

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 July 2023

DOCKET NUMBER: AR20230000887

APPLICANT REQUESTS:

- restore his rank of Sergeant First Class (SFC)/E7 with Date of Rank (DOR) of 13 September 2010
- back pay and allowances
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for service ending 30 November 2021 to reflect his rank as SFC/E-7
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum for Record (MFR) from SFC D-B-
- Tennessee (TN) Army National Guard (ARNG) Rank Reduction Request Packet
- E-mail from the applicant
- TN ARNG Permanent Orders Number 064-002
- Headquarters (HQs), TN National Guard (NG) memorandum, Subject: notice of Receipt of the Equal Opportunity (EO) Complaint of M-C- (the applicant)
- DD Form 214 Worksheet
- DD Form 214 for service ending 30 November 2021
- Anonymous statement

FACTS:

1. The applicant states in effect, he was Released from Active Duty (REFRAD) in the Active Guard/Reserve (AGR) status due to patterns of misconduct after being reduced to the rank/grade of staff sergeant (SSG)/E-6 for inefficiency by the Army National Guard (ARNG). He requests the Board grant him relief by reinstating his rank of SFC/E-7, pay him his back pay and allowances for the difference in pay for the rank of SSG to SFC. Upon approval of this request, correct his DD Form 214 for service ending 30 November 2021 to reflect his rank of SFC in block 4a (Grade, Rate, or Rank), E-7 in block 4b (Pay Grade), and 13 September 2010 in block 12i (Effective Date of Pay Grade).

The ARNG claims his reduction in rank was due to inefficiency and his REFRAD from the AGR program was due to patterns of misconduct when this injustice was actually due to age discrimination. This all stemmed from the TN ARNG was attempting to cover up the sexual assault of three minor females by a convicted sexual predator. He has statements from two Soldier's that can verify his REFRAD was due to age discrimination and not as claimed by members of the command. He also has statements from Soldiers that he had worked with who can corroborate his work ethic.

2. A review of the applicant's service record shows:

a. With prior U.S. Marine Corps Reserve enlisted service, the applicant enlisted in the ARNG on 28 April 2000. The applicant had continuous service through extensions.

b. On 1 January 2004, Orders Number 001-02, issued by HQs, 1st Squadron, 278th Armored Cavalry Regiment, the applicant was promoted to the rank/grade of sergeant (SGT)/E-5, effective on with a DOR of 1 January 2004.

c. On 27 May 2004, Orders Number 148-391, issued by Joint Force HQs, TN NG, the applicant was ordered to active duty in support of Operation Iraqi Freedom, effective 22 June 2004.

d. The applicant was honorably released from active duty on 20 November 2005.

e. On 12 November 2008, Orders Number 319-847, issued by Joint Force HQs TN NG, the applicant was ordered to full time NG duty in AGR status, effective 16 November 2008.

f. The applicant's service record is void of the ordered which promoted him to the rank of SSG/E6. On 13 October 2010, Orders Number 286-1112, issued by Joint Force HQs TN NG, the applicant was promoted to the rank of SFC/E-7, effective on with a DOR of 13 September 2010.

g. On 28 September 2011, Orders Number 271-822, issued by Joint Force HQs TN NG, the applicant was ordered to full time NG duty in AGR status, effective 16 November 2011.

h. On 6 November 2013, Orders Number 310-811, issued by Joint Force HQs TN NG, the applicant was ordered to full time NG duty in AGR status, effective 16 November 2013.

i. On 2 March 2015, the applicant was issued a Letter of Reprimand from his commander for misconduct and behavior inconsistent with the Army Values. The applicant was reported absent without leave and lying to his Noncommissioned Officer

(NCO) in Charge. His misconduct and lack of integrity was unbecoming of a senior NCO and a violation of Army values.

j. On 28 October 2016, Orders Number 302-1003, issued by Joint Force HQs TN NG, the applicant was ordered to full time NG duty in AGR status, effective 16 November 2016.

