

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230002298

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 31 January 2005, to show his retired rank/grade as staff sergeant (SSG)/E-6 vice sergeant (SGT)/E-5.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 158-1033, 7 June 2001
- Army National Guard (ARNG) Diversity Initiatives Certificate
- Commanders Urinalysis Collection Procedures Training
- DD Form 214, ending on 15 February 2003
- DD Form 214, ending on 10 August 2003
- Orders Number 337-228, 1 December 2004
- DD Form 214, ending on 31 January 2005

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 states:

a. On 1 June 2001, he was promoted to the rank/grade of SSG/E-6 by his ARNG Unit, Orders Number 158-1033, dated 7 June 2001, effective 1 June 2001. The promotion orders are/were coded and valid. He wore the grade and rank of SSG/E-6 until the date of his retirement on 31 January 2005. He received his retirement orders, Orders Number 337-228, dated 1 December 2004 to report to Fort Lewis, WA, and did so report five days prior to the reporting date of 31 January 2005 wearing the rank/grade of SSG/E-6. Upon his retirement on 31 January 2005, he was retired in the rank/grade of SGT/E-5. He tried to rectify this not only on 31 January 2005 but several

years after his retirement with his ARNG unit and was told that there were no promotion orders showing a promotion. This was no mistake it was deliberately done by a person or persons to railroad him and his retirement. He has attached several DD Forms 214, two prior to his retirement and the DD Form 214 given to him on his retirement date of 31 January 2005. Note: Separation dates and effective date of pay grades that are highlighted in yellow 12b (Separation Date this Period) and 12h (Effective Date of Pay Grade) on both prior DD Forms 214 and then Note: Effective date of pay grade on the retirement DD Form 214. The effective date of pay grade on the retirement DD Form 214 is 17 March 2003, five months after this date of rank he was issued his DD Form 214 which shows his grade and rank as SSG/E-6 which is the grade and rank he was wearing when he was issued that DD Form 214. One might ask, why it took so long for him to bring this to light? Because he gave up on trying to find or get the promotion order that they said did not exist, until December of 2022 when he was showing his daughter who is now also an Air Force veteran how to navigate through ebenefits.

b. He saw a tab that said get military records and it took him to [REDACTED] a site he had never heard of or been on. He saw that he could request his military records for download, so he requested all, most importantly his promotion order. And there it was in plain view his promotion order. He does not know how something like this could happen, but he has been bothered by it and has lived with this for 18 years.

3. A review of the applicant's official record shows the following:

a. On 22 September 1998, having had prior enlisted service in the U.S. Navy, the applicant enlisted in [REDACTED] ([REDACTED] ARNG) in the rank/grade of SGT/E-5.

b. On 1 November 1999, the applicant entered active duty.

c. On 13 March 2000, Memorandum, Subject: Disenrolled from Basic Noncommissioned Officer Course (BNCOC) shows the applicant was disenrolled from BNCOC on 12 March 2000 for failing the Army Physical Fitness Test (APFT) and retest.

d. DA Form 1059 (Service School Academic Evaluation Report), dated 17 March 2000 shows the applicant in the rank of SGT failed to achieve course standards (failing the APFT and Retest) for the BNCOC Phase I resident course.

e. DA Form 1059, dated 29 April 2001 shows the applicant in the rank of SGT completed the BNCOC Common Leader Training resident course for the period 20 October 2000 through 29 April 2001.

f. On 7 June 2001, Orders Number 158-1033 issued by the Office of the Adjutant General, promoted the applicant to the rank/grade of SSG/E-6, effective on with a Date

or Rank (DOR) of 1 June 2001 in military occupational specialty 92G (Food Service Specialist).

g. On 9 October 2002, at the [REDACTED] Court the applicant plead guilty to assault with a deadly weapon and sentenced to 30 days jail time in the [REDACTED] County jail with a report date of 1 November 2002. This form shows he was on Active Duty Special Work.

h. DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)), dated 16 October 2002 shows an adverse action Flag was initiated, effective 16 October 2002. On the same day the applicant was notified by the Director, Military Personnel that the Flag was initiated pending Uniform Code of Military Justice action.

i. On 15 February 2003, the applicant was honorably released from active duty under the provisions of Army Regulation (AR) 635-100 [sic] (Personnel Separations Officer Personnel), chapter 3 and returned to his ARNG unit. DD Form 214 items:

- 4a (Grade, Rate or Rank) shows "SSG"
- Item 12h; shows 1 June 2001
- Item 28 (Narrative Reason) shows "Directed by Service"

j. On 16 February 2003, the applicant entered active duty and was honorably released from active duty on 10 August 2003. DD Form 214 items:

- 4a; shows "SSG"
- Item 12h; shows 1 June 2001

k. DA Form 268 dated 28 July 2004 shows an adverse action Flag was removed, effective 28 July 2004, due to disciplinary action being taken.

l. On 8 October 2004, Joint Force Headquarters [REDACTED] National Guard issued Memorandum, Subject: Notification of Eligibility for Retired Pay at Age 60 showing the applicant's rank as "SGT."

m. The applicant's records are void of a National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) showing his separation/retirement from the ARNG. Likewise, it is void of orders transferring him to the Retired Reserve.

