

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20230014702

APPLICANT REQUESTS: to be promoted to the rank/grade of sergeant major (SGM)/E-9 with a Professional Military Education (PME) waiver pursuant to U.S. Army Senior Enlisted Review Board (USASERB) results dated 30 August 2023 and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Army Board for Correction of Military Records (ABCMR) Memorandum, Subject: ABCMR Directive AR20200002231 issue: Submission of his record for reconsideration under the criteria of the Fiscal Year (FY) 2015 SGM Training and Selection Board which convened on 9 September 2015, 15 November 2021
- Memorandum, Subject: USASERB, 20 December 2022
- Memorandum, Subject: USASERB, 30 August 2023

FACTS:

1. The applicant states, in pertinent part, he was recommended by the USASERB for promotion to SGM under the FY15 criteria. Based on the USASERB board results dated 30 August 2023, guidance from the G-1 Director of the U.S. Army Human Resources Command (HRC)/Army and III Corps Office of the Inspector General at Fort Cavazos, he is asking the ABCMR to direct that HRC promote him as an exception to policy (ETP) (since he is not a U.S. Army Sergeants Major Academy (USASMA) Graduate and has already retired) to SGM as a result of the USASERB vote.

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

a. On 29 August 1995, he enlisted in the Regular Army and had continuous service through reenlistments.

b. On 10 May 2010, HRC issued Order Number 138-10 promoting him to the rank/grade of master sergeant (MSG)/E-8, effective 1 June 2010.

c. On 5 May 2016, the U.S. Army Installation Management Command,

Headquarters, U.S. Army Garrison Command, Fort Knox, issued Orders Number 126-0163 honorably retiring him from active duty, effective 31 October 2016, at the rank/grade of first sergeant 1SG/E-8 with 21 years, 2 months, and 2 days of service.

d. A DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 31 October 2016 reflects an honorable retirement and transfer to the U.S. Army Reserve Control Group (Retired Reserve).

(1) Item 4a (Grade, Rate or Rank) shows MSG.

(2) Item 4b (Pay Grade) E-8

(3) Item 14 (Military Education) shows 1SG Course. It is void of completion of the USASMA.

(4) Item 18 (Remarks) shows Noncommissioned Officer Professional Development Ribbon (3rd Award)

e. On 30 April 2020, in ABCMR Docket Number AR20200002231, the applicant requested promotion consideration to SGM by a Standby Advisory Board (STAB) under the FY15 criteria. The Board determined that relief was warranted based on amendment of his Noncommissioned Officer Evaluation Report (NCOER) by the Enlisted Senior Review Board (ESRB) and recommendation for promotion reconsideration was warranted.

3. The applicant provides the following:

a. (ABCMR) Memorandum, Subject: ABCMR Directive AR20200002231 issue: Submission of his record for reconsideration under the criteria of the FY 2015 SGM Training and Selection Board which convened on 9 September 2015, dated 15 November 2021 stating, in effect, as directed by the ABCMR, the applicant's records will be referred to a USASERB formally known as a STAB. His records will be compared to those for FY 2015 to determine if he would have been selected for attendance to USASMA and subsequent promotion to SGM. The next USASERB is scheduled for 6 January 2022.

b. Memorandum, Subject: USASERB, 20 December 2022, stating, in effect:

(1) In accordance with Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions), chapter 4, paragraph 4-13f (1), the ABCMR Record of Proceedings dated 30 April 2020 approved your records to be considered by a USASERB.

(2) Your record has been identified to appear before the FY23 USASERB which convenes on or about 25 January 2023. Once we receive Director, Military Personnel Management (DMPM's) final decision we will perform the necessary administrative actions and then notify both the command and the Soldier of the results.

(3) Your record will be considered under the criteria established for the FY15 Active Component (AC)/Active Guard/Reserve (AGR) SGM Training and Selection Board, which convened on 9 September 2015. Your record will be considered against your primary military occupational specialty of 79R (Recruiter).

c. Memorandum, Subject: USASERB dated 30 August 2023, stating in effect, a Headquarters USASERB convened on 25 January 2023 and considered him under the criteria for the FY15 Regular Army USASMA Training and Selection Board. The board members recommended and the DMPM approved his name be added to the recommended list announced in memorandum AHRC-PDZ-A, dated 5 December 2015, Subject: FY15 Regular Army and United States Army Reserve AGR Sergeants Major Academy Training and Selection List.

