

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240004945

APPLICANT REQUESTS: correction of his records to show he was retired at the highest rank/grade he held which was sergeant first class (SFC)/E-7 vice private (PVT)/E-1.

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

- DD Form 149 (Application for Correction of Military Record)
- Copy of Reserve Retired Identification (ID) Card
- Retiree Account Statement, 20 March 2024

FACTS:

1. The applicant states after turning 60 years of age in September 2023, he completed his retirement package. It asked the highest rank held, which was SFC/E-7. The 20-Year letter and his ID card said E-7.

2. A review of the applicant's service records show:

a. Having prior enlisted service in the Regular Army, DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States) shows he enlisted in the U.S. Army Reserve (USAR) on 27 March 1989.

b. He reenlisted and extended in the USAR on multiple occasions.

c. On 23 February 1999, USAR Personnel Command published Orders Number R-02-001207, which ordered the applicant to Active Duty in an Active Guard/Reserve (AGR) Status for 5 years, effective 26 October 1998, in the rank of SFC. The purpose listed on the order shows "AGR/USAR USAR Recruiter."

d. On 2 January 2002, the USAR Personnel Command issued the applicant a Notification of Eligibility for Retired Pay at Age 60 Twenty Year Letter. The letter shows his rank as SFC.

e. On 19 February 2002, the U.S. Total Army Personnel Command published Order Number 050-06, which reduced the applicant from SFC to PVT, effective 6 February 2002. The authority listed on the order shows Army Regulation 140-158 (Enlisted Personnel Classification, Promotion, and Reduction), and shows "Reduction (Other Than Disciplinary)."

f. On 16 January 2024, the U.S. Army Human Resources Command Fort Knox, KY, published Orders Number C01-490356, which placed the applicant on the Army of the United States retired list, in the retired grade of "private one", effective 21 September 2023.

g. The applicant's record contains a DA Form 5016 (Chronological Statement of Retirement Points) dated 15 January 2025, which shows in relevant part, his current grade as PV1.

3. In support of his request the applicant provides:

a. DD Form 149, wherein, the applicant indicated his type of discharge was "Other than Honorable (OTH)" and date of discharge or release from active duty was 3 March 2002. However, the applicant did not provide documents related to his separation/discharge and his Interactive Personnel Electronic Records Management System (iPERMS) files are void of documents pertaining to the OTH separation/discharge.

b. Copy of Reserve Retired ID Card showing his rank/grade as SFC/E-7.

c. Retiree Account Statement, effective date 20 March 2024, which shows his rank as PV1.

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 applicant receiving a Under Other than Honorable Conditions Discharge and the guidance outlined in AR 140-158 (Enlisted Personnel Classification, Promotion, and Reduction) and legal statute, the Board concluded the applicant was reduced to Private E1 in accordance with those references. Therefore, the Board found insufficient evidence of an error or injustice warranting a change to the applicant's rank.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

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. Army Regulation (AR) 15–185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that 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. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.

2. AR 140-158 (Enlisted Personnel Classification, Promotion, and Reduction) prescribes policy and procedures governing the classification, advancement, promotion, reduction, and grade restoration of applicable USAR Soldiers. In pertinent part, paragraph 7-12a (Other reasons for reduction) states in pertinent part, approved for discharge from service under other than honorable conditions. When the appropriate authority (AR 135-178 or AR 635-200) determines that a Soldier is to be discharged from the service under other than honorable conditions, the Soldier will be reduced to PV1.

3. AR 15-80 (Army Grade Determination Review Board and Grade Determinations) establishes policies, procedures, and responsibilities of the Army Grade Determination Review Board (AGDRB) and other organizations delegated authority to make grade determinations on behalf of the Secretary of the Army. In pertinent part:

a. Paragraph 2-4 (Grade determination considerations) states, a grade determination is an administrative decision to determine appropriate retirement grade, retirement pay, or other separation pay. Although a lower grade determination may affect an individual adversely, such determinations under this regulation are not punitive. The AGDRB will consider each case on its own merits. Generally, determination will be based on the Soldier's overall service in the grade in question, either on active duty or other service qualifying the Soldier for retirement, receipt of retired pay, or separation for physical disability. Circumstances pertinent to whether such service is found satisfactory include, but are not limited to, the following:

(1) Medical reasons, which may have been a contributing or decisive factor in a reduction in grade, misconduct, or substandard performance.

