

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20230008847

APPLICANT REQUESTS:

- promotion to the rank/grade of sergeant first class (SFC)/E-7 with the date of rank (DOR) of 1 November 2006
- a personal appearance before the Board in person or via video/telephone

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

- DD Forms 149 (Application for Correction of Military Record)
- Applicant's statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 15 December 2008
- U.S. Army Human Resources Command letter to applicant, 5 January 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:

a. He served in the United States Army from 15 August 1996 to 15 December 2008. He is writing this letter to get the proper rank he earned in the U.S. Army. He was a member of the Columbia South Carolina Recruiting Battalion from September 2001 until his expiration term of service.

b. He was selected for promotion to SFC/E-7 in either fiscal year (FY) 2005 or 2006. His sequence number was number 221. His DOR should have been 1 November 2006, but he did not get promoted because he was being investigated and was subsequently flagged for a recruiting impropriety. He found out later that the investigation came back unsubstantiated in March of 2007. Per regulation the flag should have been removed and he should have been promoted to SFC that day, with the DOR of 1 November

2006, but he was never made aware of the investigation's conclusion. Instead, his battalion command kept him flagged and started an Administrative Separation Board (ASB) in May of 2007. The board convened in October 2007, where he was chosen to be retained in the Army, but removed from recruiting duty, reverting back to his Primary Military Occupation Specialty (PMOS) of 13B (Cannon Crewmember) from 79R (Recruiter). He was simply removed from the promotion list.

c. His complaint is that he should have already been an SFC when that board convened. Below is the chronological order of events to substantiate his claim:

- FY 2005/2006 – Selected for promotion to SFC with the PMOS of 79R4P
- August 2006 – Flagged and Investigated for Recruiting Impropriety
- 1 November 2006 – Supposed DOR for SFC sequence number 221
- March 2007 – Investigation found unsubstantiated. "Never made aware of this"
- May 2007 – Battalion notified him of ASB proceedings
- October 2007 – Administrative Board convened, chosen to be retained in Army, not recruiting duty and reverted back from 79R to 13B

d. In closing, he would really like this matter investigated thoroughly, so he can get the proper rank he deserved before separating from the service. Per regulation, since the investigation was found unsubstantiated in March 2007 the flag should have been removed and he would have been promoted with the DOR of 1 November 2006. Then another flag should have been placed in May of 2007 when the ASB was recommended. It is his belief that his battalion command[er] kept this flag on intentionally for him not to get promoted. He feels after this matter is investigated thoroughly; he will be awarded the rank of SFC with the DOR of 1 November 2006.

3. A review of the applicant's service records show:

a. He enlisted in the Regular Army on 15 August 1996 and served continuously through reenlistments and extensions until he was discharged due to disability with severance pay.

b. On 5 May 2003, Headquarters Fort McPherson published Orders Number 125-006, which promoted the applicant to the rank/grade of staff sergeant (SSG)/E-6, effective on with a DOR of 1 May 2003.

c. On 8 September 2008, the Headquarters, U.S. Army Recruiting Command (USAREC), Commanding General (CG) reprimanded the applicant for recruiting impropriety. The General Officer Memorandum of Reprimand (GOMOR) stated:

(1) The CG reviewed the report of investigation dated 29 April 2008, concerning the allegation of the applicant's misconduct. The CG "substantiated the case as a recruiting impropriety" because the preponderance of the evidence established that the applicant violated USAREC Regulation 601-45, paragraph 2-3f and USAREC Regulation 600-25, paragraph 2-1 (a)(2) by assisting other recruiters in obtaining child custody documents for numerous applicants who did not qualify for enlistment. The applicant also provided false transfer of custody documents for a fee of \$100.00 paid by each applicant.

(2) The applicant was reprimanded for his misconduct. As a noncommissioned officer and representative of the U.S. Army, the applicant was required to conduct himself beyond reproach. The applicant failed miserably in meeting this standard. The applicant's irresponsible misconduct undermined his potential as a leader in today's Army.