4. The applicant provides:

a. ARNG Diversity Initiatives showing the applicant in the rank of SSG completed the training given 21-23 November 2002.

b. Commanders Urinalysis Collection Procedures Training showing the applicant in the rank of SSG completed the training on 1 August 2002.

c. Orders Number 337-228 dated 1 December 2004 showing the applicant in the rank of SSG was assigned to the U.S. Army transition point at Fort Lewis, WA, for separation processing. These orders shows his retired rank as SSG and transferred him to the U.S. Army Reserve Control Group (Retired Reserve), effective 31 January 2005.

d. DD Form 214, ending on 31 January 2005 which shows the applicant entered active duty on 16 November 2004 and was honorably retired. Item 4a; shows "SGT" and item 12h; shows 17 March 2003.

5. On 6 December 2023, in the processing of this case, the NGB, Chief, Special Actions Branch, provided an advisory opinion and stated in pertinent part:

a. The [REDACTED] ARNG Chief, Enlisted Personnel Management stated the applicant's records show on 16 October 2002 notification of Flag memorandum and a 17 March 2003 reduction order to SGT/E-5 for staff. A DD Form 268 in his record show removal of the flag on 29 July 2004. The applicant's reduction order falls between the date of flag notification and flag removal. A request was made by the [REDACTED] ARNG Chief, Enlisted Personnel Management to the Judge Advocate General office to confirm his adverse action and reduction of rank however, in accordance with AR 600-8-22, flags with supporting documents for all closed flags are only maintained for one year, including flags for Soldiers who separate, retire, or are discharged while flagged. The [REDACTED] ARNG Chief, Enlisted Personnel Management states all iPERMS documentation in the applicant's records after 2004 list him as SGT/E-5. The applicant provides documents from iPERMS and the state submits documents from iPERMS that do not support this statement.

b. The applicant provided a SSG promotion order dated 7 June 2001; separation order dated 1 December 2004 with his rank as SSG/E-6; DD Form 214 with separation date as 31 January 2005 and rank as SGT/E-5; DD Form 214 with separation date of 10 August 2003 and rank as SSG/E-6; DD Form 214 with separation date of 15 February 2003 and rank as SSG/E-6; and two certificates from August and November of 2002 listing his rank as SSG. The [REDACTED] ARNG Chief, Enlisted Personnel Management provides his separation packet listing him as SGT/E-5, reduction order to SGT/E-5, notification of flag memorandum, and DD Form 268 for flag removal listing his rank as SSG/E-6 as supporting documents.

c. A review of the applicant's application was conducted by the ARNG Enlisted Policy Branch. The Enlisted Policy Branch Analyst referenced AR 635-200 12.3.b.1 which states: As an exception, ARNGUS and USAR Soldiers serving on active duty at the time of retirement, under paragraph 12-4, in a grade lower than their highest active

duty enlisted grade, who were administratively reduced in grade not as a result of their own misconduct, will retire at the highest enlisted grade in which they served satisfactorily on active duty (see Title 10, USC, section 7343). [REDACTED] ARNG supporting documentation shows the applicant was reduced in rank due to adverse action.

d. After further review of the applicant's documents provided, discussions with the [REDACTED] ARNG, and the ARNG Retirement Services Branch, it is the conclusion of this office, that he was promoted to SSG/E-6 in 2001 and then reduced in 2003 due to adverse action. Several documents after 2003 display his rank as SSG/E-6. No second promotion orders for SSG were provided and he does not qualify for the exception in AR 635-200 12.3.b.1. This office recommends retirement rank be listed as SGT/E-5. The ARNG Retirement Services Branch concurs with this recommendation. The [REDACTED] ARNG concurs with this recommendation.

6. The advisory opinion included the following documents for the Boards review:

a. Orders Number 317-1106 issued by the Joint Forces Headquarters, [REDACTED] ARNG, showing the applicant was reduced in rank from SSG/E-6 to SGT/E-5, effective on either a DOR of 17 March 2003 under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 11-61.

b. NGB Form 22 showing in item 5a (Rank) "SGT" and item 6 (Date of Rank) 17 March 2003.

c. Orders Number 80-1040 issued by the Joint Forces Headquarters, [REDACTED] ARNG, showing the applicant's rank as "SGT" and he was transferred to the Retired Reserve in the rank of SGT.

