

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230011671

APPLICANT REQUESTS: reconsideration of his previously submitted request for reinstatement of his rank/grade to sergeant first class (SFC)/E-7.

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

- Self-Authored Statement - in lieu of DD Form 149 (Application for Correction of Military Record)
- Memorandum, Subject: Request for Retirement as an Exception to Policy, 6 August 1991
- Orders Number 10-2, 22 October 1991
- Orders Number 011-2, 15 January 1992
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 31 May 1992
- Certificate, 12 February 1997

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 AR20150008694 on 17 March 2016.

2. The applicant states since retiring from the military, he has served in a variety of positions within the Petersburg, Virginia, Rescue Squad, President/Director of the church choir and President of the church food pantry. He contests that he has a clean criminal record with no pending charges. It has been over 30 years since he was retired from military service and hopes that he will not have to continue to pay the price for his actions.

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

- a. On 19 September 1967, the applicant enlisted in the Regular Army.
- b. DA Form 2339 (Application for Voluntary Retirement) shows on 10 September 1970, the applicant was transferred into the U.S. Army Reserve (USAR).

c. On 15 May 1974, the applicant enlisted in the Regular Army.

d. On 29 January 1987, U.S. Army Military Personnel Center issued Orders Number 7-15 announcing the applicant's promotion to the rank/grade of SFC/E-7, effective 1 March 1987 with a date of rank of 2 February 1987.

e. On 15 January 1992, Headquarters, U.S. Army Berlin issued Orders Number 011-2 authorizing relocation of the applicant pending his retirement.

f. Special Court-Martial Order Number 1, dated 6 April 1992, shows:

(1) The applicant was found guilty of one specification of disrespect in language toward a superior commissioned officer, one specification of indecent liberties with a child under the age of 16, three specifications of indecent assault, one specification of indecent exposure, one specification of unlawful entry, and one specification of communicating indecent language.

(2) The sentence was adjudged on 20 February 1992 and consisted of confinement for 6 months, reduced to the rank of private (PVT)/E-1, forfeiture of \$175.00 of pay per month for 6 months and to be discharged from military service with a bad conduct characterization of service.

(3) On 6 April 1992, the convening authority approved the sentence of only so much of the sentence as provides for reduction to the grade of specialist (SPC)/E-4 and forfeiture of \$175.00 pay per month for 6 months is approved and will be executed.

g. On 31 May 1992, the applicant was honorably retired for length of service at the rank of SPC/E-4 in accordance with Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 12 (Retirement for Length of Service).

4. The applicant provides:

a. Memorandum, Subject: Request for Retirement as an Exception to Policy, dated 6 August 1991, reflective of the Commander, Berlin Brigade's recommendation for approval of the applicant's submitted request for voluntary retirement.

b. Orders Number 10-2, dated 22 October 1991, which show the applicant was ordered to be released from active duty on 31 May 1992 and placed on the retirement list at the rank/grade of SFC/E-7.

c. Certificate, dated 12 February 1997 reflective of the applicant being recognized for completing Incipient Fire Brigade training.

5. The ABCMR rendered a decision on 17 March 2016, in Docket Number AR20150008694. The Board denied the applicant's requested relief noting that by law, the Board may not disturb the finality of a conviction by court-martial. It is, however, empowered to change the severity of the sentence imposed, but only in cases where clemency is determined to be appropriate to moderate the severity of the punishment. In this case, the Board determined that the sentence was appropriate given the charges by which he was convicted. As such, clemency did not appear to be appropriate.

**BOARD DISCUSSION:**

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. The evidence shows the applicant was discharged by a Special Court-Martial for disrespect, indecent assault, indecent exposure, unlawful entry, and communicating indecent language. The sentence adjudged included reduction from staff sergeant (SSG)/E-6 to private (PVT)/E-1. The convening authority approved only so much of the sentence providing for reduction from SSG/E-6 to specialist (SPC)/E-4. The applicant was subsequently retired from active duty in the rank/grade of SPC/E-4 with an effective date of pay grade as 6 April 1992, the date of the convening authority action. The Board determined there was no error or injustice in the reduction of the applicant and therefore denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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. The Military Justice Act of 1983 (Public Law 98-209) provides, in pertinent part, that military correction boards may not disturb the finality of a conviction by court-martial. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, section 1552, the authority under which this Board acts, the ABCMR is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.

2. AR 600-8-19 (Enlisted Promotions and Reductions) provides that commanders of organizations authorized a colonel or higher grade may reduce Soldiers in the rank of SFC or higher. A court-martial sentence of Soldiers which, as approved by the convening authority, includes a punitive discharge, confinement, or hard labor without confinement, carries a reduction to the lowest enlisted pay grade. Reduction will be effective on date of approval by the convening authority.

3. The Manual for Courts-Martial implements the UCMJ and provides rules and procedures governing the administration of military justice. The Rules for Courts-Martial (RCM) implements law and legal finding and provides guidelines for conducting courts-martial.

a. RCM 1301d. (Reduction in Pay Grade) provides a court-martial may sentence an enlisted member to be reduced to the lowest or any intermediate pay grade.

b. Reduction in grade is one of the most severe forms of nonjudicial punishment and it should be used with discretion. As used in Article 15, the phrase "if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction" does not refer to the authority to promote the person concerned but to the general authority to promote to the grade held by the person to be punished.

c. Effective date and execution of punishments - reduction and forfeiture of pay, if unsuspended, take effect on the date the commander imposes the punishments.

d. Article 58a (Sentences: Reduction in Enlisted Grade Upon Approval) provides that unless otherwise provided in regulations to be prescribed by the Secretary concerned, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority.

4. AR 635-200 (Personnel Separations - Enlisted Personnel), Chapter 12 (Retirement for Length of Service) provides that retirement will be in the regular or reserve grade the

Soldier holds on the date of retirement. Retired Soldiers who have less than 30 years of active service are entitled, when their active service plus service on the retired list total 30 years, to be advanced on the retired list to the highest grade in which they served on active duty satisfactorily.

//NOTHING FOLLOWS//