

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2024

DOCKET NUMBER: AR20230009713

APPLICANT REQUESTS: in effect, review of his retirement grade/cancellation of debt.

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

- DD Forms 149 (Application for Correction of Military Record)
- Orders 340-857, 5 December 2008
- Orders 18-036-00001, 5 February 2018
- Memorandum, Subject: Notification of Eligibility for Retired Pay at Non-Regular Retirement (20 Year Letter), 7 March 2019

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 submitted his promotion orders from sergeant/E5 to staff sergeant (SSG)/E6 to be reinstated because there is no paperwork supporting his claim that his promotion was taken away. No chapters, no Article 15, and no justification for this to have happened. This left him with a debt to the Defense Finance Accounting Service (DFAS). This means that anyone could go into his records without a letter to justify why this has happened. DFAS sent him a debt for his rank being taken away from him, but he has no demotion paperwork.
3. The applicant provides Orders 340-857, 5 December 2008, shows the applicant was promoted to SSG/E-6 with an effective date and a date of rank (DOR) of 21 November 2008.
4. In an advisory obtained by the U.S. Army Reserve Command (USARC), USARC has already administratively corrected the applicant's rank/grade to show he was promoted to SSG/E6 effective 21 November 2008 and retired in the rank/grade of SSG/E-6. However, as a result of the error of revoking his promotion from 2008, the Defense Finance and Accounting Service (DFAS) put the applicant in a debt status due to the

overpayment from the rank of E-5 to E-6. Although USARC has administratively corrected the rank error, DFAS still has the applicant in an overpayment status, which will be the only issue that will be addressed by the Board.

5. A review of the applicant's official records show the following:

a. DD Forms 4 show he served in the ARNG through multiple assignments.

b. DD Forms 214 period ending 10 May 2016 and show the applicant was honorably released from active duty and transferred to the USAR in the rank of SSG/E-6.

c. Memorandum, Subject: Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years), 7 March 2019 shows the applicant had completed the required years of service and will be eligible for retire pay upon his application at age 60.

6. A Defense Finance Accounting Service (DFAS) email, 22 November 2023 shows the applicant did have debts in the out of service debt system. He still owes \$47,962.24 remaining from the original overpayment debt of \$56,381.91. He may owe more because his account has gone to the private collection agency, and they charge additional fees.

7. An advisory opinion was provided, from Chief, Enlisted Management Branch, USARC, regarding the applicant's request for review of retirement grade/cancellation of debt. The Chief Enlisted Management Branch states, this Headquarters conducted extensive research and provided the following:

(1) Records indicate the applicant was promoted to the rank of SSG/E6 effective 21 November 2008, while a member of [REDACTED] Army National Guard. He enlisted into the USAR on 3 April 2019, in the grade of SSG/E-6.

(2) The applicant completed the required Professional Military Education (PME) Advanced Leaders Course (ALC) for SSG/E6 on August 16, 2013. Additionally, he deployed to Afghanistan and served on Active Duty extensively for the USAR until his reassignment to the Retired Reserve on 2 April 2019.

(3) This Headquarters published revocation order 18-036-00001 on 5 February 2018, revoking the applicant's promotion to SSG/E-6. The reason for this order is unclear. No supporting documentation justifying the revocation order was found. He completed all required training and obligations for the rank. No derogatory information was found against the applicant which would precipitate a reduction in rank.

(4) After exhaustive review of this case, this Headquarters recommends full relief

for the applicant regarding his promotion to SSG/E6 and reassignment to the Retired Reserve in the grade of SSG/E6. He completed his required PME and faithfully executed his duties in the grade of E-6 for nearly 10 years prior to the promotion order revocation.

(5) As a result, this Headquarters has rescinded the revocation order, dated 5 February 2018 and amended his reassignment to the Retired Reserve to the rank of SSG/E6. His debt should be cancelled, as his rank to SSG/E6 has been restored with a DOR of 21 November 2008.

8. On 24 October 2024, the applicant was provided with a copy of the advisory opinion with an opportunity to respond. He did not respond.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted.
2. The Board carefully considered the applicant’s contentions, his record of service and promotion orders, the notification of eligibility for non-regular retired pay, the rank in which he was transferred to the Retired Reserve and the DFAS notice of debt. The Board considered his statement and the review and conclusions by the USARC advising official. The Board concurred with the advising official’s recommendation for relief. Based on a preponderance of evidence, the Board determined that the applicant’s debt should be cancelled to correct an injustice.

BOARD VOTE:

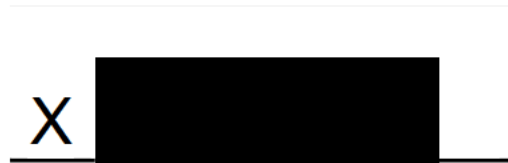
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■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

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 and Army National Guard records of the individual concerned be corrected as follows:

- show his continued service at the rank of SSG from 21 November 2008 until the date of his transfer to the Retired Reserve as a SSG;
- by cancelling collection of his out of service debt (\$47,962.24 as of November 2023) and;
- refunding any monies already collected against his debt.



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 (AR) 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 United States Code (USC), section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.
3. The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

4. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for Block 4a (Grade, Rate or Rank) 4b (Pay Grade) enter the grade or rank at the time of separation.

//NOTHING FOLLOWS//