

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240002062

APPLICANT REQUESTS: reconsideration of his previous request for correction of his rank/pay grade at the time of retirement to reflect sergeant (SGT)/E-5 instead of specialist (SPC)/E-4.

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

- DD Form 149 (Application for Correction of Military Record)
- Promotion Warrant, U.S. Marine Corps (USMC), dated 1 January 2013
- DD Form 256 (Honorable Discharge Certificate), USMC, dated 14 February 2014, with corresponding memorandum

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 AR20160000401 on 18 May 2017.

2. The applicant states he was awarded promotion to SGT/E-5, in the USMC, on 1 January 2013. His warrants were destroyed in a fire. Therefore, his previous request was denied as he did not have sufficient proof. He has since been able to obtain the applicable supporting documentation via a Freedom of Information Act (FOIA) request.

3. A DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant entered active duty in the USMC on 12 September 2006. He was honorably released from active duty and transferred to Mobilization Command (Individual Ready Reserve) on 11 September 2011, under the provisions of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), paragraph 1005, by reason of completion of required active service, in the rank grade of corporal/E-4. He completed 5 years of net active service.

4. A DD Form 368 (Request for Conditional Release) shows the applicant requested a conditional release from the USMC for the purpose of enlistment in the Army National Guard (ARNG). A conditional release was granted on 19 September 2011. He enlisted

in the ARNG of the United States on 28 October 2011, for a 6-year period, in the rank/grade of corporal/E-4.

5. A promotion warrant, signed by Brigadier General P.K.L., USMC, Commanding General, shows the applicant was promoted to SGT, in the USMC, on 1 January 2013, under the provisions of Marine Corps Bulletin 1400 (Regular Corporal and Sergeant Promotion Authority).

6. He was honorably discharged from the USMC on 14 February 2014, in the rank of SGT.

7. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), dated 30 June 2015, shows the board found the applicant unfit for retention. The PEB recommended a disability rating of 70 percent (%) and placement on the permanent disability retired list (PDRL). The applicant concurred with the recommendation and waived a formal hearing. The PEB findings and recommendation were approved on 21 July 2015.

8. Orders 230-100, issued by Joint Force Headquarters, Louisiana, and National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service) show the applicant was honorably released from the ARNG of Louisiana, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-36s, by reason of placement on the PDRL, in the rank/grade of SPC/E-4, on 18 August 2015.

9. Orders Number D 196-43, issued by the U.S. Army Physical Disability Agency, Arlington, VA, dated 15 July 2015, show he was placed on the PDRL on 19 August 2015, in the retired grade of rank E-4.

10. The ABCMR considered the applicant's request for correction of his rank/grade at the time of his placement on the PDRL on 18 May 2017. The Board determined that although he provided documentation that appeared to suggest he was promoted to SGT while in the USMC Reserve, it occurred some 14 months into his ARNG period of service. As a result, the authenticity of his contended promotion to SGT in the USMC Reserve is suspect, since by law and regulation he should have been discharged from the USMC Reserve prior to his enlistment in the ARNG. Therefore, it appeared there was no error or injustice. The Board denied his request for relief.

11. In the processing of this case, an advisory opinion was obtained on 9 August 2014 from the Chief, Special Actions Branch, NGB. The advisory official noted and opined, in pertinent part:

a. [The applicant] served in the Marine Corps from 15 February 2006 to 27 October 2011, obtaining the rank of SGT/E-5. He enlisted in the Louisiana ARNG on 28 October 2011 and served until he was placed on the PDRL, in the rank of SPC/E-4, on 19 August 2015.

b. Army Regulation 15-80 (Army Grade Determination Review Board (AGDRB) and Grade Determinations), paragraph 3-1, states enlisted Soldiers will usually retire in the grade held on the day before placement on the retired list. The AGDRB will make final determinations on behalf of the Secretary of the Army and will determine the highest grade in which the Soldier has served satisfactorily for purposes of disability retirement.

c. It is the recommendation of the NGB Retirements Branch that the applicant's request be approved, as [the applicant] has submitted verification of honorably serving in a higher grade. He should be retired in the highest rank he honorably served in, SGT/E-5.

12. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

#### 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. Upon review of the applicant's petition and available military records, the Board majority determined his record is absent evidence that shows he was promoted to sergeant (SGT)/E-5 prior to his retirement on 19 August 2015. The evidence of record shows the applicant was discharged from the U.S. Marine Corps on 11 September 2011 in the rank/grade of corporal (CPL)/E-4. He enlisted in the Army National Guard (ARNG) on 28 October 2011 in the rank/grade of CPL/E-4. He was retired from the ARNG for permanent disability on 19 August 2015. The Board majority concluded the available evidence does not support the applicant's contention that he was promoted to SGT/E-5. The Board majority noted an appointment order to sergeant in the U.S. Marine Corps on 1 January 2013, after the applicant had separated from the U.S. Marine Corps and enlisted in the ARNG and determined that was sufficient to support correction to his separation from the ARNG to show SGT/E-5.

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 (USC), Section 651 provides the legal authority for required military service. It states, in pertinent part, that each person who becomes a member of an armed force, other than a person deferred, shall serve in the armed forces for a total initial period of not less than six years nor more than eight years and who is not a Reserve, and who is qualified, shall, upon his release from active duty, be transferred to a reserve component of his armed force to complete the service required.

2. Title 10, USC, Section 12104, provides the legal authority for Reserve components transfers and states, in pertinent part, that:

a. A person who would otherwise be required to be transferred to a reserve component under Section 651 of this title, is entitled, if he is qualified and accepted, to be enlisted in any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be enlisted as a Reserve of an armed force other than from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under Section 651 of this title. However, no period may be credited more than once.

b. A person covered above shall perform the rest of his required term of service in the armed force in which he is so enlisted or in any other armed force in which he is later enlisted or appointed.

c. This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

3. Department of Defense Instruction (DoDI) Number 1205.05 (Transfer of Service Members between Reserve and Regular Components of the Military Services) establishes policy, assigns responsibilities, updates procedures, establishes objectives, and provides overall guidance for the transfer of service members between the Reserve and Regular components of the military services. It states, in pertinent part, that:

a. A military service, or two military services in the case of an inter-service transfer, may approve the request or consent to transfer of a service member with a remaining military service obligation (MSO), pursuant to Sections 651, 10145, 12104, or 12208 of Title 10, USC, (Reference (e)), if both military services approve of the transfer.

b. The discharge for transfer of a Service member shall not constitute release from, or fulfillment of, the MSO as established by Section 651. Obligated military service

performed before and after an authorized transfer shall be counted toward fulfillment of the MSO.

c. The discharge and subsequent appointment or enlistment of a Service member shall be accomplished without interrupting the continuity of the Service member's military service. The total military service accrued as of the date of transfer shall be credited.

d. The procedures will be accomplished by use of DD Form 368 (Request for Conditional Release) in all cases involving inter-service transfers and may be used for intra-service transfers.

e. A recruiting official of the military service requesting the transfer of the service member shall complete Section I of the DD Form 368 and forward it to the service member's current military service for action.

f. The current military service of the service member shall complete Section II to respond to the military service requesting transfer of the service member within 30 days of receipt of the DD Form 368. The military service requesting the transfer of the service member shall not enlist or appoint the service member without the approval of the current military service.

(1) The service member's service unit commander or designated representative shall complete Section II of DD Form 368. All pays, allowances, benefits, and service obligations that cannot be waived shall be documented in Section IV. Justification of disapproval shall be documented in Section IV.

(2) Upon receipt of an approved Section II, the military service requesting the transfer of the service member may process the service member for enlistment or appointment.

g. The military service requesting the transfer of the service member shall complete Section III certifying that the service member has been enlisted or appointed and the appropriate change in strength has been reported. The completed DD Form 368 with a copy of the oath of office (except for an intra-service officer transfer) shall then be returned to the previous military service within ten working days of the administration of the oath of office.

(1) If the military service requesting the transfer of the service member does not enlist or appoint the service member, Section IV shall be completed with an explanation and returned to the Service member's current military service not later than the expiration date of approval indicated in Section II.

(2) If the military service requesting the transfer of the service member enlists or appoints the service member, the previous military service shall process the service member for separation and report the appropriate change in strength upon receipt of the completed DD Form 368 and documentation of the oath of office, from the requesting military service.

4. Title 10, USC, Section 1372 provides the legal authority for the grade to be awarded to members retiring for physical disability. Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under Section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under Section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

a. The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

b. The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

c. The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired, and which was found to exist as a result of a physical examination.

d. The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination.

5. Army Regulation 15-80 (Army Grade Determination Review Board (AGDRB) and Grade Determinations), paragraph 3-1, states enlisted Soldiers will usually retire in the grade held on the day before placement on the retired list. The AGDRB will make final determinations on behalf of the Secretary of the Army and will determine the highest grade in which the Soldier has served satisfactorily for purposes of disability retirement.

6. Army Regulation 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of

Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization

//NOTHING FOLLOWS//