

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230004186

APPLICANT REQUESTS: placement on the retired list in the highest grade held of sergeant first class (SFC)/E-7.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 1059 (Service School Academic Evaluation Report) M1/M1A1 Abrams Master Gunner
- Headquarters (HQs), Task Force Phoenix VI Memorandum, Subject: Statement of Wartime Service
- HQs, Combined Joint Task Force Phoenix Orders Number 354-042
- HQs, Task Force Badger Memorandum, Subject: Statement of Wartime Service
- DA Form 1059 Battle Staff Noncommissioned Officer (NCO) Course
- DA Form 2823 (Sworn Statement)
- Applicant's statement for appeal of Non-Judicial Punishment (NJP)
- Office of the Adjutant General State of New York Orders Number 256-1035
- DA Form 2166-9-2 (NCO Evaluation Report) for period of 31 January through 1 October 2019
- DA Form 638 (Recommendation for Award), 3 August 2020
- DA Form 2166-9-2 for period of 2 October 2019 through 1 October 2020
- B Troop, 2nd Squadron, 101st Cavalry Permanent Orders Number 357-006
- B Troop, 2nd Squadron, 101st Cavalry Memorandum, Subject: Award of the Armed Forces Reserve Medal
- HQs, U.S. Army Armor School Permanent Orders Number 082-001
- DA Form 638, 13 June 2021
- DA Form 2166-9-2 for period of 2 October 2020 through 1 October 2021
- DD Form 214 (Certificate of Release or Discharge from Active Duty) service ending 30 November 2021
- Applicant letter to the Honorable T- R-
- Screenshot of NJP charge 2

FACTS:

1. The applicant states in effect, he requests to be placed on the retired list in his highest grade held of SFC/E-7. He believes that it is an injustice not to receive E-7 retired pay after holding the rank of SFC for nearly 18-years when he should not have been reduced in rank when the allegations against him were weak and he was not provided the opportunity to refute the evidence against him. Also, as an Active Guard/Reserve (AGR) Soldier he should have been punished under the Uniform Code of Military Justice instead of the New York State Military Law. After his punishment was completed his chain of command assured him that he would still be able to retire as a SFC/E-7. However, while he was out-processing at Fort Drum, NY, he was told that he would be placed on the retired list as a staff sergeant (SSG)/E-6, but the transition center refused to provide him the regulatory guidance which stated this to be true. The allegation against him was solely based on a single statement from one master sergeant that was not within his rating chain, and he was told the only punishment he would receive was what was listed on a counseling form and no further action would be taken. He was not given ample time to prepare his defense as he was given less than a 12-hour notice to report for the proceedings. If his actions were so egregious to prevent him from retiring in the highest grade held, why would he have been awarded the Army Commendation Medal, Army Good Conduct Medal and Meritorious Service Medal between the time of his punishment and his retirement.

He served 18 of his 20-years as a SFC in positions such as Armor Platoon Sergeant, Cavalry Platoon Sergeant and Infantry Platoon Sergeant in Afghanistan where he was awarded the Combat Infantryman Badge. He graduated from the highly selective Abrams Master Gunner Course and Battle Staff NCO Course. He later served as a Battalion Assistant Operations NCO, Operations NCO and Senior Supply Sergeant. He believes his accomplishments and longevity speaks for itself. Since his retirement from the Army National Guard (ARNG) he was a lead volunteer for a Family Readiness Group, and he is using his experience to become a Scout Master for the Boy Scouts of America and he is also considering a position as a Junior Reserve Officers' Training Corps instructor.

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

a. The applicant enlisted in the ARNG on 30 November 1989 and had continuous service through reenlistments and extensions.

b. On 9 June 1994, Orders Number 10-1, issued by HQs, 1st Battalion, 127th Armor, NYARNG, the applicant was promoted to the rank of sergeant (SGT)/E-5, effective on with a Date of Rank (DOR) of 1 July 1994.

c. On 11 December 1996, Orders Number 43-1, issued by HQs, 1st Battalion, 127th Armor, NYARNG, the applicant was promoted to the rank of SSG/E-6, effective on with a DOR of 11 December 1996.

d. On 17 August 1999, the applicant was ordered to active duty for training to attend the M1/M1A1 Abrams Master Gunner Course. He was release from active duty on 4 November 1999. DD Form 220 (Active Duty Report) shows the applicant completed 81-days of active service.

e. On 8 January 2002, Orders Number 008-001, issued by HQs, 3rd Brigade, 42nd Infantry Division (Mechanized), the applicant was promoted to the rank of SFC/E-7, effective on with a DOR of 30 December 2001.

