

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230011048

APPLICANT REQUESTS: in effect, reconsideration of his previous request to correct his DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 17 February 1986, to show his rank/grade of staff sergeant (SSG)/E-6, the highest rank/grade in which he served on active duty vice sergeant (SGT)/E-5.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2-1 (Personnel Qualification Record), page 2
- DD Form 214, 17 February 1986

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20110014657 on 19 January 2012.

2. The applicant states, in effect, his DD Form 214 shows the wrong rank/pay grade of SGT/E-5 instead of SSG/E-6. He was applying for benefits when he noticed the wrong rank on his DD Form 214. He would like to request his record to reflect the highest rank during his service in the military.

3. A review of the applicant's official records show the following:

a. He enlisted in the Regular Army on 3 January 1977, and reenlisted on 2 November 1979 and 18 February 1983.

b. Item 18 (Appointments and Reductions) of his DA Form 2-1 covering his Regular Army active duty service shows, in relevant part, he was promoted to:

- specialist four (SP4)/E-4 on 1 November 1979
- specialist five (SP5)/E-5 on 7 November 1981
- SSG/E-6 on 7 May 1985

c. The applicant's record contains DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) which shows he accepted non-judicial punishment (NJP) on 19 November 1984 under the provisions of Article 15 of the UCMJ for failing to obey a lawful order on 1 November 1984 by driving on the Fort Ord installation while his driving privileges were suspended pending drunk driving charges on 6 September 1984.

(1) The punishment imposed was "reduction to the rank of SP4 suspended for a period of six months to be remitted if not vacated before 19 May 1985; forfeiture of pay for a period of two months, one month suspended for a period of six months to be remitted if not vacated before 19 May 1985."

(2) The applicant's appeal was denied on 4 February 1985.

d. On 8 February 1985, the applicant was reprimanded by the Headquarters, 7th Infantry Division and Fort Ord, CA, Assistant Division Commander, for operating a motor vehicle under the influence of alcohol. The Administrative Letter of Reprimand states:

(1) The applicant was reprimanded under the provisions of Army Regulation (AR) 190-5 and AR 600-37 for operating a motor vehicle while under the influence of alcohol. This was an administrative letter of reprimand and was not to be considered as punishment under Article 15, UCMJ.

(2) On 28 September 1984, the applicant was convicted by the Monterey County Municipal Court for the offense of driving while under the influence of alcohol which occurred on 1 September 1984, in Seaside, CA. The applicant's blood/alcohol content at the time of the offense was .17 percent.

(3) The applicant's conduct was inexcusable and would not be condoned in the command. He placed not only his life in danger, but also the lives and welfare of others around him. Moreover, as a Noncommissioned Officer (NCO), the applicant was charged with setting the example and maintaining the respect for, and dignity of, the U.S. Army. The applicant's failure to abide by that standard has brought discredit upon himself the Army, and the NCO Corps. The applicant's actions raised serious doubt about whether the Army should continue to repose trust and confidence in him. The applicant acknowledged receipt of the letter of reprimand on 19 February 1985.

e. On 31 May 1985, Headquarters, 7th Infantry Division and Fort Ord, CA, published Orders Number 106-343, which show the applicant was promoted to the rank/grade of SSG/E-6 with an effective date of 1 June 1985 and a date of rank of 7 May 1985.

f. His record contains a DA Form 2A (Personnel Qualification Record, Part I) prepared on 7 August 1985, which shows his rank/grade as SP5, with a date of rank of 7 November 1981.

g. On 9 September 1985, the applicant was reprimanded again by the Headquarters, 7th Infantry Division and Fort Ord, CA, Assistant Division Commander, for operating a motor vehicle under the influence of alcohol. The Administrative Letter of Reprimand states:

(1) The applicant was reprimanded under the provisions of AR 190-5 and AR 600-37 for operating a motor vehicle while under the influence of alcohol. This was an administrative letter of reprimand and was not to be considered as punishment under Article 15, UCMJ.