4. On 10 May 2024, the U.S. Army Human Resources Command, Chief, Senior Enlisted Promotions, Promotions Branch provided an advisory opinion recommending disapproval of the applicant's request stating, in effect:

a. The applicant was not recommended by the USASERB for promotion to SGM under the FY15 criteria as he stated in his application (DD Form 149 Correction of Military Records). Specific guidance in the Memorandum of Instructions to the board (attached) specifically states: "These selection boards are convened to select eligible 1SG and MSG for attendance to the United States Army Sergeants Major Course (USASMC) for the purpose of promotion to SGM and eligible 1SG/MSG for denial of continued service. Selection to attend the USASMC results in selection for promotion to SGM upon successful completion of the course." Furthermore, the FY15 SGM Training and Selection List Cover Memo (attached) released with this list specifically states in paragraph 5.b. "All Soldiers identified as selects on this list will be subject to additional administrative review, and the list is not to be construed as a promotion, appointment, or permanent change of station order. Additionally, Soldiers listed herein should not assume that the structure of the list or the presence of a name on the list constitutes a firm forecast for promotion or appointment. Promotions will be announced by HRC Enlisted Promotions Branch."

b. The FY15 Regular Army (RA) SGM Training and Selection List (attached) does not assign a sequence number to any Soldier selected, it only identifies the Soldier as a resident for attendance to the USASMC. Promotions do not and cannot occur from this list as it has never been utilized for promotions. All Soldiers selected undergo a Department of the Army (DA) Suitability review where any derogatory information found

from the time of enlistment to the current date (restricted section of the Army Military Human Resources Record, substantiated DA Inspector General reports, and reports filed with the U.S. Army Crime Records Center) would be grounds for a STAB and possible removal from the list. MSG selected for the purpose of promotion to SGM will not acquire sequence numbers until they successfully graduate the USASMC, are then assigned a sequence number for promotion and those Soldiers and sequence numbers were published on the FY17 AC SGM Academy Sequence List (attached).

c. Therefore, policy for promotion to SGM specifically applies to those Soldiers who are graduates of the Academy. There is no exception to policy that should promote a nonpromotable Soldier to SGM. As stated in the current regulation at the time, AR 600-8-19, paragraph 1-28.d. Noncommissioned Officer Education System requirement for promotion and conditional promotion states: "There are no military education waivers to attain eligibility for promotion consideration or pin-on."

d. The applicant should not receive an ETP and subsequent promotion to SGM as placement on this list never made him eligible for promotion, it only selected him as a candidate for attendance at the USASMC. Attendance and graduation are a firm requirement for promotion.

5. On 16 May 2024, the applicant was provided a copy of the advisory opinion and afforded an opportunity to respond.

6. On 29 May 2024, he provided a rebuttal to the advisory opinion stating, in effect:

a. He would like to address the miscommunication in his application to the ABCMR that Senior Enlistment Promotion Chief referenced in their recommendations paragraph 3. He wrote in his application "He was recommended by the USASERB for promotion to SGM under the FY 15 criteria." This was clearly a mistake in words. It should have read what was stated in the Chief of Enlisted Promotion Branch memo. It stated, "His records will be compared to those for FY 2015 to determine if he would have been selected for attendance to the United States Sergeant Major Academy and subsequent promotion to SGM."

b. The statements in his application and in this rebuttal are based on the recent USASERB board results from FY 15 selection criteria. He understands that he cannot attend the academy as a retired Soldier to meet all the promotion criteria and subsequently be promoted as outlined. The main reason he is requesting the exception is due to the injustices that were done towards him starting with his annual Noncommissioned Officer Evaluation Report (NCOER) for rating period 22 February 2014 - 23 February 2015. His Battalion and Brigade Commanders maliciously ruined his career with this NCOER. Due to these extreme circumstances, he was not afforded the opportunity for a relook and to meet all the promotion criteria prior to retiring.

c. To address the current Chief, Senior Enlisted Promotion Branch recommendation, he disagrees with the non-recommendation for promotion and for his case being unsubstantiated. His case was substantiated by the Army Review Boards. It outlined all the injustice that was done to him. From that case he was granted the opportunity for a relook.

d. This whole process started due to the failure of the appeals process and injustices that happened while in the Army. His Command failed him for the unjust NCOER and providing a toxic and hostile work environment which led to the NCOER appeal and formal Equal Opportunity investigation. The appeal process failed, "see timeline attached" for not returning his appeal expedited as requested.

