

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009959

APPLICANT REQUESTS:

- reinstatement of rank to sergeant (SGT)/E-5 in the Army National Guard
- a personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- The Family Certificate of Merit
- The Family Relationship Workshop Certificate
- The Family Certificate of Excellence Certificate

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 requests the reinstatement of his rank/grade to SGT/E-5. He was reduced from SGT/E-5 to Private /E-1 while he was serving in the Army National Guard (ARNG) for missing his last two unit training assemblies. The reason for his absence was because he had an alcohol problem which he informed his supervisors. He sought treatment for his alcohol problem at Transitions in Miami, FL. He feels the reduction in rank was unfair after serving 23-years of service during which time he had honorable service until he missed the unit training assemblies when he sought treatment for his alcohol problem.

3. A review of the applicant's service record shows:

a. He enlisted in the ARNG on 29 March 1982 and had continuous service through extensions and reenlistments.

b. Per the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), the applicant was ordered to active duty for training on 8 August 1982. He was honorably released from active duty on 19 January 1983. DD Form 214 shows he completed 5-months and 12-days of active service.

c. On 27 April 1992, Orders Number 16-1, issued by the Pennsylvania (PAARNG), the applicant was promoted to the rank/grade of SGT/E-5, effective 13 April 1984 with the same Date of Rank (DOR). The additional instructions state "restoration of rank."

d. On 25 February 2003, the Adjutant General's Office of the Commonwealth of PA, notified the applicant of his eligibility for retired pay at age 60.

e. On 17 February 2004, the applicant was flagged for adverse action, effective 13 December 2003.

d. On 24 April 2004, Orders Number 115-001, issued by the PAARNG, the applicant was reduced in rank/grade to specialist /E-4, effective 24 April 2004 with the DOR of 15 November 1990 for inefficiency under the authority of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 2-12.

e. On 6 July 2004, the applicant was reassigned to the ambulance aide driver due to inefficiency.

f. On 23 August 2004, the applicant was flagged for adverse action due to abuse of illegal drugs and was pending separation, effective 23 August 2004.

g. On 20 September 2004, Orders Number 040-4, issued by the PAARNG, the applicant was reduced to the rank/grade of private first class (PFC)/E-3, effective 20 September 2004 with the DOR of 15 November 1990 for misconduct under the authority of NGR 600-200, paragraph 8-26.

h. On 21 September 2004, Orders Number 041-4, issued by the PAARNG, the applicant was reduced to the rank/grade of private (PV2)/E-2, effective 21 September 2004 with the DOR of 15 November 1990 for misconduct under the authority of NGR 600-200, paragraph 8-26.

i. On 22 September 2004, Orders Number 043-4, issued by the PAARNG, the applicant was reduced to the rank/grade of private (PVT)/E-1, effective 22 September 2004 with the DOR of 15 November 1990 for misconduct under the authority of NGR 600-200, paragraph 8-26.

j. The applicant was honorably released from the ARNG and assigned to the U.S. Army Reserve (USAR) Control Group (Retired Reserve), effective 28 March 2005.

National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant completed 23-years of service. Item 5a (Rank) shows "PV1."

k. On 18 May 2005, Orders Number 138-1005, issued by the Commonwealth of PA Department of Military and Veterans Affairs The Adjutant General, the applicant was honorably discharged in the rank of PVT/E-1 from the ARNG and assigned to the USAR Control Group (Retired Reserve), effective 28 March 2005.

l. The applicant's NGB Form 23B (ARNG Retirement Points History Statement) shows he had 21-years of creditable service for retirement. The form also shows the highest grade held was E-1.

m. On 30 March 2023, Orders Number C03-393461, issued by the U.S. Army Human Resources Command, the applicant was placed on the retired list, effective 17 January 2023 in the rank/grade of PVT/E-1.

4. The applicant provides:

a. The Family Certificate of Merit which shows the applicant completed the Survivors Workshop on 5 March 2004.

b. The Family Relationship Workshop Certificate which shows the applicant completed the workshop during the period of 23 through 27 February 2004.

c. The Family Certificate of Excellence Certificate which shows the applicant completed the Inpatient Recovery Program on 13 March 2004.

5. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting restoration of his rank to Sergeant (E5). On his DD form 149, he has indicated that PTSD is related to his request. He states:

"I'm requesting that my rank of E-1 be reinstated to E-5. While in service, I was reduced from an E-5 to an E-1 for missing my last two drills. The reason for my absence was due to alcohol problem. Informed my superiors of my issue and went into treatment in a place called Transitions in Miami, Florida.

I believe this correction should be made because I was treated unfairly after serving 23 yrs. of service with a good record. Missing my two last drills does not constitute a reduction in rank."

c. His National Guard Report of Separation and Record of Service (NGB Form 22) shows he enlisted in the Army National Guard on 19 March 1982 and was honorably discharged from the Pennsylvania Army National Guard (PAARNG) and transferred to the Retired Reserve effective 28 March 2005 under authority provided in paragraph 8-27u of NGR 600-200, Enlisted Personnel Management: Discharge and transfer to the Retired Reserve for soldiers are not yet age 60. It shows 21 years, 0 months, and 0 days of total service for retired pay. He had received his Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter) on 25 February 2003 and was placed on the AUS Retired list effective 17 January 2023.

d. Orders for the applicant's grade reduction from SGT/E5 to SPC/E4 are dated 24 April 2004 and cite two authorities: Paragraph 11-60 of NGR 600-200, Enlisted Personnel Management (1 March 1997) - Reduction for inefficiency; and paragraph 2-12 of AR 135-178, Enlisted Administrative Separations (3 December 2001) - Separation counseling for soldiers being discharged."

e. On 23 August 2004, the then sergeant was flagged for "Abuse of illegal drugs pending separating IAW NGR (AR) 600-85 para 12-17." Paragraph 12-17 of AR 600-85 (Army Substance Abuse Program (ASAP) (1 October 2001), is titled "Administratively separating drug abusers."

"a. Unit commanders will process all ARNG soldiers identified as illegal drug users for administrative separation.

(1) Officers and Warrant Officers will be processed under the provisions AR 135-175 and applicable NGB regulations.

(2) Enlisted personnel will be processed under the provisions of AR 135-178 and applicable NGB regulations.

b. If an ARNG soldier refuses to consent to drug testing, the unit commander or a designated representative within the soldier's chain of command will order the soldier to provide a specimen. Soldiers who refuse to participate, violate a direct order and may be processed under applicable State code for disciplinary action

and/or judicial or nonjudicial punishment; in addition to processing for separation and other administrative actions outlined under this regulation.”

f. The applicant was reduced one grade for misconduct on three consecutive days, 20-22 September 2004: From SPC/E4 to PFC/E3 on 20 September 2004, from PFC/E3 to PV2/E2 on 21 September 2004; and from PV2/E2 to PVT/E1. The was not a weekend but rather Monday – Wednesday. The pattern strongly suggests the applicant repeatedly refused to consent to drug testing in violation of a direct order and was subsequently disciplined for misconduct under paragraph 12-17b. There is no evidence he failed to participate in drill.

g. No medical documentation was submitted with the application and there are no encounters in AHLTA,

h. JLV shows he has no VA service-connected disabilities and was diagnosed with major depressive disorder in 2017.

i. It is the opinion of the Agency Medical Advisor that any restoration in rank in unwarranted.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 initially reduced from SGT/E-5 to SPC/E-4 for inefficiency effective 24 April 2004. He was then issued multiple sets of orders reducing him for misconduct to PFC/E-3, effective 20 September 2004, to PV2/E-2, effective 21 September 2004, and finally to PVT/E-1, effective 22 September 2004. He was transferred to the Retired Reserve on 28 March 2005, in the rank/grade he last held. He contends that his absence from drills, and subsequent reductions, were due to alcohol problem. The Board reviewed and agreed with the medical reviewer's finding that the pattern of reductions strongly suggests the applicant repeatedly refused to consent to drug testing in violation of a direct order and was subsequently disciplined for misconduct. There is no evidence he failed to participate in drill. The Board found insufficient evidence to restore the applicant's grade of SGT.

