

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230006563

APPLICANT REQUESTS: 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)

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 in pertinent part that he was advised that his rank would be restored to SFC/E-7 after he was retired for 10 years. He contests that this has not occurred, and he was led to believe otherwise in order to get rid of him.
3. A review of the applicant's available service records reflects the following:
 - a. On 18 January 1968, the applicant was inducted into the Army of the United States, as a private (PVT)/E-1 to serve as an 88M (Motor Transport Operator).
 - b. On 4 December 1974, the applicant was promoted to the rank/grade of staff sergeant (SSG)/E-6.
 - c. On 29 December 1979, the applicant was promoted to the rank/grade of (SFC)/E-7.
 - d. On or about 13 March 1986, (General Court Martial Order Number 19) the applicant was arraigned tried before a general court-martial in Manheim Germany. He was accused of and found guilty of violating Article 121 (Larceny), Article 123 (Falsely altering, with the intent to defraud) of the Uniform Code of Military Justice. The applicant was sentenced to be reduced to the lowest enlisted grade and to receive a bad conduct discharge.

- e. On 27 March 1986, the applicant's sentence was adjudged; reduced to PVT/E-1.
- f. On 12 May 1986, the applicant's sentence was approved and except for the part of the sentence extending to the bad conduct discharge, would be executed. The applicant's bad conduct discharge was suspended for 2 years at which time, unless sooner vacated would be remitted without further action.
- g. On 20 April 1987, Headquarters, 2nd Armored Division (Forward) issued General Court-Martial Order Number 9, which affirmed the applicant's sentence of a bad conduct discharge (suspended for 2 years from 12 May 1986) and reduction to the lowest grade, adjudged on 27 March 1986.
- h. On 15 June 1987, the 176th Personnel Service Company issued Orders Number 119-4 releasing the applicant from active duty and placing him on the retired list at the rank of PVT, effective 31 January 1988, in accordance with Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), Chapter 12.
- i. On 31 January 1988, the applicant was honorably retired from military service at the rank of PVT/E-1. DD Form 214 (Certificate of Release or Discharge from Active Duty) item 4a./b. (Grade, Rate or Rank/Pay Grade) reflects "PV1/E-1"; item 12h. (Effective Date of Pay Grade) reflects "27 March 1986"; item 24 (Character of Service) reflects "Honorable"; item 25 (Separation Authority) reflects "Chapter 12, AR 635-200; item 26 (Separation Code) reflects "RBD" (For Length of Service).

BOARD DISCUSSION:

After reviewing the application and all supporting documents and the evidence found within the military record, the Board found relief was not warranted. The Board carefully considered applicant's contentions, military record and regulatory guidance. The Board carefully considered supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board noted the applicant's period of service, severity of the misconduct and the reason for separation. In the absence of evidence attesting to post-service achievements or letters of reference to weigh in support of a clemency determination, the Board determined the rank held at the time of discharge is not in error or unjust and a correction to his record is not warranted.

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. AR 15-80 (Army Grade Determination Review Board and Grade Determinations) Chapter 3 (Enlisted Personnel Grade Determinations) provides that 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 set forth in this chapter. While enlisted Soldiers may be reduced in grade by courts-martial, nonjudicial punishment proceedings (see UCMJ, Article 15), administrative separation proceedings, or inefficiency boards, enlisted grade determinations cannot result in reduction of an enlisted Soldier's or retiree'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.

a. Title 10, USC, section 7344 entitles retired members of the Army who are retired with fewer than 30 years of active service, when such member's active service plus service on the retired list totals 30 years, to be advanced on the retired list to the highest grade served during active service satisfactorily. The AGDRB reviews each case individually to determine the highest grade served during active service satisfactorily. This is not an automatic advancement on the retired list. "Highest grade served on active duty" is the grade to which a Soldier was promoted and paid pursuant to a lawful promotion.

b. When a reduction from the highest grade served was caused by misconduct, inefficiency, or for cause, the retiree can initiate the grade determination process within 6 months before the 30-year mark or later. In such cases, the retiree is presumed not to have served satisfactorily in the higher grade.

c. Paragraph 2-5 (Unsatisfactory Service) provides that Service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when reversion to the lower grade was:

- expressly for prejudice or cause
- owing to misconduct
- caused by nonjudicial punishment pursuant to UCMJ, Article 15
- the result of the sentence of court-martial

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 sub-standard performance can result in a determination that service in grade was unsatisfactory.

3. Title 10, USC, section 7344 (Higher Grade After 30 Years of Service: Warrant Officers and Enlisted Members) provides that each retired member of the Army who 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 (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Army.

//NOTHING FOLLOWS//