

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230010932

APPLICANT REQUESTS:

- correction of her records to reflect her promotion to the rank/grade of master sergeant (MSG)/E-8
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Enlisted Record Brief (ERB)
- DA Form 2166-9-2 (Noncommissioned Officer Evaluation Report (NCOER) (staff sergeant through first sergeant/MSG) for period of service for 9 May 2016 through 8 May 2017
- DA Form 2166-9-2 for period of service for 9 May 2017 through 8 May 2018
- DA Form 2166-9-2 for period of service for 9 May 2018 through 8 May 2019
- Active Guard/Reserve (AGR) Enlisted Controlled Grade Sequence List (CGSL) as of 5 November 2020
- TX Army National Guard (ARNG) Orders Number 310-006
- Training certificate for Master Leader Course (MLC)
- TX Military Department Memorandum, Subject: Retirement Request Approval, Sergeant First Class (SFC) M-, J- (the applicant)
- AGR CGSL as of 28 September 2021
- Inspector General (IG) complaint from legal counsel
- Joint Force Headquarters (HQs) TX Military Department Orders Number 173-003
- Joint Force HQs TX Military Department Orders Number 173-004
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 30 June 2022
- Email from TX IG office, 26 August 2022
- TX Military Department Office of the IG letter
- Excerpt from Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions)

FACTS:

1. The applicant states she was assigned to a higher graded position effective 1 November 2020 with zero control grades available until the fourth quarter of 2022. She requests to be placed on the retired list in the highest grade she satisfactorily held while on active duty under provision of Title 10 United States Code (USC), section 3964 (Higher grade after 30 years of service: warrant officers and enlisted members). Although she retired on 30 June 2022 in the grade of E-7, she previously held the grade of E-8 while on active duty during the period of 1 November through 30 June 2022.

a. According to her calculation, she has a total of 20 years of Active Federal Service and on the retired list. She was selected for promotion to MSG on 30 September 2020 which was one of the greatest moments in her career. In October 2020, she was denied enrollment to the MLC scheduled in November 2020; however, she was ordered to attend the course in January 2021. She was then assigned to an E-8 position on 1 November 2020. Due to the mismanagement of AGR E-8 controlled grades, as an E-7 she had to work the duties of an E-8 in the largest brigade in the state of TX where she was administratively accountable for over 4,600 Soldiers while conducting Casualty Assistance Officer operations at Fort Hood, TX.

b. She excitedly awaited her promotion to MSG after the completion of the MLC in February 2021. However, she was told she would not be promoted for at least a year or more due to the controlled grade management. So, she decided to retire and her request was approved on 23 June 2021. Others were promoted ahead of her though they were below her in sequence or were not qualified. She filed an IG complaint through legal counsel in which she was never provided a status on the complaint for 6 months when she contacted the National Guard Bureau IG office. Of note, the IG assistant was competing against her for promotion to E-8 in the same military occupational specialty. She then requested to have her retirement date changed until after the IG complaint was concluded but it was denied and she requested an open door with the Adjutant General which was also denied. But she was referred to the Assistant Adjutant General. She finally received notification that her IG complaint was closed 3 months after her retirement date.

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

a. On 9 December 2000, the applicant enlisted in the ARNG.

b. A DD Form 214 shows the applicant was ordered to active duty in support of Operation Iraqi Freedom effective 18 December 2003. She was honorably released from active duty on 8 May 2005.

c. On 20 February 2007, the applicant entered active duty.

d. On 14 February 2011, Orders Number 045-1050, issued by the TXARNG, show the applicant was ordered to full time National Guard duty in an AGR status, effective 1 March 2011. Orders continued her in an AGR status until her length of service retirement.

e. On 24 May 2011, Orders Number 144-1016, issued by the TX Military Forces ARNG, the applicant was promoted to the rank/grade of sergeant first class (SFC)/E-7, effective 9 May 2011.

f. A DA Form 87 (Certificate of Training) shows the applicant completed Structured Self-Development Level 4 on 3 December 2015.

g. On 5 November 2020, Orders Number 310-006, issued by the TXARNG, the applicant was assigned to the Senior Human Resources HQs and HQs in Fort Worth, TX, effective 1 November 2020. The additional instructions show the AGR position was the grade of E-8 at HQs, 56th Infantry Brigade Combat Team, S-1 NCO with the Enlisted Promotion System (EPS) Number/Control Grade Number: 2020-AGR-068-EPS.

h. A DA Form 1059 (Service School Academic Evaluation Report) shows the applicant achieved course standards during the period of 8 through 21 January 2021 for MLC.

