

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 August 2024

DOCKET NUMBER: AR20230014343

APPLICANT REQUESTS:

- correction of his rank upon retirement to reflect first lieutenant (1LT)/O-2 or sergeant first class (SFC)/E-7
- 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)
- DD Form 108 (Application for Retired Pay Benefits), 9 June 2021
- DD Form 2656 (Data for Payment of Retired Personnel), 9 June 2021
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Memorandum – Subject: Request for DD Form 215 to be Issued to Reflect the Following Changes, 13 May 2016
- DD Form 215 (Correction to DD Form 214 – Certificate of Release or Discharge from Active Duty)
- Orders Number 319-0155, 15 November 2011
- Orders Number 356-0163, 22 December 2011
- Orders Number 011-0158, 11 January 2012
- Orders Number 229-0151, 16 August 2016
- Orders Number 229-0152, 16 August 2016
- National Guard Bureau (NGB) Form 23B (Army National Guard (ARNG) Retirement Points History Statement)
- Memorandum – Subject: Notification of Eligibility for Retired Pay at Age 60 (20-Year letter), 20 December 2007
- Department of the Army, U.S. Army Human Resources Command letter, 23 March 2017
- Orders Number 089-813, 30 March 2006
- Orders Number 332-803, 28 November 2011
- DD Form 2894 (Designation of Beneficiary Information), 9 June 2021
- FMS Form 2231 (Direct Deposit), 9 June 2021

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 was incorrectly retired at the rank/grade of staff sergeant (SSG)/E-6. He contests that his rank should have reflected 1LT or SFC, whichever rank would entitle him to higher retirement pay.
3. A review of the applicant's service records show:
 - a. On 15 November 1983, the applicant enlisted in the ARNG.
 - b. On 1 June 1985, the applicant was promoted to the rank/grade of SSG/E-6.
 - c. On 28 June 1986, the applicant was honorably discharged to accept a commission.
 - d. On 14 January 1987, the NGB issued Special Orders Number 9 AR announcing Federal recognition of the applicant's initial appointment in the KYARNG, effective 29 June 1986
 - e. On 23 March 1987, the applicant was appointed as a Reserve commissioned officer in the Infantry Corps.
 - f. On 23 May 1989, the NGB issued Special Orders Number 98 AR announcing Federal recognition of the applicant's promotion to the rank/grade of 1LT/O-2, effective 28 June 1989.
 - g. On 27 February 1990, the NGB issued Special Orders Number 39 AR announcing the withdrawal of the applicant's Federal recognition and transfer into the U.S. Army Reserve (USAR), effective 17 November 1989.
 - h. On 2 November 1994, the U.S. Army Reserve Personnel Center issued Orders Number C-11-446475 releasing the applicant from the USAR Control Group (Reinforcement) at the rank/grade of sergeant (SGT)/E-5.
 - i. On 28 October 1994, the applicant enlisted in the ARNG.

j. On 13 December 2002, the Department of Military Affairs issued Orders Number 347-810, announcing the applicant's promotion to the rank/grade of SSG/E-6, effective 13 December 2002.

k. On 27 January 2004, the Department of Military Affairs issued Orders Number 027-820 announcing the applicant's promotion to the rank/grade of SFC/E-7, effective 1 January 2004.

l. On 30 March 2006, the Department of Military Affairs issued Orders Number 089-813 announcing the applicant's reduction from SFC to SSG, effective 14 April 2006 in accordance with National Guard Policy on Promotion/Reductions, Paragraph 7-61 and 7-7j(4)

m. On 18 April 2006, the Department of Military Affairs issued Orders Number 108-828 ordering the applicant to Full-Time National Guard Duty, effective 15 April 2006 at the rank of SSG.

n. On 20 December 2007, the applicant was issued a Notification of Eligibility for Retired Pay at Age 60 (20-Year letter).

o. On 29 September 2011, a Physical Evaluation Board convened finding the applicant physically unfit for continued military service with a recommendation that he be medically discharged with entitlement to severance pay; disability rating of 20 percent. The applicant concurred with the board's recommendation and waived his rights to a formal hearing.