(3) The written reprimand was imposed as an administrative measure and not as punishment under Article 15, Uniform Code of Military Justice. The CG intended to file the GOMOR in the applicant's Official Military Personnel File (OMPF). The CG would not make a final decision about filing until after review of any matters submitted by the applicant on his behalf. The statements and documents upon which the GOMOR was based were previously provided to the applicant.

d. On 16 September 2008, the applicant acknowledged receipt of the GOMOR and indicated he had read and understood the unfavorable information presented against him. He elected not to make a statement on his behalf.

e. The applicant's chain of command recommended the GOMOR be filed in his OMPF.

f. On 29 September 2008, the CG (issuing authority) concurred with the recommendations of the chain of command and directed that the GOMOR be filed in the applicant's OMPF.

g. On 24 October 2008, DA Form 199 (Physical Evaluation Board (PEB) Proceedings) shows the board found the applicant physically unfit and recommended a combined rating of 10 percent and his disposition be "separation with severance pay if otherwise qualified." He concurred and waived a formal hearing of his case.

h. His record contains an Enlisted Record Brief dated 26 November 2008, which shows promotion sequence number 221, promotion select date 1 January 2006, and no flag codes.

i. On 15 December 2008, the applicant was honorably discharged by reason of "disability, severance pay, non-combat related." He completed 12 years, 3 months, and 17 days of active service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 4a (Grade, Rate or Rank) – SSG
- item 12h (Effective Date of Pay Grade) – 1 May 2003
- item 29 (Dates of Time Lost During This Period) – Under Title 10, U.S. Code, Section 972: "20070106-20070106"

4. The applicant's OMPF does not contain, and he did not provide a report of investigation, DA Forms 268 (Report to Suspend Favorable Personnel Action), nor ASB proceedings/documents.

5. The applicant provides a letter from the U.S. Army Human Resources Command, Veterans Inquiry Branch, Army Service Center, dated 5 January 2023, which informed the applicant that his request to change his rank on his DD Form 214 was being returned without action because they were not authorized to grant his request. He was advised to apply to the ABCMR.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined his record is absent evidence that shows he was promoted to sergeant first class (SFC)/E-7. The evidence of record shows the applicant was promoted to staff sergeant (SSG)/E-6 with a date of rank of 1 May 2003. The Board noted the applicant's contention that he was selected for promotion to SFC in either 2005 or 2006, but found no evidence to support that and the applicant did not provide evidence to support that he was selected or subsequently promoted to SFC/E-7 prior to his discharge on 15 December 2008. Therefore, the Board denied relief.

2. 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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 (ABCMR), states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states that 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 600-8-19 (Enlisted Promotions and Reductions), in effect at that time, prescribes the enlisted promotions and reductions function of the military personnel system. In pertinent part:

a. Paragraph 1-28 (Suspension of favorable personnel action) states, suspension of favorable personnel actions (FLAGS) will be initiated on Soldiers not in good standing as prescribed in AR 600-8-2. Field commanders (CDRs) are responsible for initiating FLAGS for command-initiated removals from a Headquarters, Department of the Army (HQDA) list. The U.S. Army Human Resources Command (HRC-Alexandria (AHRC-MSP-E) will prepare a DA Form 268 (Report to Suspend Favorable Personnel Action) for HQDA initiated removals, when the decision is made to refer a case to the Standby Advisory Board (STAB). Failure to initiate a suspension of favorable personnel action, however, does not invalidate referral of the action to the STAB or subsequent actions relating to the recommendation of removal.

b. Section III – Task: Processing Promotion List Results and Orders, paragraph 4-12 (Rules) states, (1) Battalion Human Resources will notify Soldier of procedures used to request consideration or reconsideration by the STAB, if appropriate. (2) Documents reflecting a change in a Soldier's promotable status and or promotion "PRMOS" must be forwarded immediately to HRC-Alexandria (AHRC-MSP-E). (3) Monthly HRC-Alexandria enlisted promotion orders must be screened to ensure promotable Soldiers designated by sequence number memorandum were promoted. (4) DOR will be the effective date of promotion. If the promotion was delayed due to an administrative error, the DOR will be the effective date that the promotion should have occurred. (5) Documents supporting amendment, revocation, or late promotion orders must be received by HRC-Alexandria, by the end of each month for actions to be included in the promotion orders booklet to be mailed during the following month.