k. on 12 September 2017, Orders Number 255-1004, issued by Joint Force HQs TN NG, the applicant was ordered to full time NG duty in AGR status, effective 16 November 2017.

l. On 5 March 2021, Permanent Orders Number 064-002, issued by TN ARNG, the applicant was awarded the Army Good Conduct Medal (Fourth Award) for exemplary behavior, efficiency, and fidelity in active Federal military service during the period of 13 June 2017 through 12 June 2020.

m. On 22 April 2021, Orders Number 1138322, issued by the TN ARNG Augoe Army Element Joint Force HQs, the applicant was demoted to the rank of SSG for inefficiency, effective on with a DOR of 31 March 2021.

n. On 14 September 2021, Orders Number 257-0004, issued by Joint Force HQs TN NG, the applicant was relieved from full time NG duty in AGR status, effective 30 November 2021 and returned to Army National Guard of the United States due to patterns of misconduct.

o. The applicant was REFRAD on 30 November 2021 with a General Under Honorable Conditions character of service under provision of National Guard Regulation 600-5, (ARNG – The AGR Program Title 32, Full Time National Guard Duty (FTNGD) Management, paragraph 6-5 (patterns of misconduct). DD Form 214 shows the applicant completed 13-years, 5-months, and 18-days of active service. It also shows in items:

- 4a: SSG
- 4b: E6
- 12i: 1 January 2004

p. On 12 July 2022, Orders Number 1917380, issued by TN ARNG Army Element Joint Force HQs, the applicant was reassigned to the U.S. Army Reserve Control Group (Retired Reserve), effective 2 July 2022.

3. The applicant provides:

a. Memorandum for Record from SFC D-B- dated 2 May 2020 which states during a lunch meal SSG L- commented about an ongoing investigation. SSG L- stated he was never threatened by SSG M-C- (the applicant) but he was intimidated by him. This conversation transpired, because of the mention of caring [sic] personally owned firearms.

b. Request for reduction board due to inefficiency packet, shows the applicant's commander requested a reduction board on him because he exhibited patterns or acts, conduct, or negligence which had shown the lack of ability and quality required and expected of a senior NCO, after the completion of an investigation into the allegations the applicant used a recording device against another recruiter without his knowledge or consent. This was in violation of command policy. The applicant was notified on 28 September 2020, reduction board proceedings were being initiated. The applicant acknowledged the notification and he elected to appear before the board after consultation with counsel.

c. E-mail from W-D- to the applicant which suggested he write to Colonel (COL) T- to ask that he not accept the findings of the investigation as a pattern of conduct was not found per the regulation. The applicant responded to add to his appeal, COL T- has stated there was no pattern of conduct in accordance with the regulation but was a simple violation of The Adjutant General (TAG) order regarding recording devices. The applicant inquired if everyone who possessed an iPhone, Android, Apple watch, Galaxy watch, or Fitbit be in violation of the TAG order.

d. HQs, TN NG memorandum, Subject: Notice of Receipt of the EO Informal Complaint of the applicant stated the complaint was received on 3 October 2021 which the applicant filed regarding age discrimination and was denied due process and the presumption of innocence.

e. DD Form 214 worksheet shows the applicant was honorably released from active duty on 30 November 2021 in the rank of SSG/E6 with the effective date of pay grade as 1 January 2004 for completion of required active service.

f. Statement from an anonymous Soldier which stated he witnessed Master Sergeant M- make a statement regarding the applicant being too old to be successful as a Recruiting NCO. He also stated young kids do not want to speak with a white haired old man about joining the Army. The Soldier made the statement anonymously due to fear of retaliation.

