

IN THE CASE OF: ██████████

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230010016

APPLICANT REQUESTS: placement on the retired list in the highest rank/grade held of sergeant first class (SFC)/E-7.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) for service ending 9 November 1989
- U.S. Total Army Personnel Command (PERSCOM) Orders Number 196-1
- Headquarters (HQs), III Corps and Fort Hood Orders Number 036-0189
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for service ending 1 November 2005
- Excerpt from Title 10 United States Code (USC), sections 3963 and 3965 – Armed Forces

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 served on active duty and was separated on 1 November 2005 in the rank/grade of SFC/E-7 after holding the rank for 2-years. He then enlisted in the Regular Army (RA) on 26 January 2006 in the rank/grade of staff sergeant (SSG)/E-6. He was advised the only way he could enlist in the rank of SFC was as a recruiter which he had already held and did not want to be a recruiter again, so he chose to enlist as a 92W (Water Treatment Specialist) in the rank of SSG. On 30 June 2010 he retired with 20-years of active Federal service, he is requesting to be placed on the retired list after 30-years of service plus retired list service in accordance with Title 10 USC, section 3964 and section 3963.

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

a. The applicant's service record is void of his initial enlistment contract. On 11 April 1988, Orders Number 67-26, issued by the Baltimore Military Entrance Processing Station, the applicant was ordered to initial active duty for training, effective 24 June 1988.

b. The applicant was honorably released from active duty on 9 November 1989. DD Form 214 shows the applicant completed 4-months and 12-days of active service.

c. On 11 October 1990, the applicant enlisted in the RA.

d. On 19 November 1990, the applicant extended his enlistment in the RA.

e. On 28 November 1994, Orders Number 332-00182, issued by HQs, 101st Airborne Division (Air Assault) and Fort Campbell, the applicant was promoted to the rank/grade of sergeant (SGT)/E-5, effective on with a Date of Rank (DOR) of 1 December 1994.

f. On 23 February 1996, the applicant reenlisted in the RA in the rank/grade of SGT/E-5.

g. On 19 March 1997, Orders Number 078-00819, issued by HQs, 101st Airborne Division (Air Assault) and Fort Campbell, the applicant was promoted to the rank/grade of SSG/E-6, effective on with a DOR of 1 April 1997.

h. On 27 August 1997, the applicant extended his enlistment in the RA.

i. The applicant reenlisted in the RA in the rank of SSG on 26 May 2000 and 23 July 2002.

j. On 15 July 2003, Orders Number 196-1, issued by the U.S. Total Army Personnel Command, the applicant was promoted to the rank/grade of SFC/E-7, effective on with a DOR of 1 August 2003.

k. The applicant was honorably discharged from active duty on 1 November 2005. DD Form 214 shows the applicant completed 15-years and 21-days of active service. It also shows in items:

- 4a (Grade, Rate, or Rank): SFC
- 4b (Pay Grade): E7
- 12h (Effective Date of Pay Grade): 1 August 2003

I. The applicant enlisted in the RA on 26 January 2006 in the rank/grade of SSG/E-6. His DD Form 1966 (Record of Military Processing – Armed Forces of the United States) shows in items:

- 18 (Accession Data):
 - Enlistment date: 26 January 2006
 - Pay entry date: 21 October 1988
 - Pay Grade: E6
 - Date of Grade: 26 January 2006
- Section VI – Remarks: My DOR will be adjusted at my first duty station in accordance with (IAW) Army Regulation (AR) 600-20 (Army Command Policy), Enlistment grade is E6 IAW AR 601-210 (Regular Army and Army Reserve Enlistment Program), paragraph 3-17a (c)

m. On 5 February 2010, Orders Number 036-0189, issued by HQs, III Corps and Fort Hood, retired the applicant in the rank/grade of SSG/E-6 and placed him on the retired list effective 1 July 2010. His voluntary retirement was with 20-years, 2-months, and 22-days of service.

n. The applicant was honorably retired from active duty on 30 June 2010. DD Form 214 shows the applicant completed 4-years, 5-months and 5-days of active service with 15-years, 7-months and 17-days of prior active service. It also shows in items:

- 4a: SSG
- 4b: E6
- 12h: 26 January 2006

4. The applicant's records are void of any disciplinary action that would result in a reduction in rank.

5. The applicant provides:

a. DD Form 215 showing his total prior active service was changed to show 2 months and 2 days and total prior inactive service was changed to show 1 year and 19 days on his DD Form 214 ending on 9 November 1989.

b. Title 10, USC, section 3963 (Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct), (a) A Reserve enlisted member of the Army described in subsection (b) who is retired under section 3914 of this title shall be retired in the highest enlisted grade in which the member served on active duty satisfactorily (or, in the case of a member of the National Guard,

in which the member served on full-time National Guard duty satisfactorily), as determined by the Secretary of the Army. (b) This section applies to a Reserve enlisted member who: (1) at the time of retirement is serving on active duty (or, in the case of a member of the National Guard, on full-time National Guard duty) in a grade lower than the highest enlisted grade held by the member while on active duty (or full-time National Guard duty); and (2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Army. (c) This section applies with respect to Reserve enlisted members who are retired under section 3914 of this title after September 30, 1996.

c. Title 10 USC, section 3965 (Restoration to former grade: retired warrant officers and enlisted members), each retired warrant officer or enlisted member of the Army who has been advanced on the retired list to a higher commissioned grade under section 3964 of this title, and who applies to the Secretary of the Army within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted status, as the case may be.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.

