

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 February 2024

DOCKET NUMBER: AR20230006878

APPLICANT REQUESTS: reconsideration of his previous request for retroactive promotion to the rank/grade of master sergeant (MSG)/E-8 or first sergeant (1SG)/E-8.

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

- Self-authored letter in lieu of DD Form 149 (Application for Correction of Military Record)
- Monthly 2003 E-7 to E-8 Selection, 19 January 2003
- Veterans Affairs (VA) Letter, 21 June 2004
- VA Rating Decision Letter, 30 June 2004
- VA Decision Letter, 26 September 2010
- National Guard Bureau (NGB) Form 23B (Army National Guard (ARNG) Retirement Points History Statement), dated 15 July 2013
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20190003692

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 Number AR20190003692 on 9 April 2020.

2. The applicant states, in pertinent part:

a. His Battalion was activated two times from 2003 to 2005, which is one of the reasons his records could not be found by the VA.

b. The record shows his sleep apnea and stomach disorder (irritable bowel syndrome) was approved for disability percentage but was denied in 2004 due to not obtaining any records.

c. The statement for denial claimed he did not have enough credible years for retirement. However, as the record shows on his NGB Form 23B, dated 15 July 2013, he did have enough credible years for retirement.

d. The statement he provided shows he was in the top 5 on the state promotion list for MSG or 1SG. Only one Non-commissioned Officer (NCO) that had more points than him was not selected, and the NCOs listed on the promotion list were full-time Active Guard/Reserve (AGR) and did not have an open slot unless they gave up their current position for a weekend drill only.

e. Lastly, at the time of his separation from the Kentucky ARNG (KYARNG), both his Battery and Battalion were activated and then deployed. At the time no one informed him he was eligible for promotion due to separation from the medical board. A few years after his retirement, his retired Battalion Commander informed him that he was eligible and that he should have been notified, as stated in his previous ABCMR Docket Number AR20190003692 letter from Colonel T-.

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

a. On 13 March 1981, he enlisted in the KYARNG for a period of 6 years at the rank/grade of private (PVT)/E-1.

b. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), dated 21 December 1995 shows he extended his service with the KYARNG for a period of 3 years at the rank/grade of sergeant (SGT)/E-5.

c. DA Form 4836, dated 23 January 1999 shows he extended his enlistment with the KYARNG for a period of 6 years at the rank/grade of staff sergeant (SSG)/E-6.

d. DA Form 2-1 (Personnel Qualification Record), item 17 (Civilian Education and Military Schools) shows the applicant completed the Reserve Component Advanced Noncommissioned Officer Course (ANCOC) in 1999.

e. On 4 February 2000, the Department of Military Affairs, Boone National Guard Center issued Orders Number 035-803 promoting him to the rank/grade of sergeant first class (SFC)/E-7 with a retroactive effective date and date of rank of 1 February 2000.

f. A memorandum subject: Fit for Duty Review Board, dated 5 March 2003, which states the fit for duty review board reviewed the applicant's medical records on 27 February 2003 and found he was unfit for retention. The letter further informed him he was recommended for separation, and if he refuted the decision, he needed to submit additional medical documents by 8 April 2003; he did not have enough creditable years for retirement.

g. On 4 April 2003, the Department of Military Affairs, Boone National Guard Center

issued Orders Number 094-802 honorably discharging him from the ARNG and reassigning him to the Retired Reserve, effective 30 April 2003, at the rank/grade of SFC/E-7.

h. NGB Form 22 (Report of Separation and Record of Service), dated 30 April 2003 reflects an honorable discharge and transfer to the Retired Reserve, at the rank/grade of SFC/E-7, with service from 13 March 1981 to 30 April 2003 for a net service this period of 22 years, 1 month, and 18 days.

