

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240003476

APPLICANT REQUESTS: reversal of the Army Grade Determination Review Board (AGDRB) denial of advancement on the Retired List to the rank/grade of staff sergeant (SSG)/E-6 based on the highest grade satisfactorily held.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 108-000660, Headquarters, 101st Airborne Division, 18 April 2001 (Promotion to SSG)
- Orders 129-0156, Headquarters, U.S. Army Armor Center and Fort Knox, 8 May 2008 (Reassignment Orders)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 31 October 2008

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 satisfactorily held the rank of SSG prior to being retired from active duty. He notes that he served as a SSG with unwavering pride and distinction.
3. A review of the applicant's service records show:
 - a. On 18 June 1985, the applicant enlisted in the Regular Army.
 - b. On 18 April 2001, Headquarters, 101st Airborne Division (Air Assault) issued Orders 108-000660 announcing the applicant's promotion to the rank/grade of SSG, effective 1 May 2001.
 - c. On or about 23 August 2005, the applicant was found guilty of violating Article 128 of the Uniform Code of Military Justice in that between 25 July 2004 and 15 August

2004, that applicant committed an assault upon another Soldier by having sexual intercourse with her, a means likely to produce death and or grievous bodily harm because his seminal fluid contained the Human Immunodeficiency Virus.

d. On 17 January 2006, Headquarters, XVIII Airborne Corps and Fort Bragg issued General Court-Martial Orders Number 2 announcing the adjudgment of the applicant's 23 August 2005 sentence to confinement for 34 months and reduction to private (PVT)/E-1, effective 6 September 2005.

e. On 8 May 2008, Headquarters, U.S. Army Armor Center and Fort Knox issued Orders 129-0156 reassigning the applicant to the transition center pending separation processing.

f. On 31 October 2008, the applicant was honorably retired from military service at the rank of private/E-1.

g. On 8 January 2019, the AGDRB convened to consider the applicant's request for advancement on the retired list. After review of the applicant's available service records, the board denied his request because of the General Court-Martial conviction while he was serving as a SSG. In accordance with Army Regulation (AR) 15-80 (Army Grade Determination Review Board and Grade Determinations), paragraph 2-5 (Unsatisfactory Service), 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.

h. On 31 July 2023, the AGDRB convened to consider the applicant's request for advancement on the retired list. After review of the applicant's available service records, the board denied his request because of the General Court-Martial conviction while he was serving as an SSG. In accordance with AR 15-80, paragraph 2-5, 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.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, 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 military records, the Board considered the facts and circumstances surrounding the applicant's General Court Martial conviction. The Board determined the applicant did not provide evidence that

shows that there was an error or injustice. The Army Grade Determination Review Board (AGDRB) reviewed the applicant's request for a grade determination submitted by the U.S. Army Human Resources Command and directed the applicant be placed on the retired list in the grade of private (PVT)/E-1.

2. The AGDRB noted the applicant received a General Court-Martial while serving as a staff sergeant (SSG)/E-6.
3. The Board noted the applicant's assertion of his satisfactory service as a SSG/E-6; however, determined the result of the General Court-Martial to reduce him in rank from SSG to PVT showed he did not serve satisfactorily as a SSG.
4. The Board determined the AGDRB's decision to retire the applicant as a PVT/E-1 was not in error or unjust and found no basis to reverse the decision. The Board 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.

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. AR 15-80 (Army Grade Determination Review Board and Grade Determinations) governs the actions and composition of the AGDRB established by General Order Number 16. The AGDRB determines or recommends the highest grade satisfactorily held for service/physical disability retirement, retirement pay, and separation for physical disability.
 - a. Paragraph 2-5 (Unsatisfactory Service) provides that service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when reversion to a lower grade was the result of the sentence of a court-martial.
 - b. Paragraph 2-6 (Service in the Lower Grade) provides that 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.
 - c. Paragraph 3-2 (Thirty Year Cases) provides that Section 3964, Title 10, U.S.C. (10 USC 3964) entitles certain retired members of the Army who are retired with fewer than 30 years of active service, when such member's active service plus service on the retired list totals 30 years, to be advanced on the retired list to the highest grade served on active duty satisfactorily. The AGDRB reviews each case individually to determine the highest grade served on active duty satisfactorily. This is not an automatic advancement on the retired list. Some 30-year cases, however, must be initiated by a written request from the retiree concerned. When a reduction from the highest grade served was caused by misconduct, inefficiency, or for cause, the retiree must initiate the grade determination process at the 30-year mark or later. In such cases, the retiree is presumed not to have served satisfactorily in the higher grade; therefore, the retiree must request to initiate a grade determination review if the retiree believes advancement is appropriate.

//NOTHING FOLLOWS//