p. On 15 November 2011, the U.S. Army Installation Management Command issued Orders Number 319-0155 reassigning the applicant to the U.S. Army transition point pending transition processing with entitlement to Disability Severance Pay in the rank/pay grade of SFC/E-7. The applicant was honorably discharged from active duty at the rank of SSG with entitlement to \$37,620.00 in Disability Severance Pay. The U.S. Army Physical Disability Agency provided a Physical Disability Information Report reflective of the applicant's pertinent personnel information pertaining to his separation. Review of this document provides that the applicant's retired grade of "O-2/1LT."

q. On 28 November 2011, the Department of Military Affairs issued Orders Number 332-803 discharging the applicant from the ARNG and reassigning him to the Retired Reserve, effective 15 November 2011, at the rank of SSG.

4. The applicant provides:

a. DD Form 108 dated 9 June 2021, reflective of the applicant's submitted request for retired pay. Item 4 (Highest Military Paygrade Held) reflects "SFC/E-7."

b. DD Form 2656 dated 9 June 2021, reflective of the applicant's submitted request for retired pay. Item 5 (Rank/Paygrade) reflects "SFC/E-7."

c. DD Form 214 reflective of the applicant's service on active duty from February 1984 – September 1984; item 4a. (Grade, Rate or Rank) reflects "PV2."

d. DD Form 214, ending 5 May 1987, reflective of the applicant's service on active duty from 10 January 1987 – 5 May 1987; item 4a. (Grade, Rate or Rank) reflects "2LT."

e. DD Form 214, ending 13 August 2002, reflective of the applicant's service on active duty from 18 January 2002 – 13 August 2002; item 4a. (Grade, Rate or Rank) reflects "SGT."

f. DD Form 214, ending 12 April 2005, reflective of the applicant's service on active duty from 14 August 2002 – 12 April 2005; item 4a. (Grade, Rate or Rank) reflects "SFC."

g. Memorandum – Subject: Request for DD Form 215 to be Issued to Reflect the Following Changes, dated 13 May 2016, reflective of the applicant's submitted request to have the DD Form 214 items 12d./e. (Total Prior Active Service) and (Total Prior Inactive Service) for the period ending on 15 November 2011 to be changed to reflect: 12d "0005 01 16" and 12e. "0017 03 24."

h. DD Form 215 reflective of the changes requested in item 4g. above being made to DD Form 214 for the period ending on 15 November 2011.

i. Orders Number 356-0163 dated 22 December 2011, reflective of Orders Number 319-0155 being amended to reflect a change in the additional instructions to read: "You are Authorized Disability Severance Pay in pay grade of E-7 based on 5 years, 7 months, and 1 day of service as computed 10 U.S.C. Section 1208. Section 1405 Service 12 years, 6 months, and 19 days."

j. Orders Number 011-0158 dated 11 January 2012, reflective of Orders Number 319-0155 being amended to reflect a change in the additional instructions to read: "You are Authorized Disability Severance Pay in pay grade of E-7 based on 10 years, 0 months, and 10 days of service as computed 10 U.S.C. Section 1208. Section 1405 Service 12 years 6 months 19 days."

k. Orders Number 229-0151 dated 16 August 2016, reflective of the revocation of Orders Number 319-0155 as amended by Orders Number 356-0163.

l. Orders Number 229-0152 dated 16 August 2016, reflective of the applicant being reassigned for separation processing on 15 November 2011. These orders authorize him Disability Severance Pay in pay grade E-7 based on 13 years, 2 months, and 15 days of service.

m. NGB Form 23B reflective of the applicant's qualifying service completed between 15 November 1983 – 15 November 2011; Highest Grade Held "O-2/2LT."

n. Department of the Army, U.S. Army Human Resources Command letter dated 23 March 2017, reflective of the applicant being provided with a copy of the issued DD Form 215.

o. DD Form 2894 dated 9 June 2021, reflective of the applicant's designation of his fiancée as his beneficiary.

p. FMS Form 2231 dated 9 June 2021, reflective of the applicant's personal accounting information.

