

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230012780

APPLICANT REQUESTS: correction of his record to show retirement at the highest rank/grade held satisfactorily of staff sergeant (SSG)/E-6.

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

- Letter in lieu of DD Form 149 (Application for Correction of Military Record)
- SF 180 (Request Pertaining to Military Records)
- DD Form 214 (Report of Separation from Active Duty), ending 1 August 1979
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 20 May 1988
- DD Form 214, ending 31 December 2012
- DA Form 1506 (Statement of Service – For Computation of Length of Service for Pay Purposes), dated 3 October 2012

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 Numbers AR20070007310 on 18 October 2007 and AR2018000006457 on 4 March 2020.

2. The applicant's request is to be retired at the highest grade held satisfactorily of SSG/E-6. Although the case is presented as a reconsideration, it is not a reconsideration of his previous request to be promoted to the rank/grade of sergeant major (SGM)/E-9.

3. The applicant states, in pertinent part, he held the rank/grade of SSG/E-6 for over three-years and his retirement rank should reflect that vice the rank/grade of sergeant (SGT)/E-5.

4. A review of the applicant's available service record reflects the following:

a. DD Form 214 (Report of Separation from Active Duty) shows he enlisted in the Regular Army on 2 February 1976 and was honorably discharged from active duty on 1 August 1979. Item 6a (Grade, Rate or Rank) shows specialist four (SP4)/E-4. He completed 3 years and 6 months of net active service.

b. His record shows he reenlisted in the Regular Army on 2 August 1979.

c. DA Form 2-1 (Personnel Qualification Record – Part II) Item 18 (Appointments and Reductions) shows his rank as follows:

- Private (PV1)/E-1, effective 2 February 1976
- Private (PV2)/E-2, effective 2 June 1976
- Private first class (PFC)/E-3, effective 1 October 1976
- SP4/E-4, effective 10 August 1977
- SGT/E-5, effective 8 July 1980
- SSG/E-6, effective 5 September 1984

d. On 26 October 1987, the unit commander notified the applicant that he was initiating action to separate him under the provisions of Paragraph 14-12c, Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), for the commission of a serious offense. The commander stated the basis for the action was his abuse of illegal drugs, as evidenced by the applicant's positive urinalysis for THC.

e. The applicant consulted with legal counsel and was advised of the basis for the contemplated separation action and its effects, of the rights available to him and the effect of a waiver of those rights. Subsequent to this counseling, the applicant elected to have his case considered by a personal appearance before an administrative separation board and he requested consulting counsel.

f. On 19 February 1988, an administrative separation board convened to consider the applicant's case. The applicant was present with his counsel. After carefully considering the evidence before it, the administrative separation board, by majority vote, found the preponderance of the evidence established that the applicant had used illegal drugs, and it recommended the applicant's separation for misconduct with a general, under honorable conditions discharge.

g. On 1 April 1988, the applicant's defense counsel submitted a memorandum for the Commanding General (CG) of Fort Sheridan regarding the administrative separation board results on the applicant. Defense counsel stated that because of an incorrect evidentiary ruling by the president of the board, the other two board members were not told of a polygraph, the results of which indicated that the applicant was truthful when he denied using a controlled substance. Counsel indicated that the board president said it was a close decision that took a long time to decide and that there had been a

dissenting vote. Counsel claimed that had the evidence of the polygraph been admitted, the decision likely would have been in the applicant's favor.

h. On 19 April 1988, the Brigade Judge Advocate (JA) prepared a memorandum for the CG, Fort Sheridan, addressing the polygraph issue raised by the applicant's defense counsel. He stated that the administrative separation board president had ample authority for the ruling regarding the polygraph test in question, and further indicated that one fact not presented at the board was that early in the chapter process, the applicant declined the opportunity for a Government polygraph. The JA further indicated that defense counsel also argued that the applicant was supported by the entire chain of command, which was not entirely true. He stated the Government called two witnesses, the Army Drug Control Officer, who testified that the urinalysis test was correctly administered at the unit level; and the sergeant major, whose testimony was adverse to the applicant.

i. On 2 May 1988, the separation authority, after reviewing the administrative separation board proceedings and the matters submitted in appeal, approved the findings and recommendations of the board, and directed the applicant be discharged under the provisions of Paragraph 14-12c, AR 635-200, for misconduct-abuse of illegal drugs, and that he be issued a general discharge.

j. On 10 May 1988, Headquarters Fort McPherson issued Orders Number 131-231 reassigning him to the U.S. Army transition point for transition processing and discharge from the Regular Army, effective 20 May 1988.

k. His original DD Form 214 that shows he was assigned a general discharge has been removed from his record.

l. Another DD Form 214, ending 20 May 1988 (corrected upon the decision rendered in Army Discharge Review Board (ADRB) Docket Number AR2002070934) reflects an honorable discharge from active duty by reason of Secretarial Authority. Item 4a (Grade, Rate or Rank) shows SSG. Item 12 (Record of Service) shows service from 2 August 1979 to 20 May 1988 for a net active service this period of 8 years, 9 months, and 19 days with total prior active service of 3 years and 6 months. Item 13 (Decorations, Medals, Badges, Citations & Campaign Ribbons Awarded or Authorized):

