

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 November 2024

DOCKET NUMBER: AR20230009833

APPLICANT REQUESTS:

- reissuance of promotion orders to the rank/grade of master sergeant (MSG)/E-8
- adjustment of his retired pay

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Congressional Privacy Act Compliance Form, 22 June 2023
- DA Form 2-1 (Personnel Qualification Record – Part II), 17 January 1991
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 31 October 1992
- Certificate of Retirement, 31 October 1992
- U.S. Army Reserve Personnel Center Form 741B (Retired Officer/Enlisted Accession Data Capture Worksheet), 30 June 1993
- Department of Veterans Affairs (VA) Veterans Benefits Management System (VBMS) Screenshot, 29 April 2023
- U.S. Army Human Resources Command (HRC) Letter, 20 July 2023

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, through counsel, orders promoting him to MSG/E-8 need to be reissued.
 - a. He began out-processing for retirement while stationed in Europe. His authorized place of retirement was the U.S. Army Transition Point, Fort Jackson, SC. His requested place of retirement was the U.S. Army Transition Point, Fort Shafter, HI. Block 27 of his DA Form 2-1 notes: "Copy of DA Form 2A – 2-1 forward to USAEREC

[U.S. Army Enlisted Records Center] for E-8 DA [Department of the Army] Selection Board – 900504 [4 May 1990]."

b. Upon his retirement on 31 October 1992, he received his final DD Form 214 and his Army Certificate of Retirement, both reflecting his rank at retirement as MSG/E-8. For these official documents to have that rank reflected upon them, promotion orders must have been issued. To date, he has not been provided a copy of the promotion orders. He also has a copy of a form from his postal service personnel file that shows his retired rank as E-8, with an effective date of rank of 31 October 1992. The form is dated 30 June 1993, which was 8 months after his retirement.

3. He enlisted in the Regular Army on 16 September 1970.

4. His DA Form 2-1 shows in:

a. Section III (Service, Training, and Other Dates), block 18 (Appointments and Reductions), he was promoted to the rank of sergeant first class (SFC)/E-7 effective 1 August 1983 with a date of eligibility/rank of 17 July 1983;

b. Section V (Miscellaneous), block 27 (Remarks), the entry "Copy of DA Form 2A – 2-1 forward to USAEREC [U.S. Army Enlisted Records Center] for E-8 DA [Department of the Army] Selection Board – 900504 [4 May 1990]"; and

c. The form was prepared on 17 October 1991 and he reviewed and signed the form attesting to its accuracy on 18 October 1991.

5. His records do not contain permanent orders promoting him to the rank of MSG.

6. 520th Personnel Service Company, Composite Team, Bad Kreuznach, Germany, Orders 182-257, 14 August 1992, released him from active duty and placed him on the Retired List in the rank of SFC effective 31 October 1992.

7. He retired on 31 October 1992. He completed 16 years, 3 months, and 8 days of active service and 5 years, 10 months, and 7 days of total prior active service. His DD Form 214 shows in:

- block 4a (Grade, Rate, or Rank) – MSG
- block 4b (Pay Grade) – E-8
- block 12h (Effective Date of Pay Grade) – 1 August 1983

8. His Certificate of Retirement shows he retired from the Regular Army in the rank of MSG effective 31 October 1992.

9. The U.S. Army Reserve Personnel Center Form 741B, 30 June 1993, shows his grade as E-8. The form was prepared on 30 June 1993 and reviewed on 6 July 1993.

10. The VA VBMS screenshot shows he was honorably separated from active duty on 31 October 1992 in pay grade E-8. This form was verified on 29 April 2023.

11. The Privacy Act Compliance Form, 22 June 2023, requests assistance from his Member of Congress and states:

I need assistance with correcting my Army Retiree Pay. My rank on my retirement DD [Form] 214 is MSG/E8. I am being paid as an SFC/E7. I have been attempting to get this issue resolved for a number of years. While working on VA [Department of Veterans Affairs] benefit issues, it was recently brought to my attention that you might be able to assist with correcting this issue. I have exhausted all other methods to remedy this problem but have been unable to get a resolution. When I have contacted the Army, they state the issue is with DFAS [Defense Finance and Accounting Service]. DFAS states the problem is with the Army. I am not concerned about placing blame, I would like to have my retired pay corrected. I have also found copies of documents from my records that indicate the E8 rank was awarded effective 31 October 1992, but have not been able to find the promotion order. At this time, I would like to request that the promotion order be regenerated so that my retired pay can be corrected.

