

IN THE CASE OF: ██████████

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230004752

APPLICANT REQUESTS: in effect –

- promotion to the rank/grade of staff sergeant (SSG)/E-6
- to receive backpay (compensation) as a result of his promotion

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2-1 (Personnel Qualification Record - Part II)
- DA Form 2495 (Disposition Form), 18 June 1982
- DA Forms 3356 (Board Member Appraisal (Worksheet)), 13 July 1982
- DA Form 3357-R (Board Recommendation), 13 July 1982
- DA Form 3355 (Promotion Point Worksheet), 13 July 1982
- Memorandum - Subject: Report of Board Proceedings for Promotion to Pay Grades E-5 and E-6, 13 July 1982
- Battalion Commander's approval endorsement, 15 July 1982
- Leave and Earnings Statement (LES), 1-30 November 1982
- National Guard Bureau (NGB) Forms 23 (Army National Guard (ARNG) Retirement Credits Record), 31 March 1987 and 26 June 1987
- Orders Number D-01-203170, 21 January 1992

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. His 15 July 1982 records indicate that he was promoted to SSG/E-6. This rank or promotion was never given while serving on active duty, in the U.S. Army Reserve (USAR) or ARNG until January 1987. Can the Board look into this issue and correct his

rank and pay him properly. He met all the requirements to be promoted to SSG. He earned that right as a Soldier who served his country faithfully with honor and dignity.

b. A disk was provided to him on 27 March 2015 that did not have his complete records as the disk that was provided to him on 30 January 2023 shows all of his medical, promotions, and military history.

3. A review of the applicant's military records show the following:

a. He enlisted in the Regular Army on 8 June 1976.

b. DD Form 214 (Report of Separation from Active Duty) shows he was discharged to reenlist on 15 January 1979. Item 6a (Grade, Rate or Rank) lists his rank as specialist four (SP4)/E-4.

c. DD Form 4 (Enlistment or Reenlistment Agreement - Armed Forces of the United States) shows he reenlisted for 4 years on 16 January 1979.

d. Orders Number 164-64 published by Headquarters, 13th Corps Support Command, Fort Hood, TX, promoted the applicant to the rank/grade of specialist five (SP5)/E-5, effective 1 September 1980 with a Date of Rank (DOR) of 7 August 1980.

e. On 27 January 1982, Headquarters, 13th Support Command (Corps) published Orders Number 18-15, which laterally appointed the applicant to sergeant (SGT)/E-5.

f. On 18 June 1982, DA Form 2495 shows the applicant was "approved for promotion consideration."

g. On 13 July 1982 –

(1) The majority of the DA Forms 3356 show the applicant was recommended for promotion.

(2) DA Form 3357-R shows the applicant was recommended for promotion by a majority of the Board's Membership.

(3) DA Form 3355 (Promotion Point Worksheet) shows he was "recommended" for promotion to SSG/E-6 and granted a total of 748 points.

(4) Memorandum - Subject: Report of Board Proceedings for Promotion to Pay Grade E-5 and E-6, shows the President of the Promotion Board recommended that the applicant be "integrated" onto the recommended list for promotion to SSG/E-6 in the secondary zone.

h. On 15 July 1982, the battalion commander approved the Report of Board Proceedings for Promotion to Pay Grade E-5 and E-6, which authorized the applicant to be integrated onto the recommended list for promotion to SSG/E-6. He was not promoted on this date.

i. On 19 October 1982, Headquarters, 13th Support Command (Corps) published Orders Number 200-12, which reassigned the applicant to the Adjutant General Transfer Point for separation processing with a report date of 15 January 1983. The orders list his rank as SGT.

j. On 15 January 1983, he was honorably discharged from active duty. DD Form 214 shows he completed 4 years net active service, and he had 2 years, 7 months, and 8 days total prior active service. Item 4a (Grade, Rate or Rank) shows his rank as SGT and item 12h (Effective Date of Pay Grade) shows 1 September 1980.

k. On 19 January 1985, DD Form 4 shows he enlisted in the [REDACTED] ARNG ([REDACTED] ARNG) for 1 year in rank/grade of SGT/E-5.