2. The Board found the applicant had served successfully in the rank/grade of SFC/E-7 for more than 2 years and he was not reduced in grade due to misconduct, rather as a result of the needs of the Army when he reenlisted in 2006 following a brief break in service. The Board determined the evidence supports correcting the applicant's record to show he was advanced to SFC/E-7 on the Retired List effective the date his active duty service plus his time on the Retired List equaled 30 years.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	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 records of the individual concerned be corrected by advancing him to SFC/E-7 on the Retired List effective the date his active duty service plus his time on the Retired List equaled 30 years.

8/27/2024

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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, 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. AR 15-80 (Army Grade Determination Review Board (AGDRB) and Grade Determinations), establishes policy, procedures and responsibilities of the AGDRB and other organizations delegated authority to make grade determinations on behalf of the Secretary of the Army (SA).

a. Paragraph 2-3 (Automatic Grade Determinations) state automatic grade determinations do not include cases where—(1) Reversion to a lower grade was, owing to misconduct, or punishment pursuant to Article 15, UCMJ, Article 15.

b. Paragraph 2-4 (Grade determination considerations) The AGDRB will consider each case on its own merits. Generally, determination will be based on the Soldier's overall service in the grade in question, either on active duty or other service qualifying the Soldier for retirement, receipt of retired pay, or separation for physical disability. Circumstances pertinent to whether such service is found satisfactory include, but are not limited to, the following:

- Medical reasons, which may have been a contributing or decisive factor in a reduction in grade, misconduct, or substandard performance
- Compassionate circumstances
- Length of otherwise satisfactory service in the grade in question, before and after the misconduct

c. Paragraph 3-1, enlisted Soldiers will usually retire in the grade held on the day before their placement on the retired list and are not subject to discretionary grade determinations, except for disability separations and 30-year cases. For enlisted cases, the AGDRB will make final determinations on behalf of the Secretary of the Army unless that authority is reserved by a higher authority in a particular case or type of case. It will determine the highest grade in which a Soldier has served satisfactorily for computations of retired pay. While enlisted Soldiers may be reduced in grade by court-martials, nonjudicial punishment proceedings, administrative separation proceedings or inefficiency board, enlisted grade determinations cannot result in reduction of enlisted Soldier's current grade. Enlisted grade determinations will result in either a decision to retain the individual's current grade or to advance to a higher grade in which the individual satisfactorily served or to which advancement is otherwise provided by law. Enlisted Soldiers who are determined not to have service satisfactorily in the highest grade held and who first became members after 7 September 1980 and therefore would normally fall under the high 36-month average for calculation of retired pay, do not get the benefit of that averaging if reduced in grade as a result of court-martial, non-judicial punishment or an adverse administrative action.

3. Title 10 USC, section 3964 (Higher grade after 30 years of service: warrant officers and enlisted members), (a) Each retired member of the Army covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Army. (b) This section applies to; (1) warrant officers of the Army; (2) enlisted members of the Regular Army; and (3) reserve enlisted members of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty).

4. Title 10 USC, section 3965 (Restoration to former grade: retired warrant officers and enlisted members), each retired warrant officer or enlisted member of the Army who has been advanced on the retired list to a higher commissioned grade under section 3964 of this title Show, and who applies to the Secretary of the Army within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted status, as the case may be.

5. Department of Defense Financial Management Regulation 7000.14-R Volume 7B, chapter 9 (Advancements On Retired List), 090302. Army A member of the Army who retires with less than 30-years of service is entitled, when his active service plus service on the retired list totals 30-years, to be advanced on the retired list to the highest grade served on active duty satisfactorily, as determined by the Secretary of the Army. For current active duty members, the Army Grade Determination Review Board (AGDRB) will convene prior to members' retirement and make a determination of the highest grade served on active duty satisfactorily, unless a reduction in grade was the result of misconduct, inefficiency, or for cause. Members who retired prior to 12 July 2002, without a grade determination review by the AGDRB, must apply to the AGDRB to initiate the grade determination process. Advancements will not occur until the member reaches his or her 30 year mark, in accordance with AR 15-80. If an application is submitted after the member's 30 year mark, then the effective date of advancement and pay is retroactive to the date of the member's application to the Board. This applies to: Warrant officers of the Army; Enlisted members of the Regular Army; and Reserve enlisted members of the Army, who at the time of retirement, were serving on active duty (or, in the case of members of the National Guard, on full-time duty).

6. 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. Paragraph 4-8 (Service requirement), a. Soldiers promoted to grades SFC, MSG, and SGM will incur a 2-year service requirement. Service requirement will be from the effective date of promotion, unless Soldiers are in one of the following categories: (1) Eligible for retirement based on RCP for the recommended grade. (2) Already eligible through prior service for a higher grade at time of retirement. (3) Age 55 or older. b. Service requirement will begin on the effective date of promotion. Soldiers not having sufficient time remaining must reenlist or decline promotion in accordance with paragraph 1-24 of this regulation.

//NOTHING FOLLOWS//