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. The evidence shows the applicant served as a member of the Army National Guard (ARNG) and attained the rank/grade of sergeant first class (SFC)/E-7 on 1 January 2004 and was subsequently reduced in rank to staff sergeant (SSG)/E-6 on 14 April 2006. Additionally, the Board determined the applicant did serve as a commissioned officer in the ARNG and attained the rank/grade of first lieutenant (1LT)/O-2; however, served as a member ordered to full-time National Guard duty as an enlisted member where he was discharged from active duty as a SSG for disability, severance pay, non-combat related on 15 November 2011. Therefore, his DD Form 214 accurately reflects the conditions as they existed at the time of his separation from active duty. The Board found no error or injustice and denied relief.

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. Title 10, USC, 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, USC, section 3963 (Highest Grade Held Satisfactorily: Reserve Enlisted Members Reduced in Grade not as a Result of the Member's Misconduct), provides that a Reserve enlisted member of the Army described in subsection b who is retired under section 3914 of this title shall be retired in the highest enlisted grade in which the member served on active duty satisfactorily (or, in the case of a member of the ARNG, in which the member served on Full-Time National Guard (FTNG) duty satisfactorily), as determined by the Secretary of the Army. Subsection b applies to a Reserve enlisted member who:

- at the time of retirement is serving on active duty (or, in the case of a member of the ARNG, on FTNG duty) in a grade lower than the highest enlisted grade held by the member while on active duty (or FTNG duty) and
- was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Army. This section applies to Reserve enlisted members who are retired under section 3914 of this title after 30 September 1996.

3. Army Regulation 135-180 (Army National Guard and Army Reserve Qualifying Service for Retired Pay Nonregular 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:

- revision to a lower grade was expressly for prejudice or cause, due to misconduct, or punishment pursuant to Article 15, Uniform Code of Military Justice, or court-martial; or
- there is information in the Soldier's service record to indicate clearly that the highest grade was not served satisfactorily.

a. Paragraph 1-4, states that retired pay is pay granted to Soldiers and former Reserve Component Soldiers under Title 10, USC, section 1331, after completion of 20 or more years of qualifying service and upon attaining age 60. This pay is based on the highest grade satisfactorily held at any time during an individual's entire period of service, other than in an inactive section of a Reserve Component.

b. Paragraph 4-6 (Computation of Retired Pay) provides that for a member who entered service after 7 September 1980, the retired pay base is the average of the highest 36 months of pay. In the case of a Reserve component member, this is the total amount of basic pay to which the member is entitled during the members high 36 months or to which the member would have been entitled if the member had served on active duty during the entire period of the member or former member's high 36 months.

c. The U.S. Army Human Resources Command (AHRC) will screen each retirement applicant's record to determine the highest grade held in the Armed Forces. In arriving at the highest grade satisfactorily held, the following criteria will apply:

- if the Soldier was transferred to the Retired Reserve or discharged on or after 25 February 1975, retired grade will be that grade which a commissioned officer or enlisted Soldier held while on active duty or in an active reserve status for at least 185 days or 6 calendar months
- service in the highest grade will not be deemed satisfactory and the case will be forwarded to the Secretary of the Army's Ad Hoc Review Board for final determination of the Soldier's retirement grade if, during the mandatory review of the Soldier's records, it is determined that any of the following factors exist:

i. Revision to a lower grade was expressly for prejudice or cause, due to misconduct, or punishment pursuant to Article 15, Uniform Code of Military Justice.

ii. There is information in the Soldier's service record to indicate clearly that the highest grade was not served satisfactorily.

4. Title 10, USC, Section 3964 provides that an enlisted (E-1 through E-9) or warrant officer (W-1 through W-5) retiree with less than thirty years of active service who previously held a higher grade, may apply for advancement to that higher grade on the retired list. This applies to former members of the Regular Army, and Reserve members of the Army who were serving on active duty at the time of regular retirement. In the case of members of the National Guard, Full-time National Guard duty is considered active duty.

5. 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//