e. Furthermore, he believes his case should be recommended for an exception to policy due to the USASERB results and the extreme circumstances surrounding this case. It was directed by the ABCMR that his records be looked at to determine if he would have been selected for attendance to the USASMA and subsequent promotion to SGM. The board convened and the board members recommended, and the DMPM approved his name be added to the recommended list announced in memorandum AHRC-PDZ-A, dated 5 December 2015, Subject: FY 15 Regular Army and United States Army Reserves (USAR) AGR Sergeants Major Academy Training and Selection List." (He did not see his name) in the referenced memorandum AHRC-PDZ-A number 2a. it states, "In accordance with (JAW) the above references, a DA selection board convened on 9 September 2015 and recessed on 22 September 2015 to consider eligible RA and AGR Soldiers for selection to attend USASMA for the purpose of promotion to SGM."

f. He would like to add that after he was recommended by the USASERB for the academy, Docket Number AR20200002231 closed. He did not know that he had to reach back out to the ABCMR to open a new case to petition for promotion until speaking with Inspector General (IG) Office at Fort Cavazos. He was sitting on the memorandums from HRC stating that he was recommended to be placed on the Academy Selection list. After reaching out to the IG office for guidance on the next steps and figuring out the correct way to file another case with the ABCMR, he received guidance through IG from G-1 Director HRC advising him to petition ABCMR to direct HRC to promote him to SGM with an exception to policy due to being retired already and favorable USASERB results. Please see attached email enclosure 1.

g. He also disagrees with paragraph 6 from the Senior Enlisted Promotions Chief that he "should not receive an exception to policy and subsequent promotion to SGM as placement on this list never made him eligible for promotion, it only selected him as a candidate for attendance at the USASMC. "Attendance and graduation are a firm requirement for promotion". Now as stated in the Senior Enlisted Promotion Chiefs memo paragraph 3. "These selection boards are convened to select eligible 1SG and

MSG for attendance to the USASMC for the purpose of promotion to SGM." The USASERB selected him for attendance to the USASMC for the purpose of promotion to SGM. It is no fault of his own that he cannot attend the academy or go through the suitability reviews that are part of the criteria for promotion due to being retired. He was under the impression that there are no other courses of action he can take to fully meet the requirements for promotion except request an exception to policy for promotion. However, if there are any other courses of action he can take that will help him be fully qualified for the promotion outside of the USASERB results, he is willing to do them.

h. In accordance with AR 600-8-19 page 1 the Proponent and exception authority. It states "The proponent of this regulation is the Deputy Chief of Staff, G-1. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling laws and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25-30 for specific requirements" in reference to the above paragraph, he provided the justifications and the full analysis as to why an exception to policy should be granted.

i. In closing, the facts are, the Army failed him regarding the opportunity for promotion to SGM. He did not get the same opportunity as his peers to go through all the steps for promotion. As shown in the timeline below, roughly over the last nine years he has been trying to get justice for the wrong that had been done to him. These injustices prevented him from the opportunity to be promoted to SGM. He provided proof at every level and has shown that he has justification for promotion. He has detailed the injustices and showed that these are an extreme circumstance to why he was not afforded the same opportunities as his peers. The Army grants exceptions and waivers based on extreme or out of your control circumstances. Due to these extreme circumstances and enlisted promotions are policies and not law. He believes that an exception to policy is warranted.

j. 10. Timeline:

- 22 July 2015-he file a formal Equal Opportunity (EO) Complaint against his Battalion Commander and Brigade Commander
- 29 July 2015- Brigadier General (BG) [REDACTED] was assigned as the investigating Officer for EO complaint
- 2 August 2015- Formal EO Investigation Started
- 3 September 2015- EO investigation team finished gathering case information

