

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 February 2024

DOCKET NUMBER: AR20230007485

APPLICANT REQUESTS: in effect, reinstatement of his revoked promotion to sergeant first class (SFC)/E-7 effective 1 January 2015 in the U.S. Army Reserve.

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

- DD Form 149 (Application for Correction of Military Record)
- Promotion Order 14-363-00249, 29 December 2014, Headquarters, 63rd Regional Support Command

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 he was promoted to sergeant first class by Order Number 14-363-00249, dated 29 December 2014. He received his promotion and transfer orders on 28 January 2015. He transferred to his new assigned unit. He spent 3 months' time in grade before his promotion orders were revoked by revocation order 15-067-00002, dated 8 March 2015. After the revocation, he was made to pay back all pay received in the rank of SFC. There was no explanation why his promotion was revoked. There was no disciplinary action issued and he was not in trouble. He has taken this up to every level of the chain of command for the last 9 years and has not received an explanation. He spoke with the active duty Transportation Corps sergeant major but still did not receive a viable answer. He has also reached out to JAG (Judge Advocate General) and he was told he did not have enough time in service and that is why his promotion was revoked. He had no break in service and he continues to serve in the U.S. Army Reserve. There is no reason why his promotion was revoked.
3. Review of the applicant's service records shows:

a. He enlisted in the U.S. Army Reserve (USAR) on 15 April 2005. He entered active duty for training and completed training for award of military occupational specialty (MOS) 88M, Motor Transport Operator.

b. His service included active duty mobilization from January 2008 to February 2009 and October 2010 to November 2011. He was promoted to staff sergeant (SSG)/E-6 in the USAR on 1 May 2011.

c. On 29 December 2014, Headquarters, 63rd Regional Support Command published Orders 14-363-00249 promoting him to SFC/E-7 in MOS 88M. Promotion is effective 1 January 2015 with a date of rank of 1 January 2015. The promotion is not valid, and this order will be revoked if he is not in a promotable status on the effective date of promotion. The Additional Instructions read:

(1) By accepting this promotion, he understood he must report for duty in the position to which promoted, comply with a reassignment order, if issued, and serve at least 12 months in the duty position (UIC WS08AA, Position Number 2055, Paragraph and Line Numbers 103/02) before voluntary reassignment to another TPU. Failure to initiate and facilitate reassignment to the position to which promoted may result in the promotion order being revoked. Additionally, all funds based on the higher grade may be recouped. Failure to decline the promotion in writing based on reassignment to the position within 90 days from the effective date of promotion will not justify a revocation in de facto status.

(2) A Soldier who accepts a promotion will incur a 36-month TPU service remaining requirement from the effective date of promotion. Soldiers must reenlist or extend to meet this requirement. Promotion orders will be revoked for a Soldier who fails to meet the Service Remaining Obligation.

d. He reenlisted in the USAR on 9 July 2016 and again he executed an indefinite reenlistment on 14 August 2020.

e. The applicant continues to serve in the USAR.

4. On 27 September 2023, Headquarters, USAR Command (USARC) provided an advisory opinion in the processing of this case. An advisory official references Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions) and stated this Headquarters conducted extensive research and provides the following.

a. Records indicate [Applicant] was considered and recommended for promotion to SFC in the MOS of 88M - Motor Vehicle Operator by the 81st RSC Senior Enlisted Promotion Board in September 2014. On December 29, 2014, Orders number 14-363-00249 were published promoting [Applicant] to SFC, with an effective date of 1 January

2015. The Additional Instructions in this order state: "A Soldier who accepts a promotion will incur a 36-month TPU service remaining requirement from the effective date of promotion. Soldiers must reenlist or extend to meet this requirement. Promotion orders will be revoked for a Soldier who fails to meet the Service Remaining Obligation."

b. In accordance with AR 600-8-19, Enlisted Promotions and Reductions, paragraph 4-8a, Effective with selection by a fiscal year 2012 promotion board, and all boards thereafter, Soldiers incur a 3-year (36-month) service obligation upon promotion to SFC, MSG, and SGM. The service remaining requirement begins on the effective date of promotion. Records show [Applicant's] Expiration Term of Service (ETS) date as of January 1, 2015, was April 14, 2017, as indicated on the enclosed DA Form 2A (USAR). SSG Harding had 27 months remaining on his contract; therefore, he was required to reenlist as directed by the additional instructions to meet the Service Remaining Obligation on the promotion order. Unfortunately, [Applicant] did not reenlist until July 2016. His promotion order was revoked in March 2015 for failure to meet the Service Remaining Obligation.

c. After exhaustive review of this case, this Headquarters cannot recommend relief for the applicant's promotion to SFC. Evidence indicates the applicant was notified of the Service Remaining Obligation requirement as stated in the Additional Instructions of the promotion order.