f. On 30 August 2002, Orders Number 242-310, issued by the Office of the Adjutant General State of NY, the applicant was ordered to active duty in support of Operation Noble Eagle, effective 3 September 2002.

g. On 22 August 2003, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 11-months and 20-days of active service.

h. On 2 September 2004, Orders Number 249-1029, issued by the Office of the Adjutant General State of NY, the applicant was ordered to full time National Guard Duty (FTNGD) in an AGR status, effective 9 September 2004.

i. On 12 October 2004, Orders Number 286-1029, issued by the Office of the Adjutant General Joint Force HQs, the applicant was administratively reduced to the rank of SGT/E-5, effective 9 September 2004.

j. On 7 August 2006, Orders Number 219-1017, issued by the Office of the Adjutant General, Joint Force HQs, the applicant was promoted to the rank of SSG/E-6, effective on with a DOR of 12 June 2006.

k. On 21 March 2007, Orders Number 080-1007, issued by the Office of the Adjutant General State of NY, the applicant was ordered to FTNGD in an AGR status, effective 9 September 2007 for a period of 5 years and 11 months.

l. On 14 December 2007, Orders Number 342-562, issued by the Office of the Adjutant General State of NY, the applicant was ordered to active duty in support of Operation Enduring Freedom, effective 17 January 2008.

m. On 16 January 2008. The applicant was honorably released from active duty. DD Form 214 shows the applicant completed 3-years, 4-months, and 8-days of active service.

n. On 2 September 2008, Orders Number 246-1000, issued by the Office of the Adjutant General Joint Force HQs, the applicant was promoted to the rank of SFC/E-7, effective on with a DOR of 24 May 2008.

o. On 11 February 2009, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 1-year and 25-days of active service. Item 4a (Grade, Rate or Rank) shows "SFC."

p. On 7 December 2011, Orders Number 341-335, issued by the Office of the Adjutant General State of NY, the applicant was ordered to active duty in support of Operation Enduring Freedom, effective 28 January 2012.

q. The applicant's DD Form 214 shows that he was ordered to active duty on 12 February 2009 in an AGR status and was honorably released from active duty on 27 January 2012.

r. The applicant entered active duty on 28 January 2012 and was honorably released from active duty on 16 January 2013 by reason of completion of required active service.

s. On 29 May 2013, Orders Number 149-191, issued by the Office of the Adjutant General State of NY, the applicant was ordered to active duty in an AGR status, effective 30 August 2013.

t. DA Form 2166-9-2 for the period of 31 January 2017 through 30 January 2018 the applicant received a negative NCO evaluation report for failure of his Army Physical Fitness Test (APFT). The applicant's rater rated his overall performance as met standard and commented he maintained a solid performance despite a year of personal challenges, he continued to maintain his professionalism and motivation to meet all sustainment requirements. His senior rater rated his overall potential as qualified and commented he would benefit the NY ARNG by serving as a Senior Supply NCO. He should be promoted in the middle 50 percent of his peers.

u. DA Form 2166-9-2 for the period of 31 January 2018 through 30 January 2019 the applicant failed to take the APFT during the rating period. The applicant's rater rated his overall performance as met standard and commented he was a highly competent NCO and his mental toughness and ability to not let difficult situations affect his mission was an example for all. The applicant's senior rater rated his overall potential as qualified and commented he continuously shows the potential to take on additional duties and responsibilities and to be promoted when eligible.

v. On 23 August 2019, Orders Number 235-0001, issued by the Office of the Adjutant General State of NY, the applicant was ordered to FTNGD in an AGR status, effective 30 August 2019.

w. The applicant's service record was void of any evidence of NJP. On 13 September 2019, Orders Number 256-1035, issued by the Office of the Adjutant General State of NY, the applicant was reduced in rank to SSG/E-6, effective on with a DOR of 28 August 2019 for misconduct under the provisions of Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions).

x. DA Form 2166-9-2 for the period of 31 January through 1 October 2019 the applicant failed the APFT. The applicant's rated his overall performance as met standard and commented he was a dedicated and highly competent NCO whose efforts were essential in multiple missions. The applicant's senior rater rated his overall potential as qualified and commented he was a dedicated and capable NCO with a diverse amount of experience and knowledge and to promote with peers.

y. On 11 February 2020, Orders Number 042-0001, issued by the Office of the Adjutant General State of NY, the applicant was ordered to FTNGD in an AGR status, effective 1 March 2020.

