

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20230006257

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

- removal and reversal of the State of Georgia Army National Guard non-judicial punishment (NJP) proceeding, under provisions of the State of Georgia, Official Code of Georgia Annotated, 10 January 1993
- promotion to the rank/grade of staff sergeant (SSG)/E-6
- personal appearance before the Board (via video/phone)

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Three DD Forms 256A (Honorable Discharge Certificate)
- Three training certificates
- Certificate of achievement
- Letter of commendation
- State of Georgia Commendation Medal
- DD Form 215 (Correction to DD Form 214 (Certificate of Release or Discharge from Active Duty)) for the period ending 24 August 1984
- DA Form 2166-3 (Enlisted Evaluation Report)
- DA Forms 1059 (Service School Academic Evaluation Report)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 14 May 1991
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- Permanent Orders 70-35, dated 1991
- DA Form 2166-7 (Noncommissioned Officer Evaluation Report)
- Two DD Forms 1351-2 (Travel Voucher or Sub-voucher)
- Letter issued by the Georgia Department of Defense, 18 December 1992
- Punishment Proceedings Under Section 38-2-360, official Code of Georgia Annotated (O.C.G.A.), 10 January 1993
- Memorandum subject: Request for Appeal Under Charges that were Imposed on Sergeant (SGT) M. on 10 January 1993
- Partial Chapter 3 of Army Regulation (AR) 27-10 (Legal Services Military Justice)
- A statement provided by Mr. D. L.

- Memorandum subject: Request for Appeal of NJP of SGT M. on 10 January 1993
- Appeal Denial, 18 February 1993
- Official notice of information filled in DA 210 File
- Orders 125-23, 29 June 1993
- ABCMR Docket Number AR20180006320, 26 November 2019
- ABCMR Docket Number AR20190012913, 28 May 2021
- ABCMR Docket Number AR20220001742, 6 December 2022, with application attachments

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Dockets Number:

- AR20150002138 on 5 January 2016
- AR20190012913 on 28 May 2021
- AR20220001742 on 6 December 2022

2. The applicant states, he is asking for reconsideration of his previous requests to be based on his medical and financial records. He believes he was targeted due to his race and because the captain did not like him. He lost blood while performing military duty and was not given proper care while serving in Saudi Arabia, this left him weak enough to seek medical attention, but he was instructed to follow up once he returned to his home station. This conditions still persists and should be in his medical file. He lost part of his memory while he was being separated, he sought out help and even attempted suicide several times. He received no help and was never diagnosed. He is submitting additional evidence to show that a correction was for his \$55.00 mistake was submitted. He was reduced in rank after his divorce which caused hardships. If that mistake was to be removed, nothing would prevent his promotion. The statement is available in its entirety for the Boards review.

3. The applicant provides a DD Form 1351-2 (Travel Voucher or Sub-voucher) 2 November 1992, as an additional document, not previously considered by the Board. This document shows he traveled from 29 October 1991 to 30 October 1991 for a total distance of 222 miles.

4. The applicant's service record reflects the following:

a. He enlisted in the Regular Army on 20 January 1976. He followed that with multiple reenlistments. Following service in Germany and Korea, he was honorably discharged on 24 August 1984. He completed 8 years, 7 months, 5 days of active service.

b. On 25 August 1984, he enlisted in the Georgia Army National Guard (GAANG) in the grade of sergeant (SGT)/E-5.

c. He entered active duty on 21 November 1990 in support of Operation Desert Shield/Storm. He served in Southwest Asia 5 January 1991 to 4 May 1991

d. His DD Form 214 for this period shows he was honorably released from active duty on 31 May 1991, and was transferred to 122nd Support Center, Lawrenceville, GA. He completed 5 months. His grade at the time of discharge was SGT/E-5.

e. He entered active duty in Full Time National Guard Duty (FTNGD) in Active Guard/Reserve (AGR) status and was assigned to 2nd Battalion, 121st Infantry, GAARNG.

f. DA Form 2173 shows the applicant was treated for neck, upper and lower back and left hip pain due to being struck while operating a government vehicle, on 12 July 1991. He was transported by ambulance to the hospital, he was treated and released on the same day. The applicant was on active duty at the time of treatment. A Formal Line of Duty Investigation (LODI) was not required. The injury was considered to have been incurred in Line of Duty (LOD).

g. On 10 January 1993, the applicant's ARNG commander informed him he was considering whether he should be punished under Section 38-2-360, O.C.G.A. for: on or about 2 November 1992 by preparing a voucher for approval and payment in the amount of \$55.00 for mileage by memorandum (Certificate of Non-availability), for a date of 29 October 1992 which was known by him to be false, a violation O.C.G.A. 38-2-551, Fraud against the government.

(1) The applicant acknowledged receipt, did not elect trial by court-martial, and indicated he would present matters in person.