i. On 19 February 2021, the applicant requested a voluntary retirement from the TXARNG and AGR program, effective 30 June 2022. In the request the applicant also stated that she would continue to perform her current duties in her present assignment until her request was approved.

j. On 1 March 2022, Orders Number 060-004, issued by the TXARNG, show the applicant was released from active duty, effective 30 June 2022, and placed on the retired list, effective 1 July 2022, in the rank/grade of SFC/E-7.

k. On 30 June 2022, the applicant was honorably retired from active duty. Her DD Form 214 shows in item 4a (Grade, Rate or Rank) as SFC and item 12i (Effective Date of Pay Grade) as 9 May 2011.

l. The applicant's service record is void of evidence she was promoted to the rank/grade of MSG/E-8.

3. The applicant provides:

a. Her ERB, dated 14 February 2022 shows the applicant was assigned to an E-8 position effective 17 November 2020. It also shows the applicant completed MLC.

b. A DA Form 2166-9-2 for the rating period of 9 May 2016 through 8 May 2017 which shows the applicant was rated as a platoon sergeant. Her rater rated her overall performance as far exceeded standards. Her senior rater rated her overall potential as highly qualified and she performed at a level above her peers.

c. A DA Form 2166-9-2 for the rating period of 9 May 2017 through 8 May 2018 which shows the applicant was rated as a readiness NCO and platoon sergeant. Her rater rated her overall performance as far exceeded standards. Her senior rater rated her overall potential as highly qualified and she was one of the top NCOs in the battalion.

d. A DA Form 2166-9-2 for the rating period of 9 May 2018 through 8 May 2019 which shows the applicant was rated as the senior human resources NCO in charge. Her rater rated her overall performance as far exceeded standards. Her senior rater rated her overall potential as highly qualified and she should be promoted ahead of her peers.

e. A TXARNG Enlisted CGSL as of 5 November 2020 shows she was last in sequence for E-8 with a date of acceptance of 30 September 2020.

f. A training certificate which shows the applicant successfully completed MLC during the period of 8 through 21 January 2021.

g. A TX Military Department Memorandum, Subject: Retirement Request Approval, SFC M-, J-, dated 23 June 2021, shows the applicant was approved for retirement effective 30 June 2022. Her application could not be withdrawn unless it was established that retention on active duty would prevent an extreme hardship to the applicant or her immediate family.

h. The TXARNG Enlisted CGSL as of 28 September 2021, the applicant is not shown on the list.

i. IG complaint for failure to promote in accordance with Army Regulations, dated 22 November 2021 from legal counsel which states the applicant was seeking redress through the IG system. The applicant was placed on the E-8 promotion list in September 2020. Due to her pending promotion, she accepted a higher graded position; however, she was not promoted in accordance with relevant regulations. Therefore, she requested retirement which was approved for 30 June 2022.

(1) The regulation states Soldiers will not be promoted until they are assigned to a higher graded position and meet the Professional Military Education requirements. If Soldiers are available for assignment they will be assigned and promoted provided they meet all other requirements for promotion.

(2) The AGR services failed to properly promote the applicant when she became fully qualified for promotion to MSG on 21 January 2021 when she completed MLC and was the sole occupant of an E-8 position. Therefore, there was nothing to prevent her promotion. Only after the applicant's retirement request was approved was she eligible to be removed from the promotion list. The applicant was not given appropriate notice of her removal from the promotion list.

j. E-mail from the TX IG office dated 25 March 2022 which shows the IG NCO apologized for a delay in response and he was still looking into the matter.

k. E-mail from the TX IG office dated 3 June 2022, in response to the applicant's email which stated she submitted a complaint to a congressional member, where the applicant was asked if her congressional was regarding the same issue which she filed the IG complaint. As the regulation stated an IG office who received the same complaint already submitted to a member of congress will notify the complainant in writing the final response to the complaint will come from the member of congress.

l. E-mail from the TX IG office dated 22 June 2022, in response to the applicant's email where she expressed, she was uncomfortable with the handling of her inquiry as there was a conflict of interest, which notified the applicant that after review of her complaint, it was directed her assistance case be closed with no further action. The applicant was requested to explain her comment about the conflict of interest so it could be investigated.

m. Joint Force HQs TX Military Department Orders Number 173-003, dated 22 June 2022 which shows the applicant was assigned to the U.S. Army Separation Transfer Point at Fort Sam Houston, TX for separation processing with a scheduled retirement date of 30 June 2022.