z. On 20 August 2021, Orders Number 232-0002, issued by the Office of the Adjutant General Joint Force HQs – NY, the applicant was placed on the retired list on 1 December 2021 in the rank of SSG/E-6.

aa. On 30 November 2021, the applicant was honorably retired from active duty. DD Form 214 shows the applicant completed 8-years, 10-months, and 14-days of active service. It also shows in items:

- 4a (Grade, Rate or Rank): SSG
- 4b (Pay Grade): E06
- 12i (Effective Date of Pay Grade): 28 August 2019
- 18 (Remarks): Retired List Grade SSG

3. The applicant provides:

a. DA Form 1059 for M1/M1A1 Abrams Master Gunner Course shows the applicant achieved course standard during the period of 15 August through 4 November 1999 for the highly selective course.

b. HQs, Task Force Phoenix Memorandum, Subject: Statement of Wartime Service shows the applicant served in Afghanistan and was awarded the Afghanistan Campaign

Medal, National Defense Service Medal, Global War on Terrorism Service Medal and the North Atlantic Treaty Organization Medal.

c. HQs, Combined Joint Task Force Phoenix Orders Number 354-042 shows the applicant was awarded the Combat Infantryman Badge on 20 October 2008.

d. HQs, Task Force Badger Memorandum, Subject: Statement of Wartime Service shows the applicant served in Kuwait during the period of 8 April through 15 December 2012 and was awarded the Global War on Terrorism Expeditionary Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Armed Forces Reserve Medal with "M" Device and the Overseas Service Ribbon.

e. DA Form 1059 for Battle Staff NCO Course shows the applicant achieved course standard during the period of 16 February through 9 March 2013. He achieved a superior overall academic average of 94 percent.

f. DA Form 2823 from Master Sergeant S- A- which stated the applicant was served with charges for NJP on 21 June 2019 for making a false statement. The author of the statement stated he did not previously complete a sworn statement, nor did he believe the applicant ever lied regarding to how his measurements were taken for the weigh in.

g. Applicant's appeal for NJP (unsigned) stated he requested the punishment for reduction in rank be set aside or mitigated. He was not guilty of the charges against him, and the punishment was disproportionate to the offense. He served honorably for nearly 30-years, and he was a highly rated NCO. He was extremely shocked and dismayed over the NJP. He served in Afghanistan and was awarded the Combat Infantryman Badge.

The evidence packet which was provided to him for NJP there was no evidence of a Commander's Inquiry or investigation. The memorandum for record in the packet did not have a valid signature. For charge 1; conspiracy, the DA Form 2823 did not mention any evidence of a conspiracy. It only mentioned the applicant conspired with another Soldier to falsify a record however, the document was never submitted. For charge 2; false statement, there was no statement that the applicant lied to the First Sergeant. When questioned, the First Sergeant stated that he did not believe the applicant lied to him. The weigh in document was never entered into the date system of record.

The applicant did not receive notice of NJP proceedings. He was told the punishment which was listed on the counseling document was the final decision and no further action would be taken. He was verbally informed 12-hours prior to report for the proceedings. At the time of the proceedings, he was geographically dislocated from his records regarding the entire issue, and he was not afforded the opportunity to view the evidence prior to the proceedings.

The lack of a formal investigation, sworn statements and evidence presented was a clear doubt of the charges. If there was reasonable doubt the imposed punishment must be set aside or mitigated. There were two entries into the date system of record, and one was inaccurate and the other never occurred as he was not present on the day in question. He respectfully requested to have the punishment set aside and to restore his rank to SFC. The loss of income severely affected him and his two sons.

h. DA Form 638 shows the applicant was awarded the Army Commendation Medal for meritorious service during the period of 1 January 2013 through 30 September 2019.

i. DA Form 2166-9-2 for the period of 2 October 2019 through 1 October 2020 shows the applicant's rater rated his overall performance as met standard and commented he was vital to the success of the troop through his diligent and meticulous work. His proficiency in managing supply activities and administrative requirements were unparalleled. His senior rater rated his overall potential as highly qualified and commented he had great potential and demonstrated he could perform in positions of increased responsibility, and he should be promoted ahead of peers.

j. B Troop, 2nd Squadron, 101st Cavalry Permanent Orders Number 357-006 shows the applicant was awarded the Army Good Conduct Medal for exemplary conduct, efficiency and fidelity during the period of 9 September 2016 through 8 September 2019.

k. B Troop, 2nd Squadron, 101st Cavalry Memorandum, Subject: Award of the Armed Forces Reserve Medal shows the applicant was awarded the Armed Forces Reserve Medal for the period of 30 November 2009 through 29 November 2019.