(2) On 9 January 1985, in Seaside, CA, the applicant was arrested for driving under the influence of alcohol. A lawfully administered test revealed the applicant's blood/alcohol content at that time to be .17 percent. The applicant acknowledged receipt of the letter of reprimand on 10 September 1985.

h. On 20 September 1985, Headquarters, 7th Infantry Division and Fort Ord, CA, published Orders Number 183-310, which revoked Orders Number 106-343 pertaining to the applicant's promotion to SSG/E-6 under the provisions of AR 600-200 (Enlisted Personnel Management), paragraph 7-5f (revocation of orders).

i. On 17 January 1986, Headquarters, 7th Infantry Division and Fort Ord, CA, published Orders Number 12-567, which assigned the applicant to the U.S. Army Separation Transfer Point for separation processing with a report date and date of discharge on 17 February 1986. The orders show his rank as SGT.

j. The applicant was honorably discharged from active duty on 17 February 1986 for expiration term of service. Item 4a (Grade, Rate or Rank) of the DD Form 214 he was issued at the time of his discharge shows "SGT." Item 4b (Pay Grade) of this form shows "E5" and item 12h (Effective Date of Pay Grade) shows 7 November 1981.

k. On 19 January 2012, in ABCMR Docket Number AR20110014657 shows the Board voted unanimously to deny the applicant's requests to correct his rank to SSG instead of SGT.

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

DD Form 214 reflects the grade held by the Soldier at the time of separation. The applicant in this case was issued orders on 31 May 1985 that promoted him to SSG with an effective date of 1 June 1985 and a date of rank of 7 May 1985. The applicant was issued an administrative letter of reprimand on 9 September 1985 for operating a motor vehicle under the influence of alcohol and being arrested on 9 January 1985, for driving under the influence of alcohol. On 20 September 1985, his higher headquarters published orders revoking the orders that promoted him to SSG/E-6. The applicant was then separated on 17 February 1986, in the rank of SGT, which is the rank he held at the time of separation. The Board found no error or injustice regarding the rank he received at the time of separation.

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 to amend the decision of the ABCMR set forth in ABCMR Docket Number AR20110014657.

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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 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that 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 will decide cases based on the evidence of record. The ABCMR is not an investigative agency.
2. AR 600-8-2 (Suspension of Favorable Personnel Actions (Flags)) in effect at the time prescribes policies, operating tasks, and steps governing the suspension of favorable personnel actions as a function. The regulation states that a flag will be initiated immediately when a Soldier's status changes from favorable to unfavorable. Several specific actions and investigations require a non-transferable flag. In cases of adverse action, a flag is initiated if a member is pending elimination from the Army. The flag is removed when the Soldier is reassigned to the transition center for separation. A flag properly imposed in accordance with this regulation prohibits promotion or reevaluation for promotion.
3. AR 600-8-19 (Enlisted Promotions and Reductions) prescribes policies and procedures governing promotion and reduction of Army enlisted personnel. The regulation states that Soldiers (specialist through master sergeant) are non-promotable to a higher grade when a Soldier is in proceedings that may result in an administrative elimination. The failure to initiate a DA Form 268 does not affect the Soldier's non-promotable status if a circumstance exists that requires imposition of a flag under the provisions of AR 600-8-2. A promotion is not valid, and the promotion order will be revoked if the Soldier is not, or was not, in a promotable status on the effective date. The unit commander must notify the promotion authority when a Soldier is in a non-promotable status.
4. AR 635-5 (Separation Documents), in effect at the time, prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. The regulation established standardized policy for the preparation of the DD Form 214. In pertinent part, it stated 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. This regulation, in pertinent part, also stated the active duty rank and pay grade at the time of separation will be entered in items 4a and 4b of the DD Form 214, respectively.
5. AR 600-200 (Enlisted Personnel Management) in effect at the time states in paragraph 7-6 (Nonpromotable status (All enlisted grades) the commander will provide the Commander Military Personnel Center (MILPERCEN), the Soldier's name, social

security number, sequence number, and a brief summary of the circumstances. The commander will advise MILPERCEN of the date on which the Soldier became promotable. Soldiers (E-1 through E-8) are nonpromotable and will not be advanced or promoted to the higher grade when under arrest or under a current suspension of favorable personnel actions.

//NOTHING FOLLOWS//