l. On 4 January 1986, DA Form 4836 (Oath of Extension of Enlistment or Reenlistment) shows he extended his [REDACTED] ARNG enlistment for a period of 6 years, which changed his expiration term of service date to 18 January 1992.

m. Orders Number 120-10 published by the State of Texas Adjutant General's Department, ordered the applicant to full-time National Guard duty in an Active Guard/Reserve (AGR) status in the rank/grade of SGT/E-5 for 3 years with a report date of 26 June 1987. The orders were amended to show a full-time duty commitment of 144 days from 26 June to 16 November 1987.

n. On 16 November 1987, DD Form 214 shows the applicant was honorably released from AGR status. Item 4a (Grade, Rate or Rank) shows SGT and item 12h (Effective Date of Pay Grade) shows 1 November 1986.

o. National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant was honorably released from the [REDACTED] ARNG and transferred to the USAR Control Group (Reinforcement) on 1 May 1989. Item 5a (Rank) shows his rank as SGT and item 6 (DOR) shows 19 January 1985.

p. Orders Number D-01-203170 published by the USAR Personnel Center honorably discharged the applicant from the Ready Reserve, effective 21 January 1992. The orders list his rank as SGT.

q. The applicant's record contained –

(1) DA Forms 2-1 which show the highest rank he held while serving in the Regular Army during the period of 8 June 1976 to 15 January 1983 was SGT with an effective date of 27 January 1982 and DOR of 7 August 1980.

(2) NGB Forms 23 covering the period of 25 May 1985 to 1 May 1989 which show his rank was penciled in as SSG and SGT while serving in the [REDACTED] ARNG.

r. His record is void of orders which promoted him to the rank of SSG/E-6.

4. The applicant provides an LES which covers the period of 1 to 30 November 1982 and shows his pay grade as E-5.

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. Evidence of record shows that the applicant was recommended for promotion on 15 July 1982 and, based on the battalion commander approving the Report of Board Proceedings for Promotion to Pay Grade E-5 and E-6 which authorized the applicant to be integrated onto the recommended list for promotion to SSG/E-6, he was not promoted. Further supporting documentation does not reveal substantiating evidence that he was promoted nor was any provided by applicant for consideration by the Board. After due consideration of the request, the Board determined the evidence presented does not meet the burden of proof of an error or injustice and there is no basis upon which 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:

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.

2/28/2024

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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. Army Regulation (AR) 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that 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. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.
3. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribes policy and procedures for promotions and reductions in grade.
 - a. Paragraph 7-5 (Orders) states, promotions to grades E-4 through E-9, and grade restorations will be announced in orders.
 - b. Paragraph 7-19c (Report of promotion board proceedings) states, the promotion authority will either — (1) Approve the report and authorize the names of recommended Soldiers to be integrated into the recommended list, or; (2) Disapprove the report and convene an entirely new promotion board, composed of new members.
 - c. Paragraph 7-20 (Promotion packet) states, the documents below are part of the promotion packet of a Soldier. (1) An approved recommendation for promotion and necessary waivers. (2) The DA Form 3355 used for first board appearance, and all later re-computations. (3) If applicable, a copy of the approved request for reevaluation and the DA Form 3355 used. (4) Each DA Form 3356 and DA Form 3357 used for the first board appearance and, if applicable, those used for each reevaluation. (5) A copy of the approved Report of Promotion Board Proceedings for the Soldier's first board appearance and, if applicable, each reevaluation. (6) A copy of any document used to confirm the award of promotion points in item 6, DA Form 3355 that is not filed in the Military Personnel Records Jacket according to AR 640-10. (7) If applicable, a copy of any document that allows the Soldier's previously determined promotion score to be adjusted.
 - d. Paragraph 7-21 (Recommended list) states, on completing all promotion actions during the month, a recommended list will be published. It will list all Soldiers of the organization who have been selected, but not yet promoted. Names will be listed by

grade and in ascending military occupational specialty and descending promotion point score order. The list may be prepared by the promotion authority or may be a consolidation by a higher level authority.

4. Title 31, USC, section 3702, also known as the barring act, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, USC, is relieving the government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

//NOTHING FOLLOWS//