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) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. Paragraph 2-9 states, 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. The ABCMR may, in its

discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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. NGR 600-200 (Enlisted Personnel Management) in effect at the time, establishes standards, policies, and procedures for the management of ARNG enlisted Soldiers.

a. Paragraph 8-26 (Discharge from State Army National Guard and/or Reserve of the Army), following are reasons, applicability and board requirements for administrative discharges from the Reserve of the Army and or the State ARNG.

b. Paragraph 11-54, Sergeants and above are entitled to a board unless exempt per this section when being considered for reduction for inefficiency, misconduct, or due to civil conviction.

c. Paragraph 11-60 (Reduction for inefficiency), A Soldier may be reduced one grade for inefficiency. Inefficiency is defined as technical incompetence or demonstrated pattern or one or more acts of conduct that show lack of abilities and qualities required and expected of a Soldier in that grade. Inefficiency can include one or more acts of misconduct, poor performance, a record of unexcused absences or declaration as an unsatisfactory participant, conviction by a civil or criminal court, long standing personal debts when there has been no reasonable attempt. to pay them, and significant shortcomings in training performance.

d. Paragraph 11-61 (Reduction for misconduct or civil conviction), discharge. If a Soldier is to be discharged with a discharge certificate under other than honorable conditions, the State Adjutant General will reduce the Soldier immediately to PV1 without board action. If the discharge is suspended, the Soldier is not reduced under this paragraph.

4. AR 600-8-19 (Enlisted Promotions and Reductions) in effect at the time, prescribes the enlisted promotions and reductions function of the military personnel system.

a. Paragraph 7-1, b. A reduction board is required for Soldiers in the grade of CPL/SPC (when being reduced more than one grade) and for Soldiers in the grade of SGT through SGM for any reduction for misconduct (civil conviction) under paragraph 7-4 (except under table 7-1) and for inefficiency under paragraph 7-5. Board appearance, however, may be declined in writing, which will be considered as acceptance of the reduction board's action. Individuals in grade of CPL and below may be reduced without action by a board. (1) If a Soldier in the grade of CPL/SPC and below is being reduced one grade without referral to a reduction board, the reduction action must be accomplished within 30 duty days after receipt of documentary evidence and before separation or retention is considered. (2) The reduction authority may extend

the 30 day limitation for good cause. A written justification must be included in the file if an extension is granted.

b. Paragraph 7-3 (Reduction for misconduct), a Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction. On receipt of documents establishing a sentence (imposed or vacation of a suspended sentence) or a finding of guilty with sentence to be established at a later date, action will be taken. A Soldier may be reduced even though an appeal is pending or has been filed. When a reduction board is required, it will convene after receipt of documentary evidence and before separation or retention is considered unless the Soldier waives it in writing.

b. Paragraph 7-5 (Policy on reduction for inefficiency), Inefficiency is a demonstration of characteristics that shows that the person cannot perform duties and responsibilities of the grade and military occupational specialty. Inefficiency may also include any act or conduct that clearly shows that the Soldier lacks those abilities and qualities normally required and expected of an individual of that grade and experience. Commanders may consider misconduct, including conviction by civil court, as bearing on inefficiency. A soldier may be reduced under this authority for longstanding unpaid personal debts that he or she has not made a reasonable attempt to pay.

c. Paragraph 7-11 (Appeals), appeals of reduction under rule 1, table 7-2, are authorized but only to correct an erroneous reduction (e.g., the reduction action did not meet the requirements of the rule and was, therefore, without a sufficient basis). Appeals of reduction for inefficiency or for misconduct are authorized to correct an erroneous reduction on equitable grounds. This should be based on the facts and circumstances of the particular case that partial or full restoration of grade is in the best interest of the Army and the Soldier. Authorized appeals will be submitted in writing within 30 duty days of the date of reduction or date of memorandum notifying Soldier that he or she will be restored to the former grade.

//NOTHING FOLLOWS//