5. The applicant responded to the advisory opinion and stated:

a. After reading all appropriate regulations, he is of the understanding that he did not meet the requirements for time remaining in service to accept the promotion and that was the sole given reason as to why it was revoked. There are multiple problems with the way he was notified of the promotion, and it contradicts the regulation as well. He has the email chain from Mr. [REDACTED] and the RPAC. He was never notified of his promotion by his chain of command and neither losing or gaining chain of commands knew of his promotion, he only found out the promotion was revoked because there was a change on his LES (Leave and Earnings Statement) and a debt for overpayment. He had no formal promotion ceremony by his chain of command, he had no formal meetings with retention or a career counselor. His promotion and promotion orders were never given to him by any personnel from RPAC, Chain of Command, S-1, or leadership. He was not given promotion or transfer orders until he showed up for drill weekend and found out that he was no longer assigned to the unit.

b. Months later, he took the promotion orders and transfer orders to multiple chains of command, the USARC inspector general and the army transportation corps sergeant major. Not a single chain of command helped resolve the issue. With all of that noted, he had 27 months of remaining service limiting him to only be able to sign an extension contract to accept promotion. As the regulation states soldiers are only able to reenlist

within 12-months of the contract ETS date leaving him with only one option and that was to extend to meet the service requirement. Again, those options were never discussed or presented to him by his chain of command. He did reenlist in July of 2016 of his own accord because he wanted to continue serving in the Army Reserve. He had no intention of ETS when the original promotion orders were cut and currently, he is enlisted on an indefinite contract. This has completely ruined his career path and he has been stuck at no fault of his own as a Staff Sergeant since May 2011. He finds this absolutely unacceptable that every chain of command failed to provide the information to promote him or provide the information for career progression along with regulatory guidance.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.

2. Notwithstanding the conclusion of the advisory official, a majority of the Board found the evidence clearly shows the applicant intended to remain in an active status in the USAR as evidenced by his reenlistments in 2016 and in 2020. The majority concluded the evidence also indicates the applicant received insufficient support from his chain of command in ensuring his promotion remained in effect. Based on a preponderance of the evidence, the majority determined the applicant’s record should be corrected to show his promotion to SFC/E-7 was not revoked. He should be paid any monies he is due as a result of this correction retroactive to 1 January 2015.

3. The member in the minority concurred with the conclusion of the advisory official that the applicant’s promotion was revoked because he did not take action to meet the associated 36-month service obligation in a timely manner. The member in the minority determined the revocation of his promotion was not an error or unjust.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by revoking the order that revoked his promotion to SFC/E-7. The individual concerned should be paid any monies he is due as a result of this correction retroactive to 1 January 2015

5/6/2024

X 

CHAIRPERSON



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, U.S. Code, 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 600-8-19 (Enlisted Promotions and Reductions) prescribes policies and procedures governing promotion and reduction of Army enlisted personnel. Chapter 4 of the regulation in effect at the time provided for Centralized Promotions (Sergeant First Class, Master Sergeant, and Sergeant Major). Paragraph 4-8 states:

a. Effective with selection by a fiscal year 2012 promotion board, and all boards thereafter, Soldiers incur a 3-year (36-month) service obligation upon promotion to SFC, MSG, and SGM. The service remaining requirement begins on the effective date of promotion, unless Soldiers are in one of the following categories:

- Eligible for retirement based on RCP for the recommended grade.
- Already eligible through prior service for a higher rank at time of retirement.
- Age 62 or older.

b. Soldiers not having sufficient time remaining in service must reenlist or decline promotion in accordance with paragraph 1–25. If the pin-on is delayed for administrative

reasons, the service remaining requirement will begin on the original date the Soldier would have been promoted.

//NOTHING FOLLOWS//