- Army Service Ribbon
- Noncommissioned Officer Professional Development Ribbon (with numeral 3)
- Army Good Conduct Medal (3rd Award)
- Army Commendation Medal
- U.S. Army Recruiter Badge
- Expert Marksmanship Qualification Badge with Rifle Bar
- Overseas Service Ribbon (numeral 2)

m. On 3 July 2002, the ADRB, after carefully considering the applicant's case determined his discharge was inequitable based on his overall record of service. Although the ADRB voted to upgrade the characterization of the applicant's service to fully honorable and to change the authority and reason for his separation to Paragraph 5-3, AR 635-200, by reason of Secretarial Authority, it also found the discharge was proper and specified that it did not condone the applicant's misconduct.

n. On 18 November 2005, he enlisted in the Regular Army for a period of 3-years and 18 weeks in the rank/grade of SGT/E-5. He reenlisted in the Regular Army on 2 October 2006 for a period of 6-years in the rank/grade of SGT/E-5.

o. ABCMR Docket Number AR20070007310 decided on 18 October 2007, wherein he requested promotion to the rank/grade of sergeant major (SGM)/E-9 with 30 years of applicable back pay. The Board determination denied his request for insufficient evidence to support granting the relief requested.

p. On 27 September 2012, Headquarters, 1st Infantry Division and Fort Riley issued Orders Number 271-0008 reassigning him for separation processing and retirement at the retired rank of SGT, effective 31 December 2012.

q. DD Form 214 ending 31 December 2012 reflects an honorable retirement. He completed 7 years, 1 month, and 13 days of net active service with 12 years, 10 months, and 27 days of prior active service. Item 4a shows SGT. Item 18 (Remarks) shows retired list grade SGT.

r. ABCMR Docket Number AR20180006457 decided on 4 March 2020, wherein he requested promotion to the rank/grade of SGM/E-9 with 30 years of applicable back pay. The Board determination denied his request. Based upon the available documentation showing the applicant obtained the highest rank of SSG during his military service prior to being reduced in rank as a result of the misconduct leading to his separation, the Board concluded there was no justification for granting the applicant's requested relief.

5. The applicant provides a SF 180 wherein he requested an upgrade of his retired rank/grade to show SSG/E-6 as well as a DA Form 1506 dated 3 October 2012 showing his total active service of 20 years and 10 days with the highest active duty rank/grade held of SGT/E-5.

#### 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.

Although the applicant was previously promoted to SSG in September 1984, he was separated on 20 May 1988. When he enlisted in the Regular Army and reentered active duty on 18 November 2005, he enlisted in the rank/grade of SGT/E-5. He was ultimately retired on 31 December 2012. He held the rank of SGT/E-5 at the time of retirement. An enlisted Soldier retiring due to length of service is retired at the grade he or she held on the date of retirement. Since the applicant held the rank/grade of SGT/E-5 on the date he retired, the Board determined there is neither an error nor an injustice. Nevertheless, while the available evidence is insufficient for changing his retired grade to SSG, this in no way affects his right to pursue his grade change by submitting a request under the provisions of Title 10, U.S. Code, section 3964. Under the provisions of Title 10, U.S. Code, section 3964 (10 USC §3964), an enlisted Soldier (E-1 through E-9) who retires with less than 30 years of active service who previously held a higher grade, can apply for advancement to that higher grade on the retired list to the Army Grade Determination Review Board, when the member reaches a total of 30 years' time on active duty plus time on the retired list.

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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[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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
2. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets policies, standards and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.
  - a. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion and absence without leave.
  - b. Paragraph 14-12c (Commission of a Serious Offense) of this chapter says commission of a serious military or civil offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts Martial.
3. Title 10, United States Code, section 3964 (Higher Grade after 30 Years of Service: Warrant Officers and Enlisted Members) provides that each retired member of the Army 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 as determined by the Secretary of the Army. This section applies to Warrant Officers, Enlisted Soldiers of the Regular Army and Reserve Enlisted Soldiers 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. AR 15-80 (Army Grade Determination Review Board (AGDRB) and Grade Determinations) states:
  - 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 2-5 (Unsatisfactory service) Service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when: Reversion to a lower grade was—(1) Owing to misconduct. (2) Caused by NJP pursuant to UCMJ, Article 15. There is sufficient unfavorable information to establish that the Soldier's service in the grade in question was unsatisfactory. One specific act of misconduct may or may not form the basis for a determination that the overall service in that grade was unsatisfactory, regardless of the period of time served in grade. Retirement in lieu of or as the result of elimination action will not, by itself, preclude retirement in the highest grade; however, the underlying misconduct and/or substandard performance can result in a determination that service in grade was unsatisfactory.

//NOTHING FOLLOWS//