

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230002779

APPLICANT REQUESTS: correction of his service record to show he was retired in the highest rank held of master sergeant (MSG)/E-8.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 302-1033, 28 October 2004
- Character Letter, 15 December 2021
- Orders Number C08-296386, 3 August 2022
- Veteran's Affairs (VA) Benefits Letter, 8 December 2022

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States 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, in pertinent part:

a. Because of his experiences in Operation Desert Shield/Desert Storm and other experiences from missions in the aftermath of the Panama Invasion, he has been diagnosed with 70 percent Post-Traumatic Stress Disorder (PTSD), and a total of 100 percent service connection, around 2013, (see attached VA service rating letter). For a good number of years since the wars, he was unaware he suffered from PTSD. Additionally, he also suffered two Traumatic Brain Injuries (TBI) during the Gulf War, in which he was knocked unconscious. At that time TBIs were not known, properly diagnosed, nor were they documented according to his medical records. He believes that the TBIs had an impact on his health and life.

b. As the years passed, his service-connected mental health issues were seriously affecting his life, faith, family, his work productivity in the Army National Guard (ARNG), and his civilian career in law enforcement. He began "self-medicating" with alcohol right after the war and became much worse as the years went by as he began to suffer from

depression, anxiety, night and day mares, insomnia and sleep disorders. He attended Alcoholics Anonymous and went to meetings regularly. He also entered himself into multiple alcohol rehabilitation treatment programs over the years; private programs, VA rehab programs and other VA programs to address depression, anxiety, Cognitive Behavioral Therapy (CBT), and other behavioral issues.

c. One day he was caught drinking on duty with his [REDACTED] Army National Guard ([REDACTED] ARNG) unit during an annual two-week training mission and that is what resulted in his misconduct, Article 15 and grade reduction, to which he was immediately regretful, remorseful, and ashamed of his actions.

d. Due to the problem, he took personal time off from both his careers to address the health issues around 2005-2006. He was highly regarded by his law enforcement command and his ARNG command, so he had their full support to take personal time off. In doing so he had to take a break in service with the National Guard. However, after his break, he came back to his unit with the National Guard in order to retire.

e. His unit commander, Colonel (COL) [REDACTED] established expectations for a six-month time period to find and complete a rehabilitation program of his choice, and after which, COL [REDACTED] committed to restoring his highest rank. It took longer than six months to get into a program because they were all full and he had to wait for an opening. During that time, however, COL [REDACTED] transferred to another assignment and he was unable to contact him.

f. After finding and completing a rehabilitation program, he sought further help from the VA and took part in their substance use groups, CBT, courses, an anxiety disorder course, Anger Management and PTSD therapy courses. He was also assigned to a psychologist/therapist through the VA and continues to see them at the present time.

g. He is immensely proud of his service and career in the Army, the [REDACTED] Army National Guard ([REDACTED] ARNG) and the [REDACTED] ARNG. He achieved a lot in his 25 years with many personal accomplishments to include promotions, special training courses, awards and recognitions, training missions, deployments and especially his goal of making the rank of MSG before he retired.

3. A review of the applicant's available service record reflects the following:

a. His record is void of his initial DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States). However, DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects he entered active duty on 6 April 1983 and was honorably released from active duty on 5 January 1988, by reason of expiration term of service, and transferred to the U.S. Army Reserve Control Group (Reinforcement). Item

4a (Grade, Rate or Rank) shows sergeant (SGT)/E-5. Item 12h (Effective Date of Pay Grade) shows 4 September 1987.

b. His record is void of his initial enlistment in the ■■■ ARNG.

c. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), dated 10 August 1990 shows he enlisted in the ■■■ ARNG on 23 August 1989 and extended his enlistment in the ■■■ ARNG on for a period of 6 years in the rank of SGT.

d. His record is void of orders promoting him to the rank/grade of staff sergeant (SSG)/E-6.

e. On 30 May 1997, Headquarters, 49th Military Police Brigade issued Orders Number 8-4 promoting him to the rank/grade of sergeant first class (SFC)/E-7 effective on 6 May 1997.

f. His record is void of the National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) showing his release from the ■■■ ARNG.

g. On 5 November 1997, he enlisted in the U.S. Army Reserve (USAR) in the rank/grade of SFC/E-7.

h. His record is void of separation orders showing his release from the USAR.

i. On 29 November 1999, he enlisted in the ■■■ ARNG in the rank/grade of SFC/E-7.