i. ABCMR Docket Number AR20190003692, decided on 9 April 2020, wherein he requested retroactive promotion to MSG/E-8 or 1SG/E-8. The Board determination denied his request stating, in effect, after reviewing the application and all supporting documents, the Board found the relief was not warranted. The evidence of record shows a Fit for Duty Review Board found the applicant unfit for retention and recommended his separation. Because he had completed 20 or more qualifying years of service, he was transferred to the Retired Reserve. Per the provisions of Title 10 United States Code (USC), section 1372, Soldiers on a promotion list who are retired for physical disability (Title 10 USC 1201 or 1204) or who are placed on the temporary disability retired list (Title 10 USC 1202 or 1205) at the time of retirement for disability will be retired for disability at the promotion list grade and the Soldier will be promoted effective the day before placement on the retired list. However, the Board found no evidence the applicant entered the disability evaluation system or retired due to disability. Based on the preponderance of the evidence, the Board determined the rank he received at the time of his transfer to the Retired Reserve is not in error or unjust.

j. On 8 February 2021, the U.S. Army Human Resources Command issued Orders Number C02-190697 placing him on the retired list, effective 15 July 2021, in the rank/grade of SFC/E-7.

k. The applicant's records are void of orders promoting him to the rank/grade of MSG/E-8. Likewise, it is void of Physical Evaluation Board proceedings.

4. The applicant provides the following:

a. Monthly 2003 E-7 to E-8 selection roster, dated 19 January 2003, showing his name and a total of 586.7 points.

b. VA Letter, dated 21 June 2004, showing the Agency was unable to obtain his records for the period 23 April 1981 to 17 July 1981 and 9 December 1990 to 14 June 1991.

c. VA Rating Decision Letter, dated 30 June 2004, previously considered under ABCMR Docket Number AR20190003692.

d. VA Decision Letter, dated 26 September 2010 showing no change in disability rating percentage to his service-connected medical conditions.

e. NGB Form 23B, dated 15 July 2013 showing the applicant completed 22 years, 1 month, and 18 days creditable service for retired pay and his highest grade held was SFC/E-7.

BOARD DISCUSSION:

1. 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.

2. The applicant held the rank/grade of SFC/E-7 at the time of his discharged from the ARNG and transfer to the Retired Reserve. The Board is not convinced that an error or injustice exists regarding this matter, and found insufficient evidence to grant the applicant's request, in part, for reasons:

a. a Fit for Duty Review Board found the applicant unfit for retention and recommended his separation. However, because he had over 20 qualifying years of service, he was transferred to the Retired Reserve.

b. The applicant was not retired for physical disability, therefore, the various provisions of Title 10 United States Code (USC), [section 1372, Title 10 USC 1201 or 1204, and USC 1202 or 1205] do not apply to the applicant.

c. There is no evidence a position vacancy was reasonably available for the applicant to fill at the time he was discharged and transferred to the retired Reserve.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

he 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 decision of the ABCMR set forth in Docket Number AR20190003692, dated on 9 April 2020.

█

█ █

█

█

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. National Guard Regulation 600-200 (Enlisted Personnel Management) in effect at the time states in:

a. Paragraph 6-18 (Advancement/promotion to pay grade E-4 through E-9) a Soldier must be in the active ARNG, be recommended by the unit commander, have completed the time in grade and time in service and all other applicable criteria in table 6-3. Be military occupational specialty qualified. Be in a promotable status. Be selected as best qualified by a board.

b. Table 6-3 shows a SFC/E-7 for promotion to MSG/E-8 must have 24 months' time in grade and 15 years' time in service (Promotion authority may waive up to 2 years' time in service). A position vacancy is required, must be military occupational specialty qualified, and must have completed the Active Component or Reserve Component Advanced Noncommissioned Officer Course. The promotion authority is a Field Grade Commander of a unit authorized a colonel (COL)/O-6.

2. Title 10, USC, section 3964 (Higher grade after 30 years of service: warrant officers and enlisted members) states, each retired member of the Army covered by subsection (b) 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//