c. Section V – Task: Processing Removal from a Centralized Promotion List, paragraph 4-16 (Rules) states in –

(1) Paragraph 4-16a (Rules for administrative removals), CDRs will promptly forward documentation to Commander, HRC-Alexandria, pertaining to Soldiers on a HQDA recommended list who are in one or more of the categories listed in paragraph 4-16a(2). HRC–Alexandria will delete, without further board action, the name of any Soldier from the recommended list who — Is ineligible to reenlist due to a Declination of Continued Service Statement, AWOL, confinement, local bar, qualitative management program, or court-martial conviction; was considered in error (no exception authorized); and was recommended by an approved reduction board to be removed from a promotion list.

(2) Paragraph 4-16b (Rules for processing command-initiated removals), (a) Any CDR in the Soldier's chain of command may recommend that a Soldier's name be removed from a HQDA recommended list at any time. The recommendation for removal must be fully documented and justified. DA Form 268 will be initiated at this time. (b) When recommending a Soldier for removal, CDRs will evaluate circumstances to ensure that all other appropriate actions have been taken (training, supervision, and formal counseling have not helped) or the basis for considering removal is serious enough to warrant denying the individual's promotion. (c) Recommendation may be submitted for substandard performance. (d) Removal actions, to include rebuttal, will be processed in accordance with steps in table 4-4. (e) The removal action will be submitted for review through command channels to the CDR having General Court-Martial Convening Authority (GCMCA) or the first general officer in the chain of command having a staff judge advocate on his or her staff. (f) Recommendation may be disapproved at any level of command. The disapproval will be returned through command channels to the originator with the reason for disapproval. (g) All actions will be forwarded to HRC-Alexandria in duplicate and will include a copy of his/her Personnel Qualification Record, and DA Form 268. (h) HRC–Alexandria will notify the appropriate CDR of the results and recommendations of the STAB.

d. Paragraph 4-18 (Removals from a centralized promotion list by Headquarters, Department of the Army) states, HRC-Alexandria will continuously review promotion lists against all information available to ensure that no Soldier is promoted where there is cause to believe that a Soldier is mentally, physically, morally, or professionally unqualified to perform duties of the higher grade.

e. Paragraph 4-19 (Appeals of removal from a centralized promotion list) states, (1) a Soldier who is removed from a promotion list may appeal that action only in limited circumstances. HRC–Alexandria will take final action on any appeal. (2) Soldiers may appeal a removal action when the underlying basis of the removal is subsequently determined to be erroneous. The subsequent determination must be based on facts that

were not available or reasonably discoverable at the time of the original action or at the time that the Soldier was notified of the removal action. An appeal may also be submitted for other compelling reason(s). (3) Appeals must be referred through command channels, to include GCMCA, to Commander, HRC–Alexandria.

4. AR 600-8-2 (Suspension of Favorable Personnel Actions (Flags)) in effect at the time states Suspension of favorable personnel actions is mandatory when an investigation (formal or informal) is initiated on a soldier by military or civilian authorities. Flags are classified into the two categories described below, depending upon the specific action or investigation. a. Non-transferable. The flag may not be transferred to another unit (except where consistent with paragraph 1–15). b. Transferable. The flag may be transferred to another unit. A non-transferable flag is required when an investigation or charges have been imposed against the service member. Remove the flag when the Soldier is released without charges, charges have been dropped, or punishment is completed. Memorandums of admonition, censure, or reprimand not administered as nonjudicial punishment. Remove the flag upon completion of filing instructions. However, a flag for a Soldier on a HQDA promotion list (officer promotable to O-3–O-6, warrant officers promotable to CW3–CW5, and enlisted Soldiers promotable to E-7–E-9) who is flagged for one of these memorandums can only be removed by HQDA. Promotion or reevaluation for promotion is prohibited by a flag.

//NOTHING FOLLOWS//