

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230007238

APPLICANT REQUESTS: in effect –

- advancement and retired pay in the highest grade/rank satisfactorily held in the Army National Guard
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Page 2 of DA Form 2-1 (Personnel Qualification Record)
- DD Form 214 (Report of Separation from Active Duty), 15 October 1976
- Orders Number 24-17, 8 October 1993
- Orders Number 28-1, 29 October 1993
- Adjutant General's Office Commonwealth of Pennsylvania Memorandum - Subject: Notification of Eligibility (NOE) for Retired Pay at Age 60, 5 October 1995
- Attention Management Control document, 1 November 1995
- Commonwealth of Pennsylvania, Department of Military Affairs, The Adjutant General Memorandum - Subject: Reason of Discharge, 11 December 1995
- Orders Number 236-053, 11 December 1995
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 31 December 1995
- Pennsylvania Army National Guard (PAARNG) Retirement Services letter, 14 February 2023
- Verification of [applicant's] time and grade statement, 15 February 2023

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 while in the PAARNG on 9 September 1991, he was promoted to the rank/grade of staff sergeant (SSG)/E-6 and held the rank for 2 years and 1 month. He had to take a voluntary reduction to the rank/grade of sergeant (SGT)/E-5. He lost or misplaced the paperwork during his divorce. When he contacted Fort Indiantown Gap, PA, they told him that they could not find records. J_ M _G_ found some records showing SSG. Please make the appropriate changes in pay and rank.

3. A review of the applicant's military record shows the following:

a. On 6 September 1975, DD Form 4 (Enlistment Contract - Armed Forces of the United States) shows he enlisted in the PAARNG and lists his date of birth as 13 December 1957. He served continuously until he retired.

b. DA Form 2-1, item 18 (Appointments and Reductions) shows he was promoted to the rank/grade of SSG/E-6, effective 9 September 1991.

c. DA Forms 2166-7 (Noncommissioned Officer Evaluation Report) covering the period(s) of November 1991 to October 1993 show he was evaluated in the rank of SSG and received ratings of excellence, success, and among the best.

d. Orders Number 24-17 published by the PAARNG, Headquarters, 2d Battalion, 112th Infantry, reduced the applicant to the rank/grade of SGT/E-5, effective 11 October 1993. The orders list the reason as "Voluntary Reduction - Request of Soldier dtd [dated] 13 September 1993."

e. On 5 October 1995, the Adjutant General's Office, Commonwealth of Pennsylvania issued the applicant a Notification of Eligibility for Retired Pay at Age 60.

f. On 30 November 1995, the applicant accepted punishment under the provisions of Section 5301 of the Pennsylvania Code of Military Justice (PCMJ) for disobeying a lawful order to perform the Army Physical Fitness Test on or about 0600 hours on 5 November 1995 and absenting himself from a scheduled Training Assembly from his unit on or about 1100 hours until about 1615 hours on 5 November 1995. This violated PCMJ Section 6010. His punishment consisted of reduction to the rank/grade of specialist SPC/(E-4). He did not appeal.

g. On 30 November 1995, the PAARNG, Headquarters, 2d Battalion, 112th Infantry, published Orders Number 69-6, which awarded the applicant primary Military Occupational Specialty (MOS) 94B10 (Food Service Specialist) and secondary MOS 11B10 (Infantryman). In pertinent part, the additional instructions state "Reduction from SGT effective 30 November 1995".

h. On 11 December 1995 –

(1) The PAARNG, Office of the Adjutant General issued a Memorandum - Subject: Reason for Discharge, which informed the applicant's commander that the applicant was being discharged based on his request to be retired, effective 31 December 1995.

(2) The PAARNG, Office of the Adjutant General published Orders Number 236-053, which discharged the applicant from the ARNG and assigned him to the Retired Reserve (Reserve Components), effective 31 December 1995. The orders list his rank as SGT.

i. On 31 December 1995, NGB Form 22 shows the applicant was released from the PAARNG and transferred to the Retired Reserve in the rank of SGT with a DOR of 11 October 1993. He completed 20 years, 3 months, and 26 days net service this period, and his total service for pay shows 21 years and 6 months.

j. NGB Form 23A (Army National Guard Current Annual Statement) prepared on 30 January 1996, shows his rank as SPC.

k. On 29 January 2018, Orders Number C01-890603 issued by the U.S. Army Human Resources Command, retired the applicant and placed him on the retired list in the rank/grade of SGT/E-5.