4. On 15 May 2023, in the processing of this case, the National Guard Bureau (NGB) provided an advisory opinion regarding the applicant's request for the restoration of his rank to SFC/E-7 with the DOR of 13 September 2010 and back pay and allowances for the difference in pay for SSG to SFC. The advisory official stated the NGB recommends

disapproval of the applicant's request as the TN ARNG conducted two investigations into the misconduct of the applicant which were substantiated. He was involuntarily released from the AGR program based on the outcome of the investigations. Commanders may initiate involuntary released from the AGR program when the Soldier's substandard duty performance or persistent inefficiency hinders the administration, operation, or training of the National Guard. Single acts of misconduct including but not limited to those involving violence, hostile work environment, integrity, moral turpitude may warrant initiating released without prior corrective action or rehabilitation.

5. On 16 May 2023, the Army Review Boards Agency, Case Management Division provided the applicant the advisory opinion for review and comment. He did not respond.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance before the Board is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board noted that although the applicant's claim is age discrimination, documentation available for review is void supporting evidence. The applicant submitted two Congressional inquiries on his own behalf, neither of which found evidence of age discrimination in support of his claim. Further, the AR 15-6 investigations which the TNARNG conducted found the allegations of misconduct substantiated. Based on the preponderance of the evidence available for review, the Board determined the evidence presented insufficient to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

■ ■ ■ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.

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. National Guard Regulation 600-5 (Army National Guard - The AGR Program Title 32, Full Time National Guard Duty (FTNGD) Management), sets policy and procedures for the management of ARNG Soldiers serving on FTNGD in the AGR Program. Paragraph 6-5 (Involuntary release from FTNGD), commanders have the primary responsibility to maintain good order and discipline. Involuntary release from AGR service is a mechanism for TAGs to ensure the effective administration, operation, and training of the National Guard. Commanders and supervisors may initiate involuntary release from AGR service when a Soldier's substandard duty performance or persistent inefficiency hinders the administration, operation, or training of the National Guard and when corrective action or rehabilitation efforts have not provided the necessary results, or for any other reason permitted by Army or ARNG regulations for separation from service, withdrawal of Federal Recognition, release from active duty or disqualification for subsequent AGR duty. Single acts of misconduct including but not limited to those involving violence, hostile work environment, integrity, or moral turpitude may warrant initiating release without prior corrective action or rehabilitation. Commanders determine if the basis of a proposed involuntary release warrants release from FTNGD and separation from the ARNG.

2. Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions), prescribes the enlisted promotions and reductions function of the military personnel system.

a. Paragraph 10-5, Inefficiency is a demonstration of characteristics that shows that the person cannot perform duties and responsibilities commensurate of the Soldier's current rank and MOS. For the purpose of administrative reduction, inefficiency must be predicated on a pattern of acts, conduct or negligence that clearly shows the Soldier lacks the abilities and qualities normally required and expected of the Soldier's rank and experience. Although commanders may consider misconduct, including conviction by civil court, as bearing on inefficiency, misconduct alone will not be the basis for an administrative reduction under this paragraph. Soldiers may be administratively reduced under this authority for longstanding unpaid personal debts that he or she has not made a reasonable attempt to pay. An administrative reduction for inefficiency is limited to SGT and above and to one grade.

b. Paragraph 10-14, (Restoration to former rank), rank restoration may result from DOR for Soldiers restored to former rank will be the same as the original DOR for that rank. Effective date of restoration will be the date the reduction authority is notified of the sentence or change in sentence.

3. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or

request additional evidence or opinions. Additionally, it states in paragraph 2-11 applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. AR 635-8 (Separation Processing and Documents), prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents.

a. Paragraph 5-6d, Block 4: (Grade, Rate, or Rank), Verify that active duty grade or rank and pay grade are accurate at time of separation.

b. Paragraph 5-6l (9), Block 12i: (Effective Date of Pay Grad), from the most recent promotion document (or reduction instrument), enter the effective date of promotion or reduction to the current pay grade. Do not confuse with DOR. Soldiers who have served in ranks corporal, first sergeant, or command sergeant major often have a DOR different from the effective date of pay grade.

//NOTHING FOLLOWS//