

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 February 2025

DOCKET NUMBER: AR20240006532

APPLICANT REQUESTS: In effect, correction of his records to show he was placed on the Army of the United States retired list in the highest rank he held which was first lieutenant (1LT)/O-2E.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty), 4 August 1975
- Photocopy of original commission certificate, 1 May 1980
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 31 January 1984
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 31 March 2015
- Orders Number C03-591937, 1 March 2015
- NGB Form 23A (Army National Guard (ARNG) Current Annual Statement), 27 May 2015

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. Applicant states he requests that his highest rank attained be changed to O-2E due to his prior enlisted and commissioned service in the U.S. Marine Corps (USMC). He assumed that due to his 9-year break in service and the ARNG being state-run, he would have to start out fresh with his ARNG career. He came back in enlisted, and his enlisted ranks followed him on all the paperwork even though his officer DD Form 214 was in his records. He did not give much thought about retiring at the officer rank until recently when he spoke with a knowledgeable command sergeant major (CSM) and the CSM told him that he can apply to have the record corrected even in the ARNG. Hence, him submitting this application.

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

a. With prior enlisted service in USMC Reserve, he entered active duty as an officer in the USMC on 4 August 1980.

b. On 31 January 1984, the applicant was honorably transferred to the USMC Reserve. He completed 3 years, 5 months, and 28 days net active service this period. DD Form 214 shows in:

- Item 4a (Grade, Rate or Rank) – "1STLT" (first lieutenant)
- Item 4b (Pay Grade) – O-2
- Item 12a (Date Entered Active Duty This Period) – 4 August 1980
- Item 12b (Separation Date This Period) – 31 January 1984
- Item 12c (Net Active Service This Period) – 3 years, 5 months, and 28 days
- Item 12d (Total Prior Active Service) – 8 months and 7 days
- Item 12e (Total Prior Inactive Service) – 4 years, 6 months, and 20 days
- Item 28 (Narrative Reason for Separation) – "Request for extension of service denied (upon initial EAS without readjustment pay/not selected for retention) (involuntary release)"

c. On 25 May 1995, he enlisted in the Maryland ARNG (MDARNG) for a period of 4 years. The applicant extended in the MDARNG on multiple occasions.

d. On 1 June 2006, the MDARNG notified the applicant that he was eligible for Retired pay at Age 60 (Twenty Year Letter).

e. On 4 January 2011, the MDARNG published Orders Number 004-018, which promoted the applicant to rank/grade of master sergeant (MSG)/E-8, effective on with a date of rank of 1 February 2011.

f. DD Form 108 (Application for Retired Pay Benefits) dated 1 October 2014 shows the applicant indicated his highest military pay grade held was E-8/MSG.

g. On 1 March 2015, the U.S. Army Human Resources Command published Orders Number C03-591937, which placed the applicant on the Army of the United States retired list, in the rank of MSG, effective 1 April 2015.

h. On 2 March 2015, the MDARNG published Orders Number 061-055, which discharged the applicant from the ARNG and assigned him to the Retired Reserve, effective 31 March 2015.

i. On 31 March 2015, the applicant was released from the ARNG by reason of "completed 20 years' service, active or inactive", and was transferred to the Retired

Reserve. NGB Form 22 shows he completed 19 years, 10 months, and 6 days net service this period. Item 5a (Rank) shows MSG.

j. NGB Form 23A prepared on 27 May 2015, shows in pertinent part, his rank listed as MSG and a total of 4496 Active-Duty Training points, 5703 Total Career Points, 5597 Total Points for Retired Pay, and 29 years, 10 months, and 2 days Creditable Service for Retire Pay.

4. In support of his petition to the Board, the applicant provides:

a. DD Form 214 ending on 4 August 1975, which shows he served on active duty for training in the USMC for 4 months and 10 days.

b. A photocopy of original commission certificate dated 1 May 1980, which shows he was appointed as a second lieutenant in the Reserve of the USMC.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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 and standard review based on law, policy and regulation. One potential outcome was to grant relief based on the applicant's enlisted Marines- DD Form 214 of 4 months which credit the applicant O-2E for the 4-month period. However, upon review of the applicant's petition and available military records, the Board majority found the applicant served as a commissioned officer in the U.S. Marine Corps from 4 August 1980 to 31 January 1984, completing 3 years, 5 months, and 28 days of active commissioned service. The records shows, the applicant later enlisted in the Maryland Army National Guard (MDARNG), where he served in an enlisted capacity and was ultimately promoted to master sergeant (MSG)/E-8. His retirement orders, DD Form 108, and NGB Form 22 all reflect MSG as his highest grade held in the Army National Guard, and he was placed on the retired list in that grade effective 1 April 2015.

2. The Board noted in accordance with Title 10, U.S. Code, Section 7311, a regular or reserve commissioned officer must have completed at least 20 years of service, with a minimum of 10 years served as a commissioned officer, to be retired in a commissioned grade. The applicant does not meet this statutory requirement, as his commissioned service totals less than 10 years. Therefore, the Board finds that his retirement in the grade of MSG was properly executed in accordance with law and regulation. In the absence of error or injustice, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

X //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. 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. Army Regulation 135-180 (Qualifying Service for Retired Pay Nonregular Service), in effect at the time, implements statutory authorities governing the granting of "retired pay" to Soldiers and former Reserve Components Soldiers. In pertinent part:

a. Paragraph 2-11 (Computation of retired pay) states, retired pay will be computed by the Retired Pay Division, U.S. Army Finance Support Agency, Indianapolis, IN, upon receipt of orders and data prescribed in paragraph 2-10 (Computation of service), from the Commanding General, Army Reserve Personnel Center (ARPERCEN). 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.

b. The Retired Activities Directorate, ARPERCEN will screen each retirement applicant's record to determine the highest grade held by him or her during his or her military service. In arriving at the highest grade satisfactorily held, the following criteria will apply. If the Soldier was transferred to the Retired Reserve or discharged on or after 25 February 1975, retired grade will be that grade which a commissioned officer or enlisted Soldier held while on active duty or in an active reserve status for at least 185 days or six calendar months.

c. Service in the highest grade will not be deemed satisfactory and the case will be forwarded to the Secretary of the Army's Ad Hoc Review Board for final determination of the Soldier's retirement grade if, during the mandatory review of the Soldier's records by the Retired Activities Directorate, ARPERCEN, it is determined that any of the following factors exist: (1) 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 (2) There is information in the soldier's service record to indicate clearly that the highest grade was not served satisfactorily.

3. Title 31, USC, section 3702, also known as the Barring Statute, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, USC, is relieving the Government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

//NOTHING FOLLOWS//