12. The HRC letter, 20 July 2023, responded to his congressional representative's inquiry for verification of his rank for retired pay based on the rank/grade of MSG/E-8. The Chief, Army Service Center, opined:

The systems used at the United States Army Human Resources Command do show [Applicant's] rank as MSG/E-8 which matches his DD Form 214, Certificate of Release or Discharge from Active Duty Service. We do not have access to Defense Finance and Accounting Service (DFAS) systems, but if [Applicant] provides his retirement order, we can verify if the rank is correct on his order.

13. Email correspondence from the DFAS Board for Correction of Military Records/Congressional Lead (Reply: Army Review Boards Agency Assistance), 21 June 2024, notes the DFAS database contains:

a. 520th Personnel Service Company, Composite Team, Bad Kreuznach, Germany, Orders 182-257, 14 August 1992, described above;

b. His DA Form 2-1, slightly different from the one described above, showing he was promoted to MSG with a date of eligibility/rank of 31 October 1992 in block 18;

- c. His Certificate of Retirement, described above;
- d. His DD Form 214 for the period ending 31 October 1992 showing he retired from military service; and
- e. A Congressional Privacy Act Compliance Form, 29 May 2020, showing the applicant is seeking assistance from his congressional representative wherein he states:

I need assistance with correcting my Army Retiree Pay. My rank on my retirement DD Form 214 is MSG/E-8. I am being paid as an SSG [staff sergeant]/E-7 [sic]. I have been attempting to get this issue resolved for a number of years. While working on VA benefit issues, it was recently brought to my attention that you might be able to assist with correcting this issue. I have exhausted all other methods to remedy this problem but have been unable to get resolution. When I have contacted the Army, they state the issue is with DFAS. DFAS states the problem is with the Army. I am not concerned about placing blame, I would like to have my retired pay corrected.

14. The HRC memorandum (ABCMR Advisory Opinion – AR20230009833, (Applicant) Issue: Promotion to MSG/Pay), 13 August 2024, states the HRC Enlisted Promotions Branch determined administrative relief is not warranted and unsubstantiated.

- a. The applicant was promoted to SFC effective 1 August 1983. There is no dispute on his date of rank to SFC. 520th Personnel Service Company, Composite Team, Bad Kreuznach, Germany, Orders 182-257, 14 August 1992, authorized his retirement on 31 October 1992 in the rank of SFC.
- b. The applicant offers no proof of selection by the MSG Promotion Board that convened on 4 May 1990, which would be a requirement for promotion to MSG if eligible. If he had been selected for promotion to MSG by this board, then in accordance with Army Regulation 600-8-19 (Enlisted Promotions and Reductions), paragraph 1-10, for non-promutable status, Soldiers (private through MSG) are non-promutable to a higher grade when a voluntary retirement application has been approved.
- c. In accordance with Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 12-8, Soldiers who have an approved retirement are in a non-promutable status. They will not be promoted unless a request for withdrawal of their retirement application has been approved.
- d. After a comprehensive review of all the documentation available for the applicant's case, there is no evidence that he was ever eligible for a promotion, and even if he had been selected by a MSG Promotion Board, he would have been ineligible

for promotion based on his approved retirement. Soldiers are not promoted upon retirement for length of service. Promotion to MSG incurs a 2-year service obligation from the effective date of promotion. Based on his retirement order dated 14 August 1992 in the rank of SFC, he would not have been promoted prior to or on his retirement date.

e. Because there is no justification for his promotion to MSG, we believe the rank on his DD Form 214 is in error and a correction is needed in blocks 4a (Grade, Rate, or Rank) and 4b (Pay Grade) to reflect his rank and pay grade as SFC and E-7. A promotion to MSG would never have occurred as it is not supported by Army regulation or Army policy.

15. On 5 September 2024, the Army Review Boards Agency Case Management Division provided him with a copy of the advisory opinion to allow him the opportunity to submit comments by 19 September 2024. 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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board reviewed and concurred with the advising official for the U.S. Army Human Resources Command finding the applicant provides no evidence to support his selection to master sergeant (MSG) from the board convened on 4 May 1990, which would be a requirement for promotion to MSG. Additionally, the Board determined the applicant submitted a voluntary retirement application which was approved and therefore would have been placed in a non-promotable status. The Board found insufficient evidence of an error or injustice which would warrant an amendment to the applicant's rank from sergeant first class (SFC) to MSG.

