

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230010508

APPLICANT REQUESTS: to be placed on the retired list in the rank of Sergeant First Class (SFC) his highest grade held

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 03-196-00063 Promotion to SFC

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 requests his pay grade be changed from staff sergeant (SSG)/E-6 to SFC/E-7 based on promotion orders that state his date of rank (DOR) as 1 August 2003. He held that rank until his retirement on 2 April 2023.
3. The applicant's service record contains the following documents:
 - a. The applicant was born on XXA__ 1963. He turned 60 in A__ 2023. He enlisted in the U.S. Army Reserve (USAR) on 5 June 1990 and reenlisted in the USAR on 3 June 1991 and 17 May 1997. He extended his enlistment in the USAR on 14 March
 - b. Orders 03-196-00063, published by Headquarters, 99th Regional Support Command, dated 15 July 2003 shows the applicant was promoted from the rank of SSG to the rank of SFC effective 1 August 2003 with a DOR of 1 August 2003. The promotion was awarded with the condition the applicant was enrolled in, and successfully completed the Noncommissioned Officer Education System (NCOES) course required for the grade to which promoted. The applicant understood and agreed that if he failed to meet these conditions or was subsequently denied enrollment or became an academic failure or did not meet gradating requirements the applicant was subject to reduction to the grade and rank held prior to the promotion. The applicant

further understood that if reduced, service performed in the higher grade would not be considered in determining retired grade, date of rank, or any other determinations dependent on the higher grade.

c. On 7 July 2004, the U.S. Army Human Resources Command issued him a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter). He had completed the required years of qualifying service and was eligible for retired pay, on application, at age 60.

d. Orders 04-219-00015, published by Headquarters, 99th Regional Readiness Command, on 6 August 2004, transferred him, in the rank of SFC, to the Retired Reserve effective 9 August 2004. He completed 20 years, 9 months, and 24 days of qualifying service towards non-regular retirement.

e. DA Form 4980-12 (Meritorious Service Medal (MSM) Certificate) shows the applicant, in the rank of SFC, was awarded the MSM for his 21 years of honorable service from 10 August 1994 through 9 August 2004.

f. On 21 May 2022, the applicant submitted a DD Form 108, Application for Retired Pay Benefits. He asked to retire on XX A___ 2023 (his 60th birthday) and indicated the highest rank he held was SFC.

g. On 8 May 2023, HRC published Orders C04-394486, placing him on the AUS retired list. These orders are not filed in the applicant's official service record.

h. On 19 May 2023, HRC published Orders C04-394486R, that revoked orders C04-3944896 pertaining to his placement of the applicant on the Retired List. The original orders are not available for the Board's consideration. The orders show the applicant's rank as SSG.

i. Orders C05-396168, published by AHRC, dated 19 May 2023 shows the applicant was placed on the retired list, in the rank of SSG, effective 2 April 2023.

j. The applicant's service record is void of information showing he completed the Advanced Noncommissioned Officer Course (ANCOC).

4. On 20 March 2024, AHRC responded to an inquiry by the analyst of record regarding the revocation orders found in the applicant's service record and his rank. AHRC states their system shows the applicant as a SSG and they did not have information on why the orders were revoked.

BOARD DISCUSSION:

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 shows the applicant was conditionally promoted to SFC on 1 August 2003 with s stipulation he completes the required NCO Education course required for his promoted grade. He requested and was transferred to the Retired Reserve effective 9 August 2004. There is no evidence he completed the required military education for his promoted grade. Although his record does not contain orders revoking his promotion, when he was placed on the retired list, he was retired in the rank of SSG, not SFC. The Board found no error or injustice. If the applicant has evidence that he met the conditional promotion to SFC, he may resubmit his application to the Board for reconsideration.

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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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. Title 10, United States Code (USC), section 3961, provides the legal authority for the assignment of retired grades. It states, in pertinent part, that unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve enlisted member of the Army who retires other than for physical disability retires in the regular or reserve grade that he/she holds on the date of retirement.

3 Title 10, USC, section 1406 provides the legal authority for the computation of retired pay. It states, in pertinent part, that in the case of a Non-Regular service retirement, the member is entitled to retired pay based on the highest grade held satisfactorily at any time in the Armed Forces.

4. Army Regulation (AR) 135-180 (Army National Guard and Army Reserve Retirement for Non-Regular Service) states that a person granted retired pay will receive such pay in the highest grade (temporary or permanent) satisfactorily held by him or her during his or her entire period of service. Service in the highest grade will not be deemed satisfactory if it is determined that any of the following factors exist: (a) revision to a lower grade was expressly for prejudice or cause, due to misconduct, or punishment pursuant to Article 15, UCMJ, or court-martial; or (b) there is information in the Soldier's service record to indicate clearly that the highest grade was not served satisfactorily. Paragraph 4-6c(2) states if the Soldier was transferred to the Retired Reserve or discharged on or after 25 February 1975, the retired grade will be that grade which the enlisted Soldier held while on active duty or in an active reserve status for at least 185 days or 6 calendar months.

5. AR 140-158 (Army Reserve Enlisted Personnel Classification, Promotion, and Reduction), in effect at the time, prescribed policy and procedures governing the classification, advancement, promotion, reduction, and grade restoration of applicable U.S. Army Reserve Soldiers. It states, NCOES courses are progressive and parallel the U.S. Army noncommissioned officer (NCO) rank structure. Therefore, an NCO must be a graduate of the education course required by the NCOES for his or her current grade. A Soldier with the rank of SFC must be a graduate of ANCOC-Active Component course or ANCOC-Reserve Component course.

//NOTHING FOLLOWS//