l. HQs, U.S. Army Armor School Permanent Orders Number 082-001, shows the applicant was awarded the Master Gunner Identification Badge, effective 4 November 1999.

m. DA Form 638 shows the applicant was awarded the Meritorious Service Medal for exceptionally meritorious service for over three decades of service to the NYARNG.

n. DA Form 2166-9-2 for the period of 2 October 2020 through 1 October 2021 shows the applicant's rater rated his overall performance as exceeded standard and commented he placed the long-term success of the troop at the forefront of all of his actions as he prepared for retirement. His senior rater rated his overall potential as highly qualified and commented he was an outstanding NCO who demonstrated unlimited potential and should be promoted ahead of peers.

o. Letter to the Honorable T- R- which stated the Department of Defense Financial Management Regulation 7000.14-R states members would have their retired pay computed using the high 36-months average, except for members who were reduced as a result of court-martial, NJP or an administrative action. He was not reduced for any of those reasons. He was reduced under New York State Military Law for alleged misconduct. He did not fight the reduction at the time because he was assured by his chain of command, he could still retire in the rank of SFC. The allegation was based solely on one statement from someone outside his rating chain and during the proceedings he was never provided the evidence against him.

p. Screen shot of Charge 2, false official statement, shows he was charged with intent to deceive by knowingly making a false statement to senior NCOs.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, length of service and awards and recognitions received. The Board considered the severity of the applicant's misconduct against the length of his service and overall performance and noted his honorable discharge. The Board considered his periods of foreign service and decorations received. The Board weighed the severity of the misconduct and agreed that although it was reflective of willful intent, it did not negate the quality of his overall service and, as a single incident of misconduct, found it should not have been the sole basis in determining his overall service. After due consideration of the applicant's request, the Board determined and a correction to his record to show the highest rank held upon retirement as sergeant first class (SFC)/E-7 is 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 sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD214 showing in:

- block 4a (Grade, Rate or Rank): SFC
- block 4b (Pay Grade): E07
- block 18 (Remarks): Retired List Grade E7/SFC

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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. AR 15-80 (Army Grade Determination Review Board (AGDRB) and Grade Determinations), establishes policy, procedures and responsibilities of the AGDRB and other organizations delegated authority to make grade determinations on behalf of the Secretary of the Army (SA).

a. Paragraph 2-3 (Automatic Grade Determinations) state automatic grade determinations do not include cases where—(1) Reversion to a lower grade was, owing to misconduct, or punishment pursuant to Article 15, UCMJ, Article 15.

b. Paragraph 2-4 (Grade determination considerations) The AGDRB will consider each case on its own merits. Generally, determination will be based on the Soldier's overall service in the grade in question, either on active duty or other service qualifying the Soldier for retirement, receipt of retired pay, or separation for physical disability. Circumstances pertinent to whether such service is found satisfactory include, but are not limited to, the following:

- Medical reasons, which may have been a contributing or decisive factor in a reduction in grade, misconduct, or substandard performance
- Compassionate circumstances
- Length of otherwise satisfactory service in the grade in question, before and after the misconduct

c. Paragraph 2-5 (Unsatisfactory service) Service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when: Reversion to a lower grade was—(1) Owing to misconduct. (2) Caused by NJP pursuant to UCMJ, 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. Retirement in lieu of or as the result of elimination action will not, by itself, preclude retirement in the highest grade; however, the underlying misconduct and/or substandard performance can result in a determination that service in grade was unsatisfactory.

d. Paragraph 3-1, enlisted Soldiers will usually retire in the grade held on the day before their placement on the retired list and are not subject to discretionary grade determinations, except for disability separations and 30-year cases. For enlisted cases, the AGDRB will make final determinations on behalf of the SA unless that authority is reserved by a higher authority in a particular case or type of case. It will determine the highest grade in which a Soldier has served satisfactorily for computations of retired pay. While enlisted Soldiers may be reduced in grade by court-martials, NJP

proceedings, administrative separation proceedings or inefficiency board, enlisted grade determinations cannot result in reduction of enlisted Soldier's current grade. Enlisted grade determinations will result in either a decision to retain the individual's current grade or to advance to a higher grade in which the individual satisfactorily served or to which advancement is otherwise provided by law. Enlisted Soldier who are determined not to have service satisfactorily in the highest grade held and who first became members after 7 September 1980 and therefore would normally fall under the high 36-month average for calculation of retired pay, do not get the benefit of that averaging if reduced in grade as a result of court-martial, non-judicial punishment or an adverse administrative action.

2. Title 10 United States Code, 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//