2. Based on the foregoing, the Board concluded there was no basis for an adjustment to his retired pay as the Board found insufficient evidence of an error or injustice which would warrant an amendment to the applicant's rank from SFC to MSG for retired pay purposes.

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, 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 15-185 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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.
3. Army Regulation 600-8-19 (Enlisted Promotions and Reductions), 1 November 1991, prescribed the enlisted promotions and reductions function of the military personnel system. It stated the date of rank for promotion to a higher grade is the date specified in the instrument of promotion. For Soldiers being promoted to the grades of SFC through sergeant major (SGM), an annotation would be entered in the Department of the Army-controlled sequence roster, explaining the specific reason for the delay. Headquarters, Department of the Army, would publish the promotion order or amendment with the correct effective date.
 - a. Chapter 4 (Centralized Promotions SFC, MSG, and SGM) provided the rules and steps for managing the centralized promotion system to SFC, MSG, and SGM. Headquarters, Department of the Army, promotes Soldiers to the ranks of SFC, MSG, and SGM. A centralized promotion system had been in effect for promotion of enlisted Soldiers since 1 January 1969 for SGM, 1 March 1969 for MSG, and 1 June 1970 for SFC.
 - b. Paragraph 4-8 (Service Obligation) stated:
 - (1) Soldiers promoted to grades SFC, MSG, and SGM would incur a 2-year service obligation. The service obligation would be from the effective date of the promotion before voluntary non-disability retirement, unless Soldiers were in one of the following categories:

- (a) eligible for retirement by completing 30 or more years of active federal service,
- (b) already eligible through prior service for a higher grade at time of retirement,
- (c) age 55 or older, or
- (d) expiration term of service.

(2) Soldiers on a recommended list will be promoted on the last day of the month before being placed on the Retired List if their sequence number has not been reached and they are in one of the following categories:

- (a) will complete 30 years of active federal service or
- (b) will have reached age 55.

4. Army Regulation 600-200 (Enlisted Personnel Management System), 17 October 1990, prescribed policies and procedures for career management of Army enlisted personnel; classification and reclassification of enlisted Soldiers in a military occupational specialty; utilization of enlisted personnel; testing Active Army enlisted soldiers under the Individual Training Evaluation; administering Special Duty Assignment (Proficient Pay); and promotions and reductions in grade/rank.

a. Chapter 7 (Promotions) contained standards that offered Army-wide opportunities for advancement. The Army promotes Soldiers who are qualified and who will accept Army-wide assignments.

b. Paragraph 7-42 stated the effective date of promotion for pay purposes would be the date of the promotion order unless it stated otherwise. The date of rank would be the effective date of promotion. If the promotion were delayed due to administrative error, the date of rank would be the effective date the promotion should have occurred. The Commanding General, Total Army Personnel Agency, would publish orders announcing promotions to SFC, MSG, and SGM.

5. Army Regulation 635-5 (Separation Documents), 15 August 1979, prescribed the separation documents which were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. The detailed instructions for preparing the DD Form 214 stated for:

- a. items 4a and 4b, enter the separating Soldier's active duty grade or rank and pay grade at the time of separation; and
- b. block 12h, enter the separating Soldier's effective date of promotion to the current pay grade from the most recent promotion order (or reduction instrument).

6. The VA website describes the VBMS as a web-based, paperless claims processing system for the VA. The VBMS is an electronic work environment designed for processing compensation and pension claims. Beyond claims processing, VBMS consists of:

- a document repository that electronically replaces the older paper folder used to track and store veteran claim evidence
- a National Work Queue, which manages and distributes the claims workload to field users
- a correspondence tool to create, send, and track communications to the veteran
- a system to manage fiduciaries for disabled veterans
- a rating feature set that allows for Disability Benefit Questionnaire examination results to be requested and processed through a complex schedule of rules to determine issues and service connection
- an awards module to award the veteran's benefits and transmit the information to the U.S. Treasury through the Financial Accounting System

//NOTHING FOLLOWS//