

IN THE CASE OF: ██████████

BOARD DATE: 9 September 2024

DOCKET NUMBER: AR20230007569

APPLICANT REQUESTS: promotion to the rank/grade of sergeant (SGT)/E-5.

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 effect, he was not promoted to the rank/grade of SGT/E-5 due to prejudices towards black service members which has been well documented. These personal feelings denied him his promotion, he served his time as a specialist four (SP4)/E-4. He requests the correction of his injustice and be promoted to the rank/grade of SGT/E-5.
3. A review of the applicant's service record shows:
  - a. On 15 July 1970, the applicant enlisted in the Regular Army (RA) in the rank/grade of private one (PVT)/E-1.
  - b. On 3 December 1970, the applicant accepted non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for absenting himself from his appointed place of duty. His punishment included correctional custody for 7-days.
  - c. On 28 September 1971, the applicant was appointed/promoted to the rank/grade of SP4/E-4, effective 3 September 1971.
  - d. On 19 March 1973, the applicant was charged with being absent without leave on 17 March 1973.

e. On 13 June 1973, Special Court-martial Orders Number 15, issued by Headquarters (HQs), 2nd Brigade, 1st Armored Division, the applicant was found guilty of assaulting another service member by shoving him against the wall.

(1) The court sentenced him to 2-months confinement at hard labor and reduction to the rank/grade of PVT/E-1 which was adjudged on 4 May 1973.

(2) The convening authority approved the sentence was and ordered it duly executed but execution of so much thereof as provided for confinement at hard labor and the portion of the reduction to PVT/E-1 which was excess of the reduction to the rank/grade of private first class (PFC)/E-3 was suspended for 6-months. The sentence was deferred until 12 June 1973.

f. On 23 August 1973, Special Orders Number 235, issued by HQs, U.S. Army Personnel Center, the applicant was released from active duty, effective 23 August 1973, and assigned to the U.S. Army Reserve (USAR) Control Group (Reinforcement), effective 24 August 1973.

g. The applicant was honorably released from active duty on 23 August 1973 and assigned to the USAR Control Group (Reinforcement). DD Form 214 shows the applicant completed 3-years and 24-days of active service. It also shows in items:

- 5a (Grade, Rate or Rank): SP4 and 5b (Pay Grade): E-4
- 6 (Date of Rank): 3 September 1971
- 26a (Non-Pay Periods Time Lost): 2-9 March 1972 and 10-16 March 1973
- 30 (Remarks): 17-days lost under Title 10, USC, section 972 and retained in service 24-days for the convenience of the government

h. The applicant's service record was void of his service in the USAR.

i. On 28 November 1975, the applicant enlisted in the Army National Guard of the United States (ARNGUS) in the rank/grade of SP4/E-4. DD Form 4 (Enlistment Contract – Armed Forces of the United States) shows in item 49 (Prior Service) the applicant served in:

- RA during the period of 15 July 1970 through 23 August 1973, honorably released in the rank of SP4/E-4
- USAR during the period of 24 August 1973 through 27 November 1975, honorably released in the rank of SP4/E-4

j. On 26 November 1976, Orders Number 104-3, issued by the State of Wisconsin Department of Military Affairs, the applicant was discharged from the ARNGUS in the rank/grade of SP4/E-4, effective 27 November 1976.

k. On 27 November 1976, the applicant was honorably discharged from the ARNGUS. National Guard Bureau Form 22 (Report of Separation and Record of Service) shows in items:

- 3 (Grade): SP4
- 25 (Prior Service): RA during the period of 15 July 1970 through 23 August 1973 and USAR during the period of 24 August 1973 through 27 November 1975

BOARD DISCUSSION:

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. The evidence of record shows the applicant was promoted to SP4/E-4 on 3 September 1971. On 4 May 1973 he was convicted by a court-martial that reduced him to the lowest enlisted grade of private. However, the convening authority suspended the portion of the reduction to PVT/E-1 which was excess of the reduction to the rank/grade of private first class (PFC)/E-3 for 6-months. The applicant was ultimately separated on 23 August 1973 in the rank/grade of SP4/E-4. There is no evidence the applicant was recommended for or promoted to SGT/E-5 prior to his release from active duty. The Board also considered his contention that he was not promoted to SGT was due to prejudices at the time; however, the applicant's contention was not supported by any evidence. Therefore, based on a preponderance of evidence, the Board determined that the grade/rank the applicant received upon separation was not in error or unjust.

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 for correction of the records of the individual concerned.

9/9/2024

X [REDACTED]

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CHAIRPERSON  
[REDACTED]

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 600-200 (Enlisted Personnel Management System) in effect at the time, prescribes policies, responsibilities and procedures pertaining to career management of Army enlisted personnel.

a. Paragraph 7-6 (Non-promotable status) stated individual are in a non-promotable status while:

- absent without leave
- under court-martial charges
- serving court-martial sentence
- under discharge proceedings
- under suspension of favorable action
- awaiting or undergoing reclassification for inefficiency or disciplinary reasons
- undergoing punishment imposed under Article 15
- ineligible to reenlist
- without proper security clearance
- denied reenlistment through qualitative screening
- waiting for or undergoing board action which may result in removal from recommended list or reduction to lower grade
- fail Skill Qualification Test (SQT)
- fail to qualify for reenlistment or extension
- imposed bar to reenlistment
- approved voluntary retirement

b. Paragraph 7-15 (Eligibility and selection criteria), time in service for consideration for promotion to the grade of E-5 is 36-months in the primary zone and 24-month in the secondary zone. Time in grade for consideration for promotion to the grade of E-5 is 8-months - time in grade as an E-4. Must be recommended for promotion, pass the SQT. Once on the recommended list, must maintain promotable status and obtain the HQDA identified cut-off score for respective military occupational specialty.

3. National Guard Regulation 600-200 (Enlisted Personnel Management) in effect at the time, prescribes the policies, criteria and procedures pertaining to enlisted management. Paragraph 6-15 (Promotion to pay grade E-5), must meet the criteria:

- 12-months - time in grade as E-4
- achieve minimum SQT score
- recommendation by promotion selection board

//NOTHING FOLLOWS//