

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 February 2024

DOCKET NUMBER: AR20230004624

APPLICANT REQUESTS: reconsideration of his previous request for the following:

- Promotion reconsideration to the rank/grade of master sergeant (MSG)/E-8
- Promotion reconsideration to the rank/grade of sergeant major (SGM)/E-9
- Entitlement to back pay and allowances
- A personal appearance before the Board

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), 2 October 2015
- Certificate of Training, 13 February 2020
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20210006315, 10 December 2021
- Orders Number 069-301, 10 March 2023
- Memorandum, Subject: U.S. Army Senior Enlisted Review Board (USASERB), 31 March 2023
- Email correspondence

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Numbers AR20180001921 on 3 May 2019, AR20190011679 on 6 March 2020, AR20190011685 on 21 July 2021, and AR20210006315 on 10 December 2021.

2. The applicant states, in pertinent part:

a. He would like the ABCMR to provide an exception to policy for the requirement stated in Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions), dated 2 February 2015, in paragraph 1-28a(5) that says 'All sergeant first class (SFC) (all components) must complete Structured Self Development (SSD) Course Level 4 before attaining eligibility for promotion consideration to MSG.' The purpose of the exception is

to allow his records to be presented before a USASERB (formerly Standby Advisory Board or STAB) for promotion consideration to E-8/MSG during the Fiscal Year (FY)16 MSG Promotion Board based upon his retroactive promotion date to SFC/E-7 on 1 January 2014. SSD Level 4 is a rank-restricted (SFC and above) online course that he could not access due to significant errors in his records that prevented his promotion from staff sergeant (SSG)/E-6 to E-7/SFC.

b. The ABCMR has provided relief in previous decisions under ABCMR Docket Numbers AR20210006315, AR20190011685, AR20190011679, and AR20180001921; and the subsequent ABCMR directives to the U.S Army Human Resources Command (HRC) have removed Uniform Code of Military Justice (UCMJ) and related derogatory Noncommissioned Officer Evaluation Reports from his records, restored his original SSG Date of Rank (DOR), and allowed his records to be presented before multiple USASERBs/STABs as if he were an otherwise eligible Soldier. Maintaining the punitive requirement that he complete SSD Level 4 before being considered for promotion does not account for his unique situation, the rank-restricted access to the online course, and continues to be penalized for actions that the ABCMR has provided relief from.

c. When he finally gained access to the course in February 2020, he completed it in less than two weeks. This is important because it supports that if his record errors did not exist and he was promoted to SFC in real-time on 1 January 2014, he would have completed the course well before becoming eligible for promotion to MSG, making him an otherwise eligible Soldier. If the ABCMR approves the exception to policy, he requests the agency direct the United States Army to submit his records to a USASERB to be considered for promotion to MSG/E8 and, if the outcome is favorable, submit his records for subsequent promotion boards until his time in service ended or he no longer qualified. If selected for any promotion(s), he asks that his record be corrected, establishing the promotion effective date(s) and DOR as if he had been initially selected under the criteria identified by the USASERB. In addition, he requests to be awarded all back pay and allowances due.

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

a. On 31 May 2002, the applicant enlisted in the Regular Army.

b. DA Form 1059 (Service School Academic Evaluation Report), dated 1 August 2007 shows he attended and completed the Warrior Leader Course from 3 July 2007 through 1 August 2007.

c. On 1 October 2007, Headquarters, 1st Heavy Brigade Combat Team, issued Orders Number 274-003 promoting him to the rank/grade of sergeant (SGT)/E-5, effective on with a DOR of 1 October 2007.

- d. On 25 March 2009, the applicant completed the reclassification requirements to be awarded the 92Y (Unit Supply Specialist) Military Occupational Specialty (MOS).
- e. On 20 July 2009, Headquarters, Fort Bliss, issued Orders Number 201-100 promoting him to the rank/grade of SSG/E-6, effective on with a DOR of 1 August 2009.
- f. On 11 February 2010, the applicant attended and completed the Unit Supply Specialist Advanced Leader Course from 5 January 2010 through 11 February 2010.
- g. On 12 May 2011, 3rd Infantry Brigade Combat Team, 1st Armored Division issued Orders Number 132-06 promoting the applicant to the rank/grade of SSG/E-6, effective on with a DOR of 1 May 2011. The applicant's records are void of a reduction action predating this order. See ABCMR Docket Number AR20190011679 below.
- h. On 2 October 2015, the applicant attended and completed the Unit Supply Specialist Senior Leader Course from 24 August 2015 through 7 October 2015.
- i. ABCMR Docket Number AR20180001921, decided on 3 May 2019 wherein the applicant requested removal of his DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), dated 24 August 2010. The Board determined relief was warranted based on supporting documents.
- j. On 29 January 2020, HRC issued Orders Number 29-301 promoting him to the rank/grade of SFC/E-7 with a retroactive effective date and DOR of 1 January 2017.
- k. ABCMR Docket Number AR20190011679, decided on 6 March 2020 wherein the applicant requested relief for restoration of his rank to SSG citing that since the previously imposed nonjudicial punishment under the UCMJ Article 15 resulting in his reduction from SSG to SGT was wholly removed/set aside, the punishment imposed should have also been set aside. The Board determined that the applicant's rank should be restored.
- l. ABCMR Docket Number AR20190011685, decided on 21 July 2021 wherein the applicant requested removal of the DA Form 2166-8 (Noncommissioned Officer Evaluation Report (NCOER)) for the rating period 1 October 2009 to 31 May 2010. The Board determined relief was warranted based upon the available documentation.
- m. ABCMR Docket Number AR20210006315, decided on 10 December 2021 wherein the applicant requested reconsideration for promotion to the ranks of SFC, MSG, and SGM with entitlement to back pay and allowances. The Board determined that relief was warranted for promotion to the rank of SFC based upon the supporting documents and evidence found within the military record. HRC provided a memorandum stating his DOR has been corrected to reflect 1 August 2009 from his

previous DOR of 1 May 2011. He requested and the Board determined his record should go before a STAB for consideration to SFC at an earlier date (FY13-15 SFC Promotion Board). If he is selected for promotion at an earlier date, his record would be submitted to a future USASERB still to be determined for consideration to MSG.