(2) The imposing officer found him guilty. His punishment consisted of reduction in grade to specialist (SPC) E-4.

h. In a memorandum subject: Request for Appeal of NJP of [Applicant] the applicant states the following:

(1) The charge of fraud against the government, as he understood it, resulted from his "Certificate of Non-availability" submittal of a mileage claim for expenses used for government transportation. Since this certificate was a photocopy of a previously issued certificate, rendered it invalid due to the duplicate control number, (number 86), which was previously used.

(2) For his claim to be false the following must be true: The claim or a portion of the claim must be false. He had no knowledge at the time of the claim was made that the claim or portions of the claim were false, and he did not submit a claim with the intent to defraud the government

(3) He appealed the NJP due to:

- He was not guilty of this offense
- His claim for reimbursement of travel was accurate and for expenses incurred while in LOD, as government travel was not available
- He made a photocopy of the certificate of non-availability without knowledge it was violating battalion procedures
- he did not sign Mr. T. name on the certificate but photocopied a previous copy placing a white label over Mr. T. signature of the original form and Mr. T. actually signed the form
- He contacted CPT M. for instructions on how to submit his claim but he gave him no indication that the method he used did not conform to policy
- The punishment imposed was excessive and unfair as he did not have any intent to claim expenses that were not accurate
- He was loyal, devoted to duty and has served at a time of war even when facing situations that would warrant a compassionate reassignment
- He asked not to be reduced in rank/grade or that the reduction be suspended

i. On 18 February 1993, the appellate authority denied the applicant's appeal for relief of his NJP and on 3 March 1993, information of his NJP was filed in the applicant's service record.

j. Orders 125-23, issued on 29 June 1993 show the applicant was relieved from 2nd Detachment, D Company, 2nd Battalion, 121st Infantry, Lawrence, GA, as a Full Time National Guard Duty (FTNGD) in Active Guard/Reserve (AGR) status, and reassigned to Headquarters, 2/121st Infantry, Winder, GA, with a report date of 1 September 1993.

k. DA Form 3349 (Physical Profile) shows he was issued a permanent profile on 3 October 1993, due to chronic low back pain, herniated L5-S1 disk. His profile contained lifting and physical activity restrictions.

l. His DA Forms 2-1 (Personnel Qualification Record) shows in:

(1) Item 5 (Oversea Service): Saudi Arabia, from 5 January 1991 to 4 May 1991.

(2) Item 18 (Appointments and Reductions):

- 17 October 1986: Promotion to SGT
- 3 July 1990: Promotion to SGT
- 28 February 1993: Promotion to SPC
- 26 February 1994: Promotion to SGT

m. Orders 098-03, 21 June 1996 show the applicant was retired from active duty with an effective date of 31 October 1996 and the retired grade of SGT. This document further shows this was a voluntary retirement after 20 years and 26 days of service.

n. His DD form 214 shows he was honorably retired from active duty on 31 October 1996, pursuant to Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 12, Sufficient Service for Retirement. However, this document also covers the same period as the aforementioned DD Form 214. He completed 11 years, 5 months, and 22 days of active service with 8 years, 7 months, and 4 days of total prior active service and 4 months, 15 days of foreign service. His grade at the time of discharge was SGT/E-5.

o. DD Form 215 shows a correction was made for the period ending 31 October 1996, to add the Korea Defense Service Medal (KDSM) to the applicant's corresponding DD Form 214.

p. The applicant's NGB Form 22 (Report of Separation and Record of Service (Automated Document in Lieu of NGB Form 22) shows he was honorably retired on 31 October 1996. He served 12 Years, 2 months, 7 days and was retired at grade of SGT.

5. In a prior ABCMR Docket AR20150002138, dated 5 January 2016, the applicant requested retroactive promotion to SSG/E-6 with back pay and allowances. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of the case were insufficient as a basis for correction of the records of the individual concerned. The applicant's request for promotion was carefully considered, although he contended, he should have been promoted beyond the rank/grade of SGT/E-5, his records were void of any evidence he was ever recommended for or promoted beyond that grade.

6. In a prior ABCMR Docket AR20190012913, dated 28 May 2021, the applicant requested reconsideration of his previous request for promotion to SSG/E-6, removal, and reversal of a State Army National Guard NJP proceeding under provisions of the State of Georgia, Official Code of Georgia Annotated, 10 January 1993 and a personal appearance before the Board.

a. The Board found no evidence indicating the applicant was recommended for or promoted to SSG/E-6 during his military service. The Board considered his reduction in grade and found insufficient evidence to support a conclusion that the NJP he received was improper or unjust. While this reduction may have adversely affected his chances of being promoted to SSG/E-6, the Board agreed that any conclusions regarding a possible future promotion would be purely speculative.

b. Based on a preponderance of evidence, the Board determined the applicant's rank at the time of his retirement was not in error or unjust. The evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of the case were insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20150002138, dated 5 January 2016.