(2) Compassionate circumstances.

(3) Length of otherwise satisfactory service in the grade in question, before and after the misconduct. Additionally, the AGDRB cannot waive statutory Time-In-Grade (TIG) requirements for retirement at the current grade.

(4) Performance level, as reflected in evaluation reports and other portions of the service record that reflect performance. In reviewing these matters, the AGDRB will consider whether reporting officials were aware of the performance giving rise to the grade determination.

(5) Nature and severity of misconduct, if any. Although the punishment an individual has received may be one factor in determining the seriousness of misconduct, the amount of punishment will not be considered in determining whether the individual has been "punished enough." Grade determinations are not considered punitive, and the standard for grade determinations is "highest grade satisfactorily served," not whether the individual has been sufficiently punished.

(6) The grade at which the misconduct was committed.

(7) The grade at which the misconduct was addressed by proper authorities.

b. Paragraph 2-5 (Unsatisfactory service) states that, service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when:

(1) Reversion to a lower grade was —

- Expressly for prejudice or cause
- Owing to misconduct
- Caused by nonjudicial punishment pursuant to Uniform Code of Military Justice, Article 15
- The result of the sentence of a court-martial

(2) 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. Retirement in lieu of or as the result of elimination action will not, by itself, preclude retirement in the highest grade; however, the underlying misconduct and/or substandard performance can result in a determination that service in grade was unsatisfactory.

c. 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 with regard to that next lower grade.

d. Chapter 3 (Enlisted Personnel Grade Determinations) paragraph 3-1 states, enlisted Soldiers will usually retire in the grade held on the day before their placement on the retired list and are not subject to discretionary grade determinations, except for

disability separations and 30-year cases set forth in this chapter. For enlisted cases, the AGDRB will make final determinations on behalf of the Secretary of the Army (SA) unless that authority is reserved by higher authority in a particular case or type of cases. It will determine the highest grade in which a Soldier has served satisfactorily for purposes of 30-year cases, physical disability retirement, other computations of retired pay (see Title 10, U.S. Code (USC), Section 1406 or 10 USC 1407), or separation for physical disability with severance pay. While enlisted Soldiers may be reduced in grade by courts-martial, nonjudicial punishment proceedings (see Uniform Code of Military Justice, Article 15), administrative separation proceedings, or inefficiency boards, enlisted grade determinations cannot result in reduction of an enlisted Soldier's or retiree's current grade. Enlisted grade determinations will result in either a decision to retain the individual's current grade or to advance to a higher grade in which the individual satisfactorily served or to which advancement is otherwise provided by law. Enlisted Soldiers who are determined not to have served satisfactorily in the highest grade held and who first became members after 7 September 1980, and therefore would normally fall under the high-36 month average for calculation of retired pay, do not get the benefit of that averaging if reduced in grade as the result of court-martial, nonjudicial punishment, or an adverse administrative action (see 10 USC 1407).

e. Paragraph 3-4 (Reserve enlisted members reduced not as a result of the member's misconduct) states, a Reserve enlisted member who, at the time of regular retirement after 30 September 1996, is serving on active duty or 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, will be retired in the highest enlisted grade served satisfactorily on active duty or on full-time National Guard duty, as determined by the Secretary of the Army. See Title 10, USC, section 7343.

3. Title 10, USC, Section 7343 – Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct, states:

a. A Reserve enlisted member of the Army described in subsection (b) who is retired under section 7314 (Twenty to thirty years: enlisted members) of this title 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.

b. Subsection (b) states, this section applies to a Reserve enlisted member who:

(1) 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

(2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Army.

(3) Subsection (c) states, this section applies with respect to Reserve enlisted members who are retired under section 7314 of this title after September 30, 1996.

//NOTHING FOLLOWS//