

IN THE CASE OF [REDACTED]

BOARD DATE: 7 November 2024

DOCKET NUMBER: AR20240002239

APPLICANT REQUESTS: advancement on the retired list from private (PVT)/E-1 to sergeant first class (SFC)/E-7.

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

- DD Form 149 (Application for Correction of Military Record)
- NCO Evaluation Reports for the rating periods 1990 through June 1999
- Applicant Letter, undated to the Commanding General
- Letter, 1 March 2001, from his Commander to the Commanding General to Disapprove Confinement,

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 he requests the Board review and consider his request to be advanced on the Retired List to the rank of E-7, grade of sergeant first class which is the grade he held honorably without any discourse. He is requesting that this advancement be dated for the date of 31 October 2001. He asks for the Board's thorough review of the included documentation that has not been reviewed previously to support a favorable decision for this request. He requests that the Board consider and make a more just and fair decision upon review of the supporting documentation that clearly illustrates an unjust, unfair, and excessively harsh punishment. He requests that the Board values the evidence presented to support this request. He wants the Board's help to restore his rank as requested which would be an honor for his service to our country, to his family and himself.
3. The applicant enlisted in the Regular Army on 23 June 1981. He held a communications military occupational specialty.

a. He served through multiple reenlistments in a variety of stateside or overseas assignments, including Korea, Germany, and Hawaii.

b. Permanent Orders 3468, issued by (now called) U.S. Army Human Resources Command on 12 December 1997 promoted the applicant to master sergeant (MSG)/E-8 effective 1 January 1998.

c. On 28 November 2000, he was arraigned at a general court-martial that convened at Headquarters, XVIII Airborne Corps, Fort Bragg, NC. He was found guilty and convicted of Charge. Article 1, Plea: Guilty. Finding: Guilty.

- Specification 1: Larceny of a laptop computer, military property of the United States, of a value of about \$2,200.00, between on or about 1 October-1999 and on or about 9 June 2000. Plea: Guilty. Finding: Guilty.
- Specification 2: Larceny of computer equipment, military property of the United States, of a value over \$100.00, between on or about 19 August 1999 and on or about 9 June 2000. Plea: None entered. Finding: Dismissed on motion of Trial Counsel.

d. The court/judge sentenced him to be confined for 4 months, to forfeit \$500.00 pay per month for 4 months, and to be reduced to private (PVT)/E-1.

e. On 1 March 2001, the Director of Health Care Operations submitted a request to the Commanding General/Convening Authority requesting the Commanding General disapprove the applicant's confinement.

f. On 2 March 2001, the applicant's defense counsel submitted a petition for clemency requesting the convening authority not approve the confinement or the reduction, despite the seriousness of the offense for which the applicant was convicted.

g. General Court-Martial Order Number 14, dated On 19 March 2001, shows the convening authority approved the sentence and ordered it executed. The service of the sentence to confinement was deferred for 72 hours on 28 November 2000 and ended on 30 November 2000.

h. As the applicant was retirement eligible, on 29 August 2001, Headquarters, XVIII Airborne Corps published Orders 241-0258 that released the applicant from active duty on 31 October 2001 and placed him on the retired list, in the retired grade of PVT/E-1, on 1 November 2001.

i. The applicant was retired on 31 October 2001 and placed on the retired list in his retired grade of PVT/E-1 on 1 November 2001. His DD Form 214 (Certificate of Release

or Discharge from Active Duty) shows he completed 20 years and 20 days of active service, and he had lost time from 28 November 2000 to 7 March 2001.

4. On 25 April 2018, the applicant petitioned the Army Grade Determination Review Board (AGDRB) to be advanced on the retired list to the highest grade that he satisfactorily held while on active duty, under the provision of section 3964, title 10, United States Code. He stated although he retired on October 31, 2001, in the grade of E-1, he previously held the grade of E-8 while on active duty. According to his calculation, he believes he has a total of 37 years of active service and time on the retired list.

