

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240004062

APPLICANT REQUESTS: to be placed on the Retired List in the highest rank/grade he satisfactorily held, staff sergeant (SSG)/E-6 vice sergeant (SGT)/E-5.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))

FACTS:

1. The applicant states upon applying for retirement benefits, he was advised that his rank was in question. He had attained the rank of SSG/E-6 on 18 February 1998. He was however demoted to SGT/E-5 on 29 September 2004 after an Article 15 hearing. He requests his rank at retirement be changed to SSG/E-6. He was advised that when retirement documents are reviewed, he would be paid at the highest rank attained, which is SSG/E-6.

2. The applicant was born on XX J____ [REDACTED]. He served on active duty (Regular Army) from 20 October 1981 to 16 October 1984.

a. Upon release from active duty, he served in the U.S. Army Reserve in a variety of assignments, via multiple extensions or reenlistments.

b. On 18 February 1998, Headquarters, 98th Division published Orders 049-021 promoting the applicant to SSG/E-6 in his primary specialty of 71L (Administrative Specialist).

c. On 9 January 2004, he was ordered to active duty in support of Operation Enduring Freedom.

d. On 26 February 2004, the U.S. Army Human Resources Command issued the applicant a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

e. On 25 September 2004, while assigned to Camp Spearhead, Kuwait, was notified by his commander she was considering whether he should be punished under Article 15, UCMJ, for the following misconduct: In that he, did, at Camp Spearhead, Kuwait, on or about 17 August 2004, assault SGT [Name] by striking, pushing, or using other unlawful force. This is in violation of Article 128, UCMJ.

(1) The applicant consulted with counsel, declined trial by a court-martial and opted for a closed hearing.

(2) The imposing officer found the applicant guilty and punished him with a reduction to SGT/E-5, forfeiture of pay, and restriction. The imposing officer also directed this Article 15 be permanently filed in the applicant's service record.

(3) The applicant appealed to the next higher commander and submitted additional matters. However, on 5 October 2005, the brigade commander denied his appeal.

f. The applicant was honorably released from active duty in the rank/grade of SGT/E-5 on 26 February 2005, and transferred back to the control of the U.S. Army Reserve.

g. On 18 July 2005, Headquarters, 77th U.S. Army Regional Readiness Command published Orders 05-199-00002 honorably discharging the applicant from the U.S. Army Reserve effective 3 June 2005. The discharge order lists his grade as SGT.

h. On 28 June 2023, the applicant submitted a DD Form 108 (Application for Retired Pay Benefits). His DA Form 5016 (Chronological Statement of Retirement Points) shows he completed over 22 years and 1 month of qualifying service towards non-regular retirement.

3. The applicant's Age-60 retirement orders are pending a determination by this Board (regarding his grade).

4. By regulation (AR 135-180) a person granted retired pay will receive such pay in the highest grade (temporary or permanent) satisfactorily held by him or her during his or her entire period of service. Service in the highest grade will not be deemed satisfactory if it is determined that any of the following factors exist: (a) revision to a lower grade was expressly for prejudice or cause, due to misconduct, or punishment pursuant to Article 15, UCMJ, or court-martial; or (b) there is information in the Soldier's service record to indicate clearly that the highest grade was not served satisfactorily.

BOARD DISCUSSION:

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 allegations. The Board determined the applicant did not provide evidence that shows that there was an error or injustice. The applicant was reduced in rank from SSG/E-6 to SGT/E-5 by Article 15 for violating the Uniform Code of Military Justice.

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 3963 for the highest grade held satisfactorily when Reserve enlisted members are reduced in grade not as a result of the member's misconduct, "....The Reserve enlisted member who shall be retired in the highest enlisted grade in which the member served on active duty satisfactorily (or, in the case of a member of the National Guard, in which the member served on full-time National Guard duty satisfactorily), as determined by the Secretary of the Army, and at the time of retirement is serving on active duty (or, in the case of a member of the National Guard, on full-time National Guard duty) in a grade lower than the highest enlisted grade held by the member while on active duty (or full-time National Guard duty); and was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Army."
2. Department of Defense Financial Management Regulation, volume 7B (Military Pay Policy and Procedures-Retired Pay), chapter 1 (Initial Entitlements-Retirements), section 0105 (Rank and Pay Grade), paragraph 010501A (General Determinations) states that unless entitled to a higher grade under some other provision of law, those Regular and Reserve members who retire other than for disability, will retire in the Regular or Reserve grade they hold on the date of retirement. Paragraph 10503 (Satisfactory Service) provides that the determination as to what constitutes satisfactory service for the purpose of retirement in the highest grade is within the discretionary power of the Secretary of the Military Department concerned.
3. Army Regulation 135-180 (Army National Guard and Army Reserve Qualifying Service for Retired Pay Nonregular Service) states that a person granted retired pay will receive such pay in the highest grade (temporary or permanent) satisfactorily held by him or her during his or her entire period of service. Service in the highest grade will not be deemed satisfactory if it is determined that any of the following factors exist: (a) revision to a lower grade was expressly for prejudice or cause, due to misconduct, or punishment pursuant to Article 15, Uniform Code of Military Justice, or court-martial; or (b) there is information in the Soldier's service record to indicate clearly that the highest grade was not served satisfactorily.

/NOTHING FOLLOWS//