grades of sergeant (SGT) and staff sergeant (SSG).

a. Battalion and brigade CDRs of provisional units in the grade of lieutenant colonel (LTC) or above have promotion authority to the grades of SGT and SSG.

b. First-line leaders will counsel Soldiers who are eligible for promotion to PV2 through SSG without a waiver (fully qualified) but not recommended in writing. Counseling will take place initially when the Soldier attains eligibility, and at least every 3 months thereafter, and include information as to why the Soldier was not recommended and what can be done to correct deficiencies or qualities that reflect a lack of promotion potential.

c. Promotion to SGT and SSG are executed in a semi-centralized manner.

(1) Field operations will handle board appearance, promotion point calculation, promotion list maintenance, and the final execution of the promotions occur in the field in a decentralized manner.

(2) HQDA operations will handle promotion cutoff scores and the monthly SGT/SSG promotion selection by-name list, which are determined and announced monthly

d. By using the standard promotion scoring forms, with predetermined promotion point factors, Soldiers in pay grades SPC/CPL and SGT generally can measure how well they qualify for promotion. They can set precise goals with a self-improvement training program to increase their potential for promotion.

//NOTHING FOLLOWS//