j. DA Form 4836, dated 5 October 2003, shows he extended his enlistment with the ■■■ ARNG for a period of 3 years in the rank/grade of SFC/E-7.

k. On 28 October 2004, Orders Number 302-1033 issued by the ■■■ ARNG promoted him to the rank/grade of master sergeant (MSG)/E-8 effective on 4 October 2004.

l. On 14 March 2006, the ■■■ ARNG issued Orders Number 73-1022 reducing him in rank from MSG/E-8 to SFC/E-7 for administrative purposes under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 11-58, effective 14 March 2006.

m. NGB Form 22, dated 28 November 2006 shows he was honorably discharged from the ■■■ ARNG, in the rank/grade of SFC/E-7, with service from 29 November 1999 to 28 November 2006 for a net active service this period of 7 years.

n. On 20 December 2006, the [REDACTED] ARNG issued Orders Number 354-1091 honorably discharging hm from the [REDACTED] ARNG, in the rank/grade of SFC/E-7, with a retroactive effective date of 28 November 2006.

o. On 18 October 2007, he enlisted in the [REDACTED] ARNG in the rank/grade of SSG/E-6.

p. On 6 May 2008, the [REDACTED] ARNG issued Orders Number 127-1217 reducing him in rank from SSG/E-6 to SGT/E-5 under the provisions of NGR 600-200, paragraph 11-61 for misconduct with a retroactive effective date of 4 May 2008.

q. His record is void of the Article 15, Uniform Code of Military Justice action which led to his reduction for misconduct or any other documentation of misconduct.

r. On 28 August 2008, the [REDACTED] ARNG issued a Memorandum for Notification of Eligibility for Retired Pay at Age 60.

s. DA Form 4836, dated 16 October 2008 shows he extended his enlistment with the [REDACTED] ARNG for a period of 6 months in the rank/grade of SGT/E-5.

t. On 16 April 2009, the [REDACTED] ARNG issued Orders Number 106-1023 honorably releasing him from the [REDACTED] ARNG, effective 17 April 2009, and reassigning him to the Retired Reserve.

u. Army Grade Determination Review Board Docket Number AR20220001148 letter, dated 31 May 2022 states, in effect, after review of the applicant's Army Military Human Resource Record and the documents provided, it was determined he was not eligible for advancement on the Retired List because the provisions of Title 10, USC, section 7344 (previously Title 10, USC, section 3964) do not apply to retirement for non-regular service. The law requires a retired member to be serving on active duty at the time of retirement and have at least 20 years of active federal service.

v. On 3 August 2022, the U.S. Army Human Resources Command issued Orders Number C08-296386 placing him on the retired list in the rank/grade of SGT/E-5 with a retroactive effective date of 3 July 2022.

4. The applicant provides the following:

a. Character Letter from retired Brigadier General [REDACTED], dated 15 December 2021, previously considered by the AGDRB. The letter is available in the supporting documents for the Board's review.

b. VA Benefits Letter, dated 8 December 2022, showing his combined service-

connected evaluation as 70 percent with compensation at 100 percent because he is unemployable due to service-connected disabilities.

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 Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board recognized the applicant's period and length of service and the circumstances which lead to his discharge. The Board considered the applicant's grade, relative severity of the misconduct and agreed that there was sufficient unfavorable information to establish that the applicant's service in the grade in question was unsatisfactory. After due consideration of the applicant's request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

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

2/28/2024

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CHAIRPERSON

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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:

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. Title 10 USC, section 7344 (Higher Grade after 30 Years of Service: Warrant Officers and Enlisted Members) provides that each retired member of the Army who 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. This section applies to Warrant Officers, Enlisted Soldiers of the Regular Army and Reserve Enlisted Soldiers of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty).

3. Army Regulation (AR) 15-80 (Army Grade Determination Review Board and Grade Determinations) states:

a. Paragraph 2-5 (Unsatisfactory Service) Service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when: a. Reversion to a lower grade was owing to misconduct or caused by nonjudicial punishment pursuant to Uniform Code of Military Justice, Article 15. There is sufficient unfavorable information to establish that the Soldier's service in the grade in question was unsatisfactory. One specific act of misconduct may or may not form the basis for a determination that the overall service in that grade was unsatisfactory, regardless of the period of time served in grade.

b. Paragraph 2-6 (Service in the lower grade) If service in the highest grade held was unsatisfactory, the Soldier can be deemed to have served satisfactorily in the next lower grade actually held, unless paragraph 2 – 5 applies with regard to that next lower grade.

4. 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.

//NOTHING FOLLOWS//