n. DD Form 214, ending 30 June 2022 reflects an honorable retirement due to sufficient service at the rank/grade of SFC/E-7. Item 12 (Record of Service) shows service from 3 June 2002 to 30 June 2022 for a net active service this period of 20 years and 28 days.

4. The applicant provides the following:

a. Certificate of Training, dated 13 February 2020 showing his completion of Distributed Leader Course IV.

b. HRC Orders Number 069-301 dated 10 March 2023 promoting him to the rank/grade of SFC/E-7 with a retroactive effective date and DOR of 1 January 2014 in accordance with ABCMR Docket Number AR20210006315.

c. Memorandum, Subject: USASERB, dated 31 March 2023 showing his record was considered and convened by the Board on 25 January 2023 approving his promotion to the rank/grade of SFC/E-7 with a retroactive effective date and DOR of 1 January 2014.

d. Email correspondence with HRC showing his request and denial for promotion consideration to MSG before the FY16 Promotion Board due to his completion of the SSD Level 4 course and the timeframe in which it was completed.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board considered the administrative history in this case and found his request to be considered for promotion to MSG/E-8 has merit. He did eventually become educationally qualified to be considered for promotion to MSG/E-8 and the Board determined the circumstances in this case support correction of the record to show he was eligible to be considered under the criteria for the FY16 MSG Promotion Board and should now receive such consideration.

3. The Board considered his additional request for consideration for promotion to SGM/E-9 if selected for promotion to MSG/E-8. The Board found it would be purely speculative to conclude that he would have become eligible for promotion to SGM/E-9. Based on a preponderance of the evidence, the Board determined the portion of his application regarding promotion consideration for SGM/E-9 should be denied.

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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show he was educationally qualified to be considered for promotion to MSG/E-8 under the criteria for the FY16 MSG Promotion Board and referring his record to be considered for promotion under those criteria.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

6/3/2024

X █

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. AR 600-8-19 (Enlisted Promotions and Reductions) provides that reconsideration for promotion normally will be granted when one or more of the following conditions existed on the Soldier's Army Military Human Resources Record (AMHRR) and was reviewed by a selection board:

- an adverse evaluation (Noncommissioned officer Evaluation Report (NCOER) or Academic Evaluation Report (AER)) reviewed by a board was subsequently declared invalid in whole or in part and was determined by the Army Review Boards Agency (ARBA) to constitute a material error
- an adverse document belonging to another Soldier is filed on the AMHRR
- a UCMJ, Article 15, administered on or after 1 September 1979 that was designated for file in the local file only but was erroneously filed on the AMHRR reviewed by the board
- a UCMJ, Article 15 punishment that was wholly set aside on or after 1 September 1979 and was filed on the AMHRR when reviewed by the board
- court-martial orders were filed in the performance folder of the AMHRR when the findings were "not guilty"
- a document was filed on the AMHRR that erroneously identified the non-select as Absent Without Leave or a deserter
- transcript awarding a degree was excluded from the records
- absence of an award of a Meritorious Service Medal or higher (initial award only)
- a mandatory, error-free NCOER (that is, annual, extended annual, change of rater) received by HRC in accordance with specific board military personnel message or regulatory requirements was not posted to the AMHRR
- an individual was considered in an MOS or CPMOS that is not the Soldier's normal career progression

a. The following items do not constitute material error and will not be reasons for reconsideration:

- omission of letters of appreciation, commendation, congratulations, or other similar commendatory correspondence
- documents that are not derogatory having been filed on the wrong AMHRR
- absence of documents (such as transcripts) written, prepared, or computed following the convening of a board
- incorrect data on the Enlisted Record Brief (ERB)/Soldier Record Brief (SRB)
- failure to review promotion board files by the considered Soldier
- absence of the ERB/SRB

- absence of official photograph or the presence of an outdated photograph
- absence of an AER showing completion of a NCOPDS Course
- a "complete the record" NCOER is an optional report and the absence of this report will not, under any circumstances, be a basis for reconsideration.
- absence of an award for achievement or meritorious service lower than a Meritorious Service Medal
- omission of an AER dated 120 days prior to the board convene date

b. A Soldier referred to a USASERB/STAB normally will be considered by the STAB within 120 calendar days after the case is referred for review.

c. Chapter 5 (Promotion to SFC, MSG and SGM) provides that all SSGs through MSGs who meet the basic eligibility requirements will be considered for promotion. All Soldiers within the announced zone will be considered by the promotion selection board unless a declination statement has been provided by the Soldier. Soldiers in the rank of SSG and above must have 36-months' time in grade in their current rank to be considered for promotion to SFC and above.

2. AR 15-185 (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 that 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.

//NOTHING FOLLOWS//