

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240007189

APPLICANT REQUESTS: in effect:

- reconsideration of his previous request to restore his rank/grade to staff sergeant (SSG)/E-6
- as new issues he requests, reimbursement for items taken from him, and disability retirement with a rating of 100 percent (%)
- all authorized decorations and awards

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Benefits Information Statement and Rating
- Medical Record from Munson Healthcare-Kalkaska Memorial Health Center
- Progress Notes, from Almeda E. Lutz VA Medical Center
- U.S. Army Tank-Automotive and Armaments Command's (TACOM) Statement Acknowledging Shipment of Awards
- Michigan Driver License
- Applicant's Certification of Birth

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20090004087 on 23 July 2009.

2. The applicant states he wants his rank/grade reinstated to SSG/E-6 with a 100% disability rating as he was told upon retirement. He also annotates on his application, that he is requesting an administrative correction, pay and allowance, disability promotion/rank, and discharge/separation. He further noted "accident/100% disability taken away, was supposed to be returned at retirement."

3. He further states the search warrant [used against him] was illegal, it was issued using the wrong name. He should not have been court-martialed. He would like to be reimbursed for the items taken from him/seized.

4. The applicant enlisted in the Regular Army on 16 October 1962. The highest rank/grade he attained was SSG/E-6, on 26 September 1968.

5. His DA Form 2-1 (Personnel Qualification Record) shows he served overseas in:

- Germany from 30 March 1965 to 28 February 1967
- Vietnam from 29 January 1968 to 29 January 1969
- Germany from 11 August 1969 to 1 March 1972
- Germany from 6 October 1975 to 2 October 1978
- Korea from 1 March 1982 to 24 January 1983

6. On 20 October 1983, he was assigned to Fort Bliss, TX, with duties in military occupational specialty 51H (Construction Engineer) and he was assigned the principal duties of construction engineer supervisor.

7. On 22 May 1985, a general court-martial (GCM) found the applicant guilty, contrary to his pleas, of violating the Uniform Code of Military Justice (UCMJ):

- Article 81, by conspiring to commit larceny of military property valued in excess of \$100
- Article 112, by stealing military property valued in excess of \$100
- He was sentenced to reduction to private (PV1)/E-1, a forfeiture of \$5,000 pay, and confinement for 1 year

8. On 8 January 1986, the applicant underwent a retirement medical examination which shows in:

- Item 35 Clinical Evaluation Abnormal, (Upper Extremities), multiple surgery scars-range of motion of the elbow and wrist
- Item 74 (Summary of Defects and Diagnoses), "BIL. High-Frequency Hearing Loss Documented," S/P crush injury Left Arm c ↓ mobility on elbow and wrist
- Item 76 (Physical Profile), PULHES of 111311
- Item 77 (Examinee), is qualified for retirement

9. On 31 January 1986, while serving in the rank of PV1, the applicant completed a DA Form 2339 (Application for Voluntary Retirement) in which he requested retirement in the rank of PV1, effective 1 March 1986.

10. On 28 February 1986, the applicant was honorably retired from active duty in the rank of PV1. The DD Form 214 he was issued confirms he completed a total of 22 years, 1 month, and 15 days of creditable active military service and he accrued 289 days of lost time due to being in confinement. His DD Form 214 shows in item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized) the:

- National Defense Service Medal
- Vietnam Service Medal with 1 silver service star
- Republic of Vietnam (RVN) Campaign Medal
- Vietnam Cross of Gallantry with Palm
- Good Conduct Medal (5th Award)
- Army Service Ribbon
- Overseas Service Ribbon (3rd Award)
- Noncommissioned Officer Professional Development Ribbon (3rd Award)
- Bronze Star Medal
- Expert Marksmanship Qualification Badge, Rifle Bar (M-16)

11. The applicant's contention that he was told his rank would be amended at the time of retirement is not supported by the evidence. There are no provisions for automatic reinstatement of rank upon retirement. The governing regulations stipulate that an individual will be retired in the rank held on the date of release for retirement.

12. The available evidence confirms the applicant's trial by court-martial was warranted by the gravity of the offenses charged. Conviction and reduction were effected in accordance with applicable law and regulations. His reduction was warranted based on the misconduct he committed. If he believed items were improperly seized or there was a problem with the search warrant, the issues should have been addressed during the appeals process.

13. On 8 January 1986, the applicant underwent a retirement medical examination which found him qualified for retirement. There is no evidence available to support that he ever had a 100% disability rating, or that he was involved in an accident that required medical separation processing.

14. The applicant provided a VA Benefits Statement, dated 10 November 2017, showing he was granted a combined disability rating of 20% effective 1 December 2016.

15. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting to have his length of Service (LOS) retirement revoked and that he subsequently be granted a permanent retirement for physical disability. So, in essence, a referral to the Disability Evaluation System (DES).

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD Form 214 for the period of service under consideration shows he entered the Regular Army 12 March 1974 and was honorably retired for length of service on 28 February 1986 under the separation authority provided in chapter 12 of AR 635-200, Personnel Separations – Enlisted Personnel.

d. The applicant's service predates the electronic records.

e. His separation examination shows he had bilateral high frequency hearing loss and had some decreased "mobility" at the left elbow and wrist due to some form of crush injury. However, there were no limitations noted and he was found qualified for retirement.

f. The DES compensates disabilities when they cause or contribute to career termination. Paragraph 3-2b of Army Regulation (AR) 635-40, (Physical Evaluation for Retention, Retirement, or Separation) (1 September 1990) states:

(1) Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to soldiers whose service is interrupted and they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

(2) When a soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with

his or her rank or grade until the soldier is scheduled for separation or retirement, creates a presumption that the soldier is fit.

g. Paragraph 3-1 of AR 635-40, (1 September 1990) states:

The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of his or her office, grade, rank, or rating.

h. There insufficient probative evidence the applicant had a medical condition would have failed the medical retention standards of chapter 3, AR 40-501 (Standards of Medical Fitness) prior to his voluntary retirement. Thus, there was no cause for referral to the DES. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his voluntary LOS retirement.

i. JLV shows he has been awarded two VA service-connected disability ratings in 2006: Paralysis of a nerve and impaired hearing. However, the DES compensates an individual only for service incurred medical condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. It is the opinion of the Agency medical advisor that neither a referral of his case to the DES of a reversal of one or more of USAHRC's non-combat related determinations is warranted.

#### BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that partial relief was 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.

2. Restoration of his rank/grade to SSG/E-6. Deny. The Board determined the overall merits of the case are insufficient as a basis for correction of Docket Number AR20090004087 considered on 23 July 2009.

3. Reimbursement for items taken from him and disability retirement with a rating of 100%. Deny. The Board reviewed and agreed with the medical reviewer's finding that there is no evidence the applicant had a medical condition or injury which would have failed the medical retention standards prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Additionally, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his voluntary retirement.

4. Authorized decorations and awards. A review of the applicant's service record revealed sufficient evidence to amend his DD Form 214 by adding the Korea Defense Service Medal.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                GRANT FULL RELIEF

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:                :                :                GRANT FORMAL HEARING

:                :                :                DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 28 February 1986 to show award of the Korea Defense Service Medal.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to restoration of his rank/grade to SSG/E-6, reimbursement for items taken from him, and disability retirement with a 100% rating.

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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.
2. Army Regulation 635-5 (Separation Documents) prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes standardized policy for the preparation of the DD Form 214. It states, in pertinent part, that the DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement or discharge. The regulation also contains guidelines for the preparation of the DD Form 214. It states, in pertinent part, that the rank and pay grade entry in Item 4a and Item 4b will be the active duty grade or rank and pay grade the member holds at the time of separation.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 12 sets policies and procedures for voluntary retirement of Soldiers by reason of length of service. Paragraph 12-3b states, in pertinent part, that retirement will be in the Regular or Reserve grade the Soldier holds on the date of retirement as directed in Title 10 of the U. S. Code, section 3961 (10 USC 3961). There are no provisions for automatic reinstatement of rank upon retirement.
4. Paragraph 12-6 (Advancement on the Retired List) of the same regulation contains guidance on the advancement of Soldiers on the Retired List. It states, in pertinent part, that retired Soldiers are entitled to be advanced on the Retired List to the highest grade they held and in which they satisfactorily served on active duty when their active service plus service on the retired list totals 30 years. The legal authority for this action is provided by Title 10 of the U. S. Code, section 3964 (10 USC 3964).
5. Army Regulation 15-80 (Army Grade Determination Review Board (AGDRB) and Grade Determination) establishes policies, procedures, and responsibilities of the AGDRB and other organizations delegated authority to make grade determinations. Paragraph 2-5 states, in pertinent part, that service in the highest grade held 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, UCMJ.
6. Army Regulation 600-8-22 (Military Awards) states the Korea Defense Service Medal is authorized for award to members of the Armed Forces of the United States who have



served on active duty in support of the defense of the Republic of Korea. The period of eligibility is 28 July 1954 to a date to be determined by the Secretary of Defense.)

7. Title 10, U.S. Code (USC), chapter 61, provides disability retirement or separation for a member who is physically unfit to perform the duties of his office, rank, grade or rating because of disability incurred while entitled to basic pay.

8. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

9. Title 38, Code of Federal Regulations, Part IV is the VA Schedule for Rating Disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

//NOTHING FOLLOWS//