

IN THE CASE OF: ██████████

BOARD DATE: 6 March 2024

DOCKET NUMBER: AR20230005666

APPLICANT REQUESTS: cancellation of the demotion order that reduced him from sergeant first class (SFC)/E-7 to staff sergeant (SSG)/E-6 in the ██████████ Army National Guard (██████ ARNG), a demotion that resulted from his erroneous enlistment as an SFC/E-7 in the ██████████ Army National Guard (██████ ARNG).

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

- DD Form 149 (Application for Correction of Military Record)
- Reduction Order 0001829641.00, dated 18 May 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), February 2002 to August 2021
- Memorandum, 15 May 2022, Subject: Defacto Status
- U.S. Marine Corps Promotion Certificate, 1 April 2021
- U.S. Air Force DD Form 214, April to August 2015
- Enlisted Record Brief
- NCO Evaluation Reports, April 2021 through April 2022, and April 2018 through April 2019
- DA Form 1059 (Service School Academic Evaluation Report)

FACTS:

1. The applicant states after serving for over 4 years in the Army National Guard (ARNG) as a sergeant first class (SFC)/E-7, he was forced to take a rank reduction to staff sergeant (SSG)/E-6 in order to return to active duty.

a. The U.S. Army Human Resources Command (HRC) stated that he should not have been allowed to enter into the ARNG as a SFC due to having left the U.S. Air Force as an E-6. The ARNG conducted a grade determination that was approved and used his 4 months in the U.S. Air Force (USAF) as an E6 as well as his nearly 13 years in the U. S. Marine Corps (USMC) where he was an E7 when he was discharged.

b. He was brought into the ████████ ARNG as an E7 after I provided all previous enlistment documentation from the USMC and the USAF showing both his time and rank from each. He first instructed at the Iowa OCS (Officer candidate School) where he

developed a new class that is now being used at the Federal OCS at Fort Benning. After screening for Special Forces with the [REDACTED] ARNG, he attended and passed Selection as well as the Qualification Course where he served as the senior enlisted and the class leader for the duration of the 18 month course, receiving the Leadership award for the class. He had previously completed the E8 course in the Marine Corps and then attended SLC (Senior Leaders Course) prior to assessing back to active duty, again where he participated in the Leadership Board for the class. He was both PME (professional military education) complete for his grade and would have been looked at for E-8 in 2022 if not returning to active duty. He then served as the senior Engineer on his team performing the duties of an E-7. In addition to the professional wrongdoing, this has caused an additional financial strain on his family

2. Review of the applicant's service records shows:

a. He served in the U.S. Marine Corps (on active duty) from 22 August 2000 to 11 January 2013. His DD Form 214 is not available; however, he provides a Certificate of promotion to SFC/E-7 in the USMC effective 1 April 2012.

b. After a break in service from 12 January to 15 April 2013 (4 months and 15 days), he enlisted in the Regular Air Force, as a Tech Sergeant/E-6 on 16 April 2015. However, he was discharged due to unsatisfactory performance on 14 August 2015.

c. After a break in service from 15 August 2015 to 19 April 2018 (2 years, 8 months, and 4 days), and after receiving a waiver for enlistment, he enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) for 6 years in the grade of SFC/E-7 on 20 April 2018.

d. On or about 3 May 2019, he transferred from the [REDACTED] ARNG to the [REDACTED] ARNG. He then entered active duty from 14 February 2020 to 12 August 2021, as SFC/E-7.

e. He completed the Special Forces Engineer Sergeant Course from 13 February to 8 October 2020. He also completed the Special Forces Senior Leaders Course from 4 October to 18 November 2021.

3. On 15 May 2022, by memorandum to the State ARNG Property and Fiscal Officer, the [REDACTED] ARNG G-1 submitted Request for de facto status for the applicant. This memorandum states:

a. The applicant promoted to Gunnery Sergeant, E7 in the Marine Corps on 1 April 2012 and discharged from the Marine Corps as an E7 on 11 January 2013. He later joined the U.S. Air Force at the rank of TSgt/E6 on 16 April 2015. He was discharged on 11 August 2015 as a TSgt/E6. On 20 April 2018, he enlisted in the [REDACTED] ARNG at the grade of E7; per policy, however, there was a mistake, and the applicant should have been

enlisted at his previously held grade of E6. He later transferred to the ■■■ ARNG on 2 May 2019 as an E7 and continues to hold the grade of E7 as of this writing.

b. The applicant has undertaken efforts to move his career onto active duty in the regular army and has secured a position in 3rd SFG(A). However, during the conditional release process and prior to his accession onto active duty, it was identified that the applicant's enlistment at the grade of E7 violated existing policy; because his service in the Air Force was most recent, he should have been enlisted at the rank of SSG (E6). Pursuant to AR 600-8-19, para. 10-1, when the applicant joins the Regular Army, he will likely be reduced in order to correct the error. Therefore, the ■■■ ARNG will undertake steps to correct the applicant's grade and date of rank to reflect the required enlistment grade of E6. The correction transaction, to which the applicant consents, will cause a debt to be incurred, affecting all pay and allowances dating back to his enlistment in the ■■■ ARNG.

c. On behalf of the applicant, the ■■■ ARNG G1 seeks to have the US Property and Fiscal Officer for the ■■■ National Guard grant the applicant de facto status, preventing collection of this debt. The debt would be incurred at no fault of the applicant, who merely enlisted at the highest grade granted to him by ARNG recruiters, who can even support their enlistment process by pointing to a prior, faulty grade determination that neglected his USAF service period. The enlistment, therefore, had the clear effect of an erroneous promotion, for which the applicant was not responsible and should not be penalized. In consulting with the Staff Judge Advocate, there is no identified statutory bar to the applicant having received E7 pay during the past several years. His enlistment at that grade violated only an Army policy, lacking the force of statutory law.