5. On 12 February 2019, the AGDRB informed the applicant that:

a. On 29 August 2018, the Army Grade Determination Review Board convened on behalf of the Secretary of the Army under the provisions of Army Regulation 15-80, Army Grade Determination Review Board and Grade Determinations, to consider his application for advancement on the Retired List. Army Regulation 15-80, paragraph 2-5, provides that service in the highest grade or an intermediate grade will normally be considered to be unsatisfactory when reversion to a lower grade is the result of a court-martial sentence, or punishment under Article 15, Uniform Code of Military Justice.

b. After a thorough review of your Army Military Human Resource Record (AMHRR) (which included the applicant's service, awards, evaluations, and other personnel records), the AGDRB determined to deny advancement on the Retired List because of a General Court-Martial reduction while he was in the grade of E-8.

6. The applicant's NCO Evaluation Reports between 1990 and 1999 show successful or excellent performance and high potential.

7. The AGDRB determines the highest grade in which a Soldier served satisfactorily. A "satisfactory" determination of service at a particular grade has pay implications in three types of cases:

- Advancement on the retired list for enlisted Soldiers and warrant officers who previously held a higher grade after 30 years combined service on the active duty and retired lists (see application procedure below),
- Retiring officers above the grade of warrant officer who have been the subject of adverse information since their last promotion (see information at the end of this page), or
- Disability separations and retirements.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record and applicable regulations, the Board found that relief was not warranted.

2. The Board carefully considered the applicant’s contentions, his record and length of service, the nature of his misconduct, the court-martial proceedings, the sentence imposed and the applicant’s retirement grade. The Board considered the applicant’s statement, letters of support, the previous consideration of his request and the applicable Army policy. In light of the serious misconduct, the Board found that the applicant’s reduction to the lowest rank as a result of a court-martial was not unjust, that the applicant provided insufficient evidence to support an advancement in grade and that the rank reflected on his DD Form 214 was not in error or unjust. Based on a preponderance of evidence, the Bord determined that an advancement in the applicant’s retirement grade was not warranted.

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.



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 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.

3. Title 10, U.S. Code, section 3964, provides that a retired enlisted member or warrant officer 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. Rank placement on the Retired List is based solely on the highest rank in which a member satisfactorily served on active duty. USAR service in an inactive status while a member of a dual component program does not satisfy this active duty satisfactory service provision of the law.

4. Army Regulation 635-200 (Personnel Separations, now called Active Duty Enlisted Administrative Separations) sets forth the basis authority for separation of enlisted personnel. Chapter 12 provides policy and guidance on retirement for length of service. Paragraph 12-6 states in pertinent part, that retired Soldiers who have less than 30 years of active service are entitled, when their active service plus service on the retired list total 30 years, to be advanced on the retired list to the highest grade in which they served on active duty satisfactorily (or, in the case of Reserve Soldiers, in which they served on full-time duty satisfactorily) in accordance with Title 10, U.S. Code, section 3964. This provision applies to warrant officers, RA enlisted Soldiers, and Reserve enlisted Soldiers who, at the time of retirement, are serving on active duty (or full-time National Guard Duty). Upon completion of 30 years of service, their military personnel records are reviewed to determine whether service in the higher grade was satisfactory.

4. Army Regulation (AR) 15-80 (AGDRB) establishes policies, procedures, and responsibilities of the AGDRB and other organizations delegated authority to make grade determinations on behalf of the Secretary of the Army (SA).

a. Paragraph 2-5 (Unsatisfactory Service) states, service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when (c) 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. However, service retirement in lieu of or as the result of elimination action will not, by itself, preclude retirement in the highest grade.

b. Paragraph 2-6 (Service in Lower Grade) states if service in the highest grade held was unsatisfactory, the Soldier can be deemed to have served satisfactorily in the next lower grade actually held, unless paragraph 2-5 applies.

//NOTHING FOLLOWS//