4. In support of his case, the applicant provides the following:

a. DD Form 214 ending on 15 October 1976, which shows he was honorably released from active duty for training after completing training for MOS 94B10.

b. Orders Number 28-1 dated 29 October 1993, which amended Orders Number 24-17 to read Orders Number 27-17.

c. Attention Management Control document dated 1 November 1995, which shows his unit Retention NCO and Battalion Commander recommended approval of his retirement request.

d. PAARNG Retirement Services letter from J_ M_ G_, dated 14 February 2023, wherein he states, the applicant contacted the office and explained that he should be a SSG and not SGT since he held the rank of SSG in good standing for the required amount of time before being reduced to SGT due to unit reorganization. The applicant was promoted to the rank of SSG on 9 September 1991 and reduced to SGT on 11 October 1993. This information was found on a partial DA Form 2-1 located in his record. This record does not state whether his reduction was for inefficiency or misconduct.

e. Statement from Master Sergeant (Retired) N_ P_ K_ dated 15 February 2023, wherein he states, the applicant was the assistant Mess SGT in the company at the time. In 1993, the battalion Modified Table of Organization and Equipment changed. The mess section was reduced to one E-7 position and one E-6 position for the battalion. Because of excess E-6 positions, the applicant was asked to take a voluntary reduction in October 1993. The applicant's time in grade was 25 months when he took the voluntary reduction.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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 Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board agreed that the applicant was promoted to the rank/grade of SSG/E-6, effective 9 September 1991. Subsequent to holding the rank/grade of SSG/E-7, the mess section was reduced to one E-7 and one E-6 position for the battalion. As that resulted in excess E-6 positions, the applicant was asked to take a voluntary reduction in October 1993. His time in grade was 25 months when he took the voluntary reduction. He took voluntary retirement effective 11 October 19. As that did not provide him sufficient time in grade, his grade as shown is not in error or unjust. After due consideration of the case, the Board determined the evidence presented insufficient 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:

The Board determined 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 and a correction to his record to show the highest grade held as SSG/E-7 is not warranted.

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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. 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 (ABCMR)) 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. The ABCMR is not an investigative agency. Paragraph 2-11 states, 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.
3. AR 135-180 (Qualifying Service for Retired Pay Nonregular Service), in effect at the time, implements statutory authorities governing the granting of "retired pay" to Soldiers and former Reserve components Soldiers. In pertinent part, the regulation states:
 - a. Paragraph 2-11 (Computation of retired pay) states, retired pay will be computed by the Retired Pay Division, U.S. Army Finance Support Agency, Indianapolis, IN 46249, upon receipt of orders and data prescribed in paragraph 2–10, from the Commanding General, Army Reserve Personnel Center (ARPERCEN). A person granted retired pay will receive such pay in the highest grade (temporary or permanent) satisfactorily held by him or her during his or her entire period of service.
 - b. The Retired Activities Directorate, ARPERCEN will screen each retirement applicant's record to determine the highest grade held by him or her during his or her military service. In arriving at the highest grade satisfactorily held, the following criteria will apply. If the Soldier was transferred to the Retired Reserve or discharged on or after 25 February 1975, retired grade will be that grade which a commissioned officer or enlisted Soldier held while on active duty or in an active reserve status for at least 185 days or six calendar months.
 - c. Service in the highest grade will not be deemed satisfactory and the case will be forwarded to the Secretary of the Army's Ad Hoc Review Board for final determination of the Soldier's retirement grade if, during the mandatory review of the Soldier's records by the Retired Activities Directorate, ARPERCEN, it is determined that any of the following factors exist:

(1) Revision to a lower grade was expressly for prejudice or cause, due to misconduct, or punishment pursuant to Article 15, UCMJ, or court-martial; or

(2) There is information in the Soldier's service record to indicate clearly that the highest grade was not served satisfactorily.

4. Title 10, USC, section 3964 - Higher grade after 30 years of service: warrant officers and enlisted members provides the legal authority for advancement on the Retired List. It states, in pertinent part, retired Soldiers who are retired with less than 30 years of active service are entitled, when their active service plus service on the Retired List totals 30 years, to be advanced on the Retired List to the highest grade they held and in which they satisfactorily served while on active duty as determined by the Secretary of the service concerned.

//NOTHING FOLLOWS//