- 5 September 2015-EO investigation concluded with results
- 3 November 2015-He received the Commander's Inquiry Report on his NCOER from Recruiting Command (USAREC); he then filed a NCOER appeal and requested a STAB
- 1 December 2015-EO Investigation results received; these results showed that the Battalion Commander Violated AR 600-20 (Command Policy)
- 3 February 2016-HRC denied his STAB request, stating that a Command Inquiry was not a basis for requesting a STAB
- 1 March 2016- Resubmitted appeal and request for STAB based on EO investigation findings
- 10 January 2017- Enlisted Special Review Board (ESRB) sent their findings and recommendations to HRC in reference to NCOER appeal
- 3 February 2017- HRC notified him of ESRB decision through postal service stating the determination had been made that promotion reconsideration was warranted
- 4 November 2019- Reached out to HRC and was referred to the Senior enlistment branch and was given their phone number
- 7 November 2019-HRC emailed him an example STAB packet
- 15 November 2019-He requested a STAB through memorandum to HRC
- 18 December 2019-HRC notified him that he had to go through the Army Review Boards
- 19 December 2019-He reached out to Army Review Boards and submitted an application for a STAB
- 27 February 2020-He was assigned case number AR20200002231; he was informed that it could take up to 18-24 months before he received an answer on my application
- 30 June 2021-He received the result from Case number AR20200002231 granting him full relief and directed the relook for SGM on the next USASERB
- 20 December 2022-He received notification of upcoming USASERB from HRC
- 31 August 2023-He received USASERB results recommending him to be placed on the Sergeant Major Academy list
- 8 September 2023-He reached back out to the Army Review Boards about the Board results
- 13 September 2023-The Army Review Boards directed him to submit his application online
- 15 October 2023-Submitted online application.
- 16 May 2024- He received notification to submit a rebuttal based on the Senior Enlisted Promotions Chief recommendations

k. In conjunction with this rebuttal, he provided email correspondence as supporting evidence with HRC.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation showing the applicant was not educationally qualified for promotion to SGM, as well as the findings and recommendation outlined in the HRC advisory opinion, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military record.

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.

2/5/2025

X

CHAIRPERSON

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 600-8-19 (Enlisted Promotions and Reductions), prescribes policies and procedures governing promotions and reductions of Army enlisted personnel.

a. Paragraph 1-29 (Noncommissioned Officer Professional Development System requirement for promotion and conditional promotion) states graduation of the USASMC is a promotion requirement to SGM.

b. Chapter 4 (Centralized Promotions) provides that Soldiers selected to attend the SMC by a centralized selection board are subject to post-board personnel suitability screening. This process includes a review of information contained on the restricted section of the AMHRR, substantiated DA Inspector General reports, and reports filed with the U.S. Army Crime Records Center. Soldiers found to have possible disqualifying derogatory information as a result of this screening will receive separate written notification from HRC. The notification will include copies of all derogatory information and will outline the rebuttal process for submission to a STAB. The STAB, complete with the Soldier's rebuttal should one be rendered, will then consider the Soldier's eligibility for attendance to the SMC. This STAB will make a recommendation to the Deputy Chief of Staff, G-1, DMPM, for final decision on the suitability of the affected Soldier to serve as otherwise selected. Soldiers found unsuitable to attend the SMC will receive formal notification and are permanently ineligible for further consideration and selection to attend the course and subsequently, promotion to sergeant major.

c. Section IV (Processing Request for STAB Consideration) states the Deputy Chief of Staff, G-1, or designee may approve cases for referral to a STAB upon determining that a material error existed in a Soldier's AMHRR when the file was reviewed by a selection board. STABs are convened to consider records of those recommended Soldiers on whom derogatory information has developed that may warrant removal from a recommended list. This includes Soldiers selected to attend SMC for the purpose of promotion to SGM but were referred by the USASERB because of derogatory information identified during the post-board screening process.

d. Paragraph 4-17 (Removal from a Centralized Selection List by HQDA) provides that HRC will continuously review selection lists against all information available to ensure that no Soldier is promoted or allowed to attend and/or complete training at the SMC for the purpose of promotion when there is cause to believe that a Soldier is mentally, physically, morally, or professionally unqualified to perform duties of the higher rank. A Soldier may be referred to a STAB for derogatory background information as determined by the USASERB in accordance with the Army Personnel Suitability Screening Policy and for other derogatory information received by HQDA, but not filed in the AMHRR, if it is substantiated, relevant, and might reasonably and materially affect a promotion recommendation.

e. Paragraph 4-18 (Appeals of Removal from a Centralized Promotion List) provides that a Soldier who is removed from a selection list may appeal that action only in limited circumstances. HRC will take final action on any appeal. Soldiers may appeal a removal action when the underlying basis of the removal is subsequently determined to be erroneous. The subsequent determination must be based on facts that were not available or reasonable discoverable at the time of the original action or at the time that the Soldier was notified of the removal action. An appeal may also be submitted for other compelling reasons.

2. 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.

a. 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants 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//