4. On 18 May 2022, by authority of The Adjutant General, and Army Regulation (AR) 600-8-19 (Enlisted Promotion and Reduction) the ■■■ ARNG published Orders 0001829641.00 demoting the applicant to E6 due to "Erroneous Promotion." The

- Demotion Rank: SSG
- Demotion Rank Entry Date: 20 April 2018
- Demotion Grade Entry Date: 20 April 2018

5. On 7 June 2022, the applicant enlisted in the Regular Army (active duty) in the grade of SSG/E-6 for 3 years.

6. On 31 July 2023, he was issued Orders 0005537254.00 promoting him to SFC/E-7 (in the Regular Army) effective 1 August 2023 by authority of AR 600-8-19.

- Effective Date: 01 August 2023
- Promotion Rank: SFC

7. On 5 December 2023, the U.S. Army Human Resources Command provided an advisory opinion in the processing of this case. A promotion Branch official referenced Army Regulation 600-8-19, dated 26 October 2023, Enlisted Promotions and Reductions, and stated:

a. After a review of the applicant's request, HRC Enlisted Promotions Branch has determined administrative relief is not warranted and unsubstantiated. The applicant was promoted to SFC by promotion order 0005537254, dated 31 July 2023, with a DOR and effective date of 1 August 2023, due to his OML (order of merit list) passing in his MOS (military occupational specialty) for that date while he was fully qualified for promotion on the Fiscal Year 2023 SSG Evaluation Board.

b. The applicant was demoted by the [REDACTED] Army National Guard prior to his accession onto active duty. The reason given was an erroneous promotion as he was accessed into the [REDACTED] Army National Guard from an earlier enlisted with the United States Air Force, which he discharged from as an E-6. Therefore, he should have accessed as SSG, not SFC into the [REDACTED] Army National Guard. This was explained by the [REDACTED] ARNG G-1's request for de facto status in the support documentation the applicant's attached to his ABCMR request.

c. Enlisted Promotions has no authority to restore the applicant's rank to SFC when he assessed onto active duty. Any authority to restore that rank would rest with the [REDACTED] Army National Guard, but the [REDACTED] ARNG G-1 memorandum also stated that the applicant consented to the demotion.

8. The applicant was provided with a copy of this advisory opinion to give him an opportunity to provide a rebuttal. He did not respond.

BOARD DISCUSSION:

1After 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. The Board noted that the applicant was promoted to SFC by promotion order 0005537254, dated 31 July 2023, with a DOR and effective date of 1 August 2023, due to his OML (order of merit list) passing in his MOS (military occupational specialty) for that date while he was fully qualified for promotion on the FY23 SSG Evaluation Board. The applicant previously served in the USAF and was discharged from that component as an E-6. He was erroneously accessed into the ARNG as a SFC by mistake. Since the accession grade was in error, he was demoted by the [REDACTED] ARNG prior to his accession onto active duty due to an erroneous promotion, as he was accessed into the [REDACTED] ARNG from an earlier enlisted status with the USAF. This means he

should have accessed as SSG, not SFC into the [REDACTED] ARNG. Not only was he accessed in the higher grade in error, this error was explained to the applicant and he consented. Therefore, the Board determined there no error or injustice.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

			GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[REDACTED]			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 [REDACTED]

CHAIRPERSON
[REDACTED]

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:

Army Regulation 600-8-19 (Enlisted Promotions and Reductions) provides for the promotion and reduction of enlisted Soldiers. De facto status refers to a member, who was promoted by competent authority, performed duties of the higher grade, and accepted pay and allowances of the higher grade in good faith and without intent to

defraud. Paragraph 1-20 (Erroneous promotions and de facto status) of the regulation currently in effect states

a. Instruments announcing erroneous promotions will be revoked. When a Soldier has been erroneously promoted and has received pay at the higher grade, a determination of de facto status may be made only to allow the Soldier to keep any pay and allowances received at the higher grade.

b. De facto status may be granted by the promotion authority or higher commander after legal review by the servicing Staff Judge Advocate's office. A U.S. Property and Fiscal Officer is the final approval authority for Title 32 ARNG personnel for all grades. In determining whether a Soldier is entitled to de facto status, a factual evaluation must be made to determine whether—

- A promotion order/instrument has been issued.
- The Soldier occupied the higher grade in good faith.
- The Soldier actually discharged the functions of the higher grade.
- There is no absolute statutory bar to his or her receipt of the pay at the higher grade.

c. De facto status for Soldiers erroneously promoted to SFC, MSG, and SGM will be determined as follows:

- CG, HRC (AHRC – PDV – PE) for all active duty and for USAR (AGR, IRR, IMA) Soldiers
- CG, appropriate RD, for all USAR TPU Soldiers
- Director ARNG for all (USC Title 10) ARNG Soldiers.

d. In all cases, promotions revoked because of voluntary actions such as a retirement or declination will not result in de facto status. All requests for de facto status on a Soldier erroneously promoted to the ranks of SFC, MSG, and SGM must be reviewed by the Soldier's servicing Staff Judge Advocate's office prior to being submitted for final decision to the determining authority as listed immediately above.

//NOTHING FOLLOWS//