7. In the previous ABCMR Docket AR20220001742, dated 6 December 2022, the applicant requested reconsideration of his previously reconsidered request for promotion to the rank/grade of SSG/E-6 removal, reversal of a State Army National Guard NJP proceeding under provisions of the State of Georgia, Official Code of Georgia Annotated, 10 January 1993, and personal appearance before the Board.

a. A personal appearance hearing was not necessary to serve the interest of equity and justice in this case, as the evidence of record was sufficient to render a fair and equitable decision. Based on a preponderance of evidence, the Board determined the applicant's rank at the time of his retirement was not in error or unjust. The Board did not find evidence to show his State NJP was in error or unjust.

b. 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 to amend the decision of the ABCMR set forth in Dockets Number AR20190012913 on 28 May 2021 and/or AR20150002138 on 5 January 2016.

8. Due to the applicant's other mental health conditions, injuries, and medical conditions he incurred while on active duty, the case is being forwarded to the Behavioral Health and Medical staff at the ARBA.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. State NJP: Deny. The applicant violated the State ARNG military justice. He was advised by his commander of such violation. The imposing commander found him guilty and punished him with a reduction to E-4. The applicant appealed to the higher authority and his appeal was denied. He ultimately retired due to length of service in the grade of SPC/E-4. The Board found no evidence his NJP is in error or unjust. The Board also found no evidence his due process was violated or that he was denied any rights. He contends that he was targeted due to his race and because the captain did not like him but did not provide the documentary evidence to support such contention. He also contends he lost blood while performing military duty and was not given proper care while serving in Saudi Arabia but did to provide evidence confirming the loss of blood caused the voucher fraud. Therefore, the Board determined relief is not warranted.

b. Grade: Deny. The evidence of record shows the applicant enlisted in the ARNG as SGT/E-5. During his service in the ARNG, he received NJP that resulted in his reduction to SPC/E-4. He held that grade at the time of retirement. The Board found no evidence he was recommended or promoted to a higher grade between the date of reduction and the date of retirement. Promotions to the grade of SGT and SSG require a promotion recommendation, appearance before a promotion board, addition to the standing list, and meeting other requirements (order of merit list, position vacancy, cut-off scores, education, etc.). Therefore, the Board determined a change to his grade is not warranted.

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:

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 to amend the decision of the ABCMR set forth in Dockets Number:

- AR20150002138 on 5 January 2016
- AR20190012913 on 28 May 2021
- AR20220001742 on 6 December 2022

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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. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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 may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.
2. National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), in effect at the time, prescribed the criteria, policies, processes, procedures and responsibilities to classify; assign; utilize; transfer within and between states; Army National Guard (ARNG) enlisted Soldiers. Promotion to the grades SSG/E-6 and above require promotion board action. Promotions to SPC/E-4 through command sergeant major and all lateral appointments are announced in orders.
3. Title 38, Chapter 2, Article 5, Section 38-2-360 of the Official Code of Georgia Annotated, provides the authority for Commanding Officer nonjudicial punishment. A person punished under authority of this Code section who deems his punishment unjust or disproportionate to the offense may appeal, through the proper channel, to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may be required in the meantime to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority shall have power to suspend, set aside, or remit any part or amount of the punishment and to restore all rights, privileges, and property affected. The commanding officer may impose:
 - withholding of privileges for a period not to exceed two consecutive weeks
 - restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks
 - extra duties for a period not to exceed two consecutive weeks and not to exceed two hours per day, holidays included
 - reduction to the next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command
4. Army Regulation 600-8-4 (Line of Duty (LOD) Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. Formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 (Statement of Medical Examination and Duty Status) completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 (Report of Investigation LOD and Misconduct Status) and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. The worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty is considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. An injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence & by a greater weight of evidence than supports any different conclusion. Evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

5. Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), provides Medical fitness standards for enlistment, induction and appointment, including officer procurement programs; Medical fitness standards for retention and separation including retirement; Medical fitness standards for diving, Special Forces Ranger, free fall parachute training and duty, and Military occupational specialties (MOSs) and officer assignments; Medical standards and policies for aviation; Physical profiles; Medical examinations. Chapter 7, Temporary vs. permanent profiles further explains:

- Permanent profiles. A profile is considered permanent unless a modifier of “T” (temporary) is added. A permanent profile may only be awarded or changed by the authority designated by Commanders of Army Military Treatment Facilities. Permanent profiles may be amended at any time if clinically indicated and will automatically be reviewed at the time of a soldier’s periodic examination. The soldier’s commander may also request a review of a permanent profile.
- Temporary profiles. A temporary profile is given if the condition is considered temporary, the correction or treatment of the condition is medically advisable, and correction usually will result in a higher physical capacity. Soldiers on active duty and RC soldiers not on active duty with a temporary profile will be medically evaluated at least once every 3 months at which time the profile may be extended by the profiling officer.

//NOTHING FOLLOWS//