7. On 21 December 2023, the applicant was provided with a copy of the advisory opinion for commend or rebuttal.

8. On 21 December 2023, the applicant responded stating:

a. He can only respond and comment in one way and that is with total shock and disgust. He should have gone into detail when he sent his application in to the ABCMR for correction, having an idea of what he thought might have transpired the day he went to Fort Lewis, to retire back in 2005. He was a Soldier with the [REDACTED] ARNG and worked as an Active Guard/Reserve Soldier with [REDACTED] Counter Drug Task Force from 1999 to 2005 in which he had accumulated enough active-duty years to retire because he had 14 prior active duty years in the U.S. Navy. He was promoted to SSG by his National Guard Unit the 1498th Transportation Company on 7 June 2001. While working for the Counter Drug Task Force, he worked with some of the most racist and hateful individuals that called themselves United States Army Soldiers. There were very

few African American Soldiers with the Counter Drug Task Force, and it was not very pleasant working there until he had the courage to say enough was enough.

b. In late 2002 an African American E-5/SGT walked into one of the trailers that the task force used as offices, to find a hangman's noose hanging from one of the light fixtures. The African American E-5/SGT notified him and another African American E-6/SSG of this atrocity and we took pictures of the noose before taking it down and keeping it as evidence that went along with his formal complaint against the Counter Drug Task Force. After a lengthy investigation several senior Noncommissioned Officers and Soldiers were relieved from the task force, and he was immediately appointed as the new Equal Opportunity Representative (EOR) by the Counter Drug task Force Commander Colonel (COL) [REDACTED] because there was no EOR in place. He went on to file two more complaints while still in his collateral duties as the EOR for the Counter Drug Task Force, one against two E-8/Master Sergeants and the other against his Executive Officer who was later relieved by the Task Force Commander COL [REDACTED] after finding out that his Executive Officer went through illegal channels to get orders on him back to Iraq Operation Iraqi Freedom II seven months before his retirement.

c. The documents that he has seen issued by the NGB are by far the most shocking documents he has ever seen. He has never had any adverse actions against him, nor has he ever had any knowledge of any flags against him pending any Uniform Code of Military Justice action. He has never seen or had any knowledge of a reduction order against him because of misconduct. This is the first time he has seen these documents that were provided by the NGB, and he is speechless. The claim of a flagging action dated 16 October 2002 and then a flag removal signed 29 July 2004 almost 2 years later and 7 months prior to his retirement. The NGB may claim that they have done a complete records review for him, and as the Heavenly Father is his witness the NGB found what the [REDACTED] ARNG did on the day of his retirement and thereafter. The NGB claims that all documents found after 2004 have him listed with a rank of SGT/E-5. But he has clearly shown and provided proof that he was a SSG when he received his retirement orders from the Office Of The Adjutant General, Orders Number 337-228 dated 1 December 2004 and retired rank/grade of SSG/E-6.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the National Guard Bureau (NGB), Chief, Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for disapproval finding the

applicant was promoted to SSG/E-6 in 2001 and subsequently reduced to SGT/E-5 in 2003 due to adverse action. While certain documents post-dating, the reduction reference the rank of SSG/E-6, no valid promotion order reinstating the applicant to that grade was found in the official record.

2. The Board determined that the applicant does not meet the exception criteria outlined in AR 635-200, paragraph 12.3.b.1, which governs retirement grade eligibility following reductions due to misconduct or other adverse actions. Without substantiating documentation to support re-promotion or qualifying exception, the Board found the applicant's request lacks sufficient evidentiary support. Although the applicant provided supporting documentation asserting eligibility for retirement at the grade of E-6, coordination with [REDACTED] Army National Guard ([REDACTED] ARNG) reaffirmed the accuracy of the recorded retirement grade as SGT/E-5. Therefore, the DD Form 214 issued at separation on 31 January 2005 properly reflects his final service grade. Based on a preponderance of the evidence, and in alignment with advisory recommendations and applicable regulation, the Board found no error or injustice in the recorded grade at retirement and thereby denied relief.

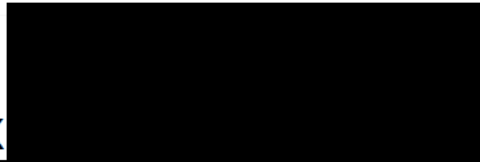
BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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, USC, 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. AR 15-185 (ABCMR) states in paragraph 2-9, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. AR 635-5 (Separation Documents) in effect at the time, prescribes the separation documents that must be prepared for soldiers on retirement, discharge, release from active-duty service, or control of the Active Army. Source documents consist of the enlisted record brief, separation order, and any other document authorized for filing in the official military personnel file. Item 4a; enter the active-duty grade or rank and pay grade at the time of separation from the enlisted record brief.
4. Title 10, USC, section 7343 (Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct) states, a Reserve enlisted member of the Army described in subsection (b) who is retired under section 7314 of this title shall be retired in the highest enlisted grade in which the member served on active duty satisfactorily (or, in the case of a member of the National

Guard, in which the member served on full-time National Guard duty satisfactorily), as determined by the Secretary of the Army.

5. AR 635-200 (Personnel Separations Enlisted Personnel) chapter 12-3b.(1) states, retirement normally will be in the regular or reserve grade the Soldier holds on the date of retirement. (Title 10, USC, section 3961.). As an exception, ARNGUS and USAR Soldiers serving on active duty at the time of retirement, under paragraph 12-4, in a grade lower than their highest active duty enlisted grade, who were administratively reduced in grade not as a result of their own misconduct, will retire at the highest enlisted grade in which they served satisfactorily on active duty.

6. Title 10 USC, section 3964 states, each retired member of the Army covered by subsection (b) (Reserve enlisted members) who at the time of retirement, are serving on active duty is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Army.

//NOTHING FOLLOWS//