n. Joint Force HQs TX Military Department Orders Number 173-004, dated 22 June 2022 which shows the applicant was retired effective 30 June 2022 and placed on the retired list effective 1 July 2022 in the rank of SFC.

o. E-mail from the TX IG office, dated 26 August 2022 which stated attached was her final reply letter regarding her assistance request. The IG office considered her case closed and no further action would be taken.

p. TX Military Department Office of the IG letter dated 26 August 2022 stated the letter was in response to her letter dated 13 January 2022 concerning her promotion and pay issues. The inquiry determined the applicant was removed from the control grade sequence list based on her non-promotable status which occurred when her voluntary retirement was approved on 23 June 2021. The promotions regulation states a Soldier becomes non-promotable upon the approval of a voluntary retirement request.

States cannot exceed their AGR controlled grade list, therefore a Soldier who in non-promotable cannot be promoted. The applicant was not removed from the centralized promotion list, only the controlled graded sequence list.

q. Excerpt from AR 600-8-19,

(1) Paragraph 4-15 and 4-18, does not apply to the applicant's case as chapter 4 of this regulation provides the rules and steps for managing the centralized promotion system to SFC, MSG, and sergeant major (SGM) for the Regular Army (RA) and U.S. Army Reserve (USAR) AGR Soldiers.

(2) Paragraph 5-5 does not apply to the applicant's case as chapter 5 of this regulation prescribes policy for the promotion of USAR Soldiers to the rank of SFC, MSG, and SGM who are assigned to Troop Program Unit (TPUs), Army Reserve Elements (AREs), multi-component units, the Individual Ready Reserve (IRR), and the Standby Reserve (active status list).

(3) Paragraph 7-40 (Selecting Soldiers from the promotion list), Soldiers on the promotion list who are fully eligible and available to include completion of the required PME for pin-on, will be offered the position. Upon exhausting the promotion list with all PME qualified Soldiers by CPMOS, Soldiers will be offered assignment to available vacancies for which they are eligible and available without the required PME for promotion. Soldiers selected for assignments when they are fully qualified will be promoted concurrently with the assignment provided, they meet the PME requirements. They may not be assigned to positions or promoted in the position until the incumbent is reassigned or separated. In the case of AGR personnel, States are authorized to fill the incumbent's position in accordance with National Guard Regulation 600-5. However, States cannot exceed their AGR controlled grade authorization. AGR SFC and MSG selected and assigned to funded positions, but for whom there are no available controlled grade allocations to promote, will remain assigned pending availability of a control grade resource. State leadership and DARNG decides which positions and Soldiers are allocated to the limited number of controlled grades, and the method through which this is done, providing that the method does not violate other articles or the spirit of this chapter or NGR 600-200.

4. On 1 December 2023, in the processing of this case, the National Guard Bureau, provided an advisory opinion regarding the applicant's request to be retired in the grade of E-8 with the coinciding adjustment in her retirement pay. The advisory official stated the recommendation was to disapprove the applicant's request.

a. The applicant's record shows she was selected for promotion to the rank of MSG on 30 September 2020. However, there were no controlled grades available at the time, and the promotion was not effective immediately. She submitted a voluntary retirement

request on 19 February 2021 which was approved on 23 June 2021. At that time, she was removed from the controlled grade sequence list. On 1 August 2021, the next E-8 controlled grade became available for the TXARNG to promote the next E-7, but the applicant was not on the list due to her approved voluntary retirement. She was reassigned to the retired list effective 1 July 2022.

b. AR 600-8-19 states that an approved voluntary retirement puts a Soldier in a non-promotable status. It also states AGR promotion to MSG will be promoted effective the date of assignment to a valid position, date an AGR controlled grade is authorized or if applicable, the date of graduation from the PME course requirement whichever is later. AGR Soldiers selected and assigned to a position of the next higher grade before the list expires but are not promoted because a controlled grade is not available will remain assigned pending availability of a controlled grade.

c. Based on the applicant's claims and the documents she provided in support of her request, the applicant's highest rank held was SFC, and her request should be disapproved. There is no evidence of AGR controlled grade mismanagement by the TXARNG, and the applicant submitted a voluntary retirement request before she could be promoted to E-8.

5. On 8 December 2023, the Army Review Board Agency, Case Management Division, provided the applicant the advisory opinion for review and comment. She did not respond.

#### BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined his record is absent evidence that shows she was promoted to master sergeant (MSG)/E-8. The Board reviewed and concurred with the National Guard Bureau's advisory opinion finding that she was selected for promotion to MSG/E-8 on 30 September 2020. However, there were no controlled grades available and her promotion was not effective immediately. She subsequently submitted a voluntary retirement on 19 February 2021 at which time she was removed from the sequence list.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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.

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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. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

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

a. Paragraph 1-29 (Noncommissioned Officer Professional Development System requirement for promotion and conditional promotion), Soldiers (all components) must complete the following professional military education (PME) courses: completion of SSD/DLC 4 is an eligibility requirement for promotion consideration to MSG. Completion of the Master Leaders Course (MLC) is a promotion requirement to MSG (effective with the FY18 MSG promotion selection board results) for RA and USAR (AGR) Soldiers. Completion of MLC is a promotion pin-on requirement to the rank of MSG/1SG effective 1 January 2019 for ARNG Soldiers.

b. Chapter 7 (Enlisted Promotion of Army National Guard Personnel), the DARNG has responsibility and exception authority (not contrary to controlling laws and regulations) for the policies provided in this chapter and as such, will provide guidance and interpretation of the policies set forth.

c. Paragraph 7-4 (Non-promotable status), commanders and leaders at all levels will notify the promotion authority when Soldiers whose name appears on a list are non-promotable. Soldiers may be advanced or promoted only while in a promotable status. Soldiers in a non-promotable status may not be selected from the promotion list until they have regained a promotable status. A Soldier is in a non-promotable status and will not be selected, promoted, advanced, appointed to a higher rank, or laterally appointed to CPL, 1SG, or CSM when a Soldier has a voluntary retirement application that has been approved.

d. Paragraph 7-28 (Promotion process), once considered and selected for promotion and assigned to a valid position, Soldiers are promotable provided they meet the PME requirement with the effective date and date of rank on the date they are assigned to the valid higher graded position. Soldiers who are not PME qualified will not be promoted any earlier than the date they graduate from the required PME course. AGR promotions to MSG will be promoted effective the date assigned to a valid position, date an AGR controlled grade is authorized, or if applicable, the date graduated from the PME course, whichever is later. AGR Soldiers selected and

assigned to higher graded positions before the list expires but are not promoted because a controlled grade is not available, will remain assigned pending availability of a controlled grade resource. AGR Soldiers selected from the promotion list, pending a control grade are no longer required to compete for the position for which selected.

e. Paragraph 7-40 (Selecting Soldiers from the promotion list), Soldiers on the promotion list who are fully eligible and available to include completion of the required PME for pin-on, will be offered the position. Upon exhausting the promotion list with all PME qualified Soldiers by CPMOS, Soldiers will be offered assignment to available vacancies for which they are eligible and available without the required PME for promotion. Soldiers selected for assignments when they are fully qualified will be promoted concurrently with the assignment provided, they meet the PME requirements. They may not be assigned to positions or promoted in the position until the incumbent is reassigned or separated. In the case of AGR personnel, States are authorized to fill the incumbent's position in accordance with NGR 600–5. However, States cannot exceed their AGR controlled grade authorization. AGR SFC and MSG selected and assigned to funded positions, but for whom there are no available controlled grade allocations to promote, will remain assigned pending availability of a control grade resource. State leadership and DARNG decides which positions and Soldiers are allocated to the limited number of controlled grades, and the method through which this is done, providing that the method does not violate other articles or the spirit of this chapter or NGR 600–200.

f. Paragraph 7-44 (Removal of Soldiers from the promotion lists), Soldiers will be notified of removal action, in writing. Once a Soldier is removed the action is final. CDRs will promptly notify the AG (MPMO), or DARNG for Title 10 AGR Soldiers, and forward supporting documents to remove from a promotion list a Soldier who has an approved retirement.

3. NGR 600-5 (Army National Guard – The Active Guard Reserve Program Title 32, Full Time National Guard Duty Management) in effect at the time, sets policy and procedures for the management of ARNG Soldiers serving on FTNGD in the AGR Program.

a. Paragraph 3-3c, AGR Soldiers will be the sole occupant of their assigned positions by the modified table of organization and equipment or the table of distribution and allowances by paragraph and line number. An AGR Soldier may be excess in their paragraph and line number for a period of up to one year when they are pending separation and a backfill has been selected and assigned.

b. Paragraph 6-8 (Retirement process), Soldiers will retire in the grade held on the date of retirement.

4. Title 10 United States Code (USC), section 3964 (Higher grade after 30-years of service: warrant officers and enlisted members), 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. 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).

//NOTHING FOLLOWS//