

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS
RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20230014446

APPLICANT REQUESTS: in effect, correction to his retirement orders, 1 December 2023, to show his rank as sergeant first class (SFC)/E-7.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 his retirement orders incorrectly list his rank/pay grade as staff sergeant (SSG)/E-6.
3. Having prior enlisted service in the Regular Army, the applicant enlisted in the U.S. Army Reserve on 12 February 1987 in the rank/pay grade of specialist four (SPC)/E-4.
4. He was promoted to staff sergeant (SSG)/E-6 on 31 October 1997.
5. His record is void of orders promoting him to SFC/E-7. However, the record shows that:
 - a. He failed to achieve the course standards while attending the Advanced Noncommissioned Officer Course (ANCOC). His DA Form 1059, Service School Academic Evaluation Report, 7 August 2002, shows that he failed the Army Physical Fitness Test (APFT).
 - b. Orders 02-239-00013, 27 August 2002, published by Headquarters, 108th Division (Institutional Training), Charlotte, NC, reduced the applicant from SFC/E-7 to SSG/E/6, effective 27 August 2002. His effective date of rank is listed as 31 October 1999.

6. He was placed on the retired list effective 15 July 2022.

7. The Chief Enlisted Management Branch, Headquarters, U.S. Army Reserve Command provided an advisory in the case. This official stated that records indicate that the applicant was conditionally promoted to SFC in early 2002 and scheduled to attend the requisite Professional Military Education (PME), ANCOC, beginning on 28 July 2002. Unfortunately, he failed his APFT; therefore, he failed to achieve course standards, as indicated on the DA Form 1059, 7 August 2002.

a. Upon receipt of the DA Form 1059, the applicant's command, published a reduction order to SSG, effective 27 August 2002, in accordance with Army Regulation, 140-158, Enlisted Personnel Classification, Promotion, and Reduction, paragraph 7-12.

b. Subsequently, the applicant requested and was approved for reassignment to the Retired Reserve. Because he did not meet the conditions for promotion to SFC, he was assigned to the Retired Reserve at the rank of SSG.

8. The applicant was provided a copy of the advisory opinion on 27 August 2024 for comment. He did not provide a response.

9. By regulation, a Soldier will be reduced when they fail to meet conditional promotion NCO Education System (NCOES) requirements. A soldier who accepts a promotion with the condition that he or she must enroll in, and successfully complete, a specified NCOES course, and fails to meet those conditions will be reduced to the grade and rank held prior to the conditional promotion.

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 was promoted to staff sergeant (SSG)/E-6 on 31 October 1997. The applicant was conditionally promoted to sergeant first class (SFC)/E-7 in early 2002; however, failed to achieve course standards for resident professional military education to the next higher grade for Advanced Noncommissioned Officer Course (ANCOC) between 28 July 2002 and 8 August 2002 and was reduced from SFC/E-7 to SSG/E-6 on 27 August 2002 with an effective date of 31 October 1999. He was honorably retired on 15 July 2022.

2. The Board reviewed and concurred with the advising official for the U.S. Army Human Resources Command finding the applicant failed his Army Physical Fitness Test in ANCOC and his command published a reduction order. He subsequently requested

and was approved for reassignment to the Retired Reserve effective 6 August 2004 in the rank of SSG/E-6 as he did not meet the conditions of his promotion to SFC/E-7. The Board determined there was no error or injustice in the reduction of the applicant and therefore denied relief.

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, U.S. Code, 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 Army Board for Correction of Military Records (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. Army Regulation (AR) 140-158, Army Reserve-Enlisted Personnel Classification, Promotion, and Reduction, in effect at the time, stated a Soldier will be reduced when they fail to meet conditional promotion NCOES requirements. A soldier who accepts a promotion with the condition that he or she must enroll in, and successfully complete, a specified NCOES course, and fails to meet those conditions, or is subsequently denied enrollment, or becomes an academic failure, or does not meet graduation requirements, or is declared a "No-Show", will be reduced to the grade and rank held prior to the conditional promotion.

a. Board action is not required for reductions under this paragraph.

b. The effective date of the reduction will be the date of the reduction order. However, service performed in the higher grade will not be considered for retirement, date of rank, or any other determinations dependent on the higher grade.

c. Failure to complete schooling. Soldiers who are advanced to a higher pay grade as a result of attendance at a service school, or civilian educational institution and who disenroll or fail to complete the course successfully will be reduced.

3. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//