

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2025

DOCKET NUMBER: AR20240008148

APPLICANT REQUESTS: in effect

- restoration to the rank/grade of staff sergeant (SSG)/E-6
- to be retired in the highest rank he held which was staff sergeant (SSG)/E-6

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2166-7 (NCO Evaluation Report (NCOER)), September 2001
- Permanent Order Number 007-08, 7 March 2006
- Enlisted Record Brief (ERB), 15 March 2006
- DA Form 638 (Recommendation for Award), 9 September 2006
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 31 July 2006

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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:

a. He did 20 years in service and was demoted within timeframe to keep SSG/E-6 status. He retired with scope of retaining status of rank. He turned in a DA Form 4187 (Personnel Action) before he retired, and unit deployed within 30 days and unit no longer exists. He only found two people through Facebook to witness record of event. The two individuals were First Sergeant J_ H_ and Sergeant First Class R_ S_. He did not deploy nor was he assigned to another location. He received an award from a unit he was never in by Lieutenant M_ whom he had problems with as a truckmaster in the 154th Transportation Company. He later received an NCOER that was done, and the list goes on. He requests that his rank be restored to SSG/E-6 per Army Regulation

(AR) that his 1SG had stated that he made within 11 days. DA Form 4187 was turned in, but he never got to see.

b. The unit deployed and then dismantled. He tried to email and look up people. He went on post looking to find people and they were all gone, even the battalion that he was in was gone. He served his country for 20 years and 9 days. B_ W_ stated that the unit signed the DA Form 4187 and turned it in, and she would fix his rank in 30 days. She also stated that he had made the regulation, and the DA Form 4187 was turned in the following day.

3. A review of the applicant's military service record shows:

a. He enlisted in the Regular Army on 22 July 1986 and served through multiple reenlistments until he was retired.

b. On 24 November 1998, Alpha Detachment, 546th Personnel Service Battalion, Fort Hood, TX, published Orders Number 328-12, which promoted the applicant to the rank/grade of SSG/E-6, effective 1 December 1998.

c. On 15 September 2004, Alpha Detachment, 546th Personnel Service Battalion, Fort Hood, TX, published Orders Number 259-22, which promoted the applicant again to the rank/grade of SSG/E-6, effective with a Date of Rank (DOR) of 1 October 2004.

d. On 19 October 2005, DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) shows the applicant received Non-Judicial Punishment (NJP) for:

- Committing an indecent assault upon Specialist (SPC) K_ F_, a person not his wife, by pressing his body against her butt with intent to gratify his lust and sexual desires
- Writing and communicating to SPC K_ F_ certain indecent language...
- Wrongfully soliciting SPC K_ F_ to violate AR 600-200, paragraph 4-14b, dated 13 May 2002, to have a prohibited relationship
- Committing an indecent assault upon Private First Class (PFC) V_ A_ T_, a person not his wife, by pressing his body against her butt with intent to gratify his lust and sexual desires
- Wrongfully soliciting PFC V_ A_ T_, to violate AR 600-200, paragraph 4-14b, dated 13 May 2002, to have a prohibited relationship
- Orally communicating to PFC V_ A_ T_, certain indecent language...
- Wrongfully soliciting PFC V_ A_ T_ to have a prohibited relationship on multiple occasions
- Wrongfully soliciting PFC K_ V_ to have a prohibited relationship on multiple occasions

The applicant's punishment consisted of reduction to sergeant (SGT)/E-5; forfeiture of \$1,225.00 pay per month for 2 months; and extra duty for 45 days. The commander imposing the NJP directed the original DA Form 2627 be filed in the applicant's performance fiche. The applicant appealed the NJP and submitted additional matters.

e. On 24 October 2005:

(1) A Judge Advocate reviewed and considered the applicant's appeal and found the proceedings were conducted in accordance with law and regulation and the punishments imposed were not unjust nor disproportionate to the offenses committed.

(2) The Combined Task Force Bayonet commander considered all matters presented in the applicant's appeal and denied it.

f. His record contains an NCOER for the period covered from March through October 2005, which shows he received a change of rater NCOER and received unfavorable ratings for Army Values. His rank was listed as SGT with a DOR of 19 October 2005.

g. On 21 June 2006, Headquarters III Corps and Fort Hood published Orders Number 172-0144, which retired the applicant, effective 31 July 2006, and placed him on the retired list in the rank of SGT, effective 1 August 2006. In pertinent part, the order shows:

- Retirement type and allotment code: Non-Disability/2
- Statute authorizing retirement: Title 10, U.S. Code, section 3964

h. On 31 July 2006, the applicant was honorably retired. His DD Form 214 shows in:

- Item 4a (Grade, Rate or Rank) – SGT
- Item 12c (Net Active Service This Period) – 20 years and 9 days
- Item 12h (Effective Date of Pay Grade) – 19 October 2005
- Item 23 (Type of Separation) – Retirement
- Item 28 (Narrative Reason for Separation) – Sufficient Service for Retirement

i. The applicant's record does not contain orders nor documentation showing he was promoted or restored back to the rank/grade of SSG/E-6.

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

a. An NCOER covering the period of October 2000 through September 2001, which shows his rank as SSG with a DOR of 1 December 1999, and he received favorable ratings.

b. Permanent Order Number 007-08 dated 7 March 2006, published by 154th Transportation Company, 180th Transportation Battalion, Fort Hood, TX, which shows he was awarded the Army Good Conduct Medal (6th award) for the period of 21 July 2001 to 21 July 2004.

c. An ERB dated 15 March 2006, which shows his rank as SSG with a DOR of 1 October 2004.

d. DA Form 638 dated 9 September 2006, which shows he was awarded the Army Commendation Medal (5th oak leaf cluster) for retirement.

5. On 3 February 2025, the Chief, Enlisted Promotions Branch, U.S. Army Human Resources Command (HRC), provided an advisory opinion and determined the applicant's request should be denied. The HRC advisory official states:

a. After review of the applicant's application for correction of military records, it has been determined that his request for correction of military records should be denied. The applicant did not provide enough documentation to substantiate re-instatement of SSG rank.

b. The applicant states that he did 20 years in service and was demoted within time frame to keep SSG status. When a Soldier is demoted if the demotion was suspended then the Soldiers are allowed to retain their rank if they meet the suspension instructions. AR 600-8-19 dated 14 January 2005, was the regulation in effect at the time of the applicant's separation. Paragraph 7-12a outlines that reduction, except for Article 15 of the UCMJ, is announced in orders. Orders or DA Form 2627-2, Record of Supplementary Action Under Article 15, UCMJ are needed to verify the reason he was demoted. The applicant's record does not have any documentation reference demotion.

c. The applicant states that a DA Form 4187 was turned in requesting the restoration of his SSG. A DA Form 4187 will not restore a Soldier's rank. If the reason for demotion was an Article 15 the DA Form 2627-2 would serve as a reason for the restoration of the rank once the suspension instructions were met. There are no documentation showing a demotion which should have been uploaded by legal. There is a DD Form 214 date of separation is 31 July 2006, and it lists the applicant's rank as SGT with an effective date of 19 October 2005. The DD Form 214 is an Army legal documentation that can be used as verification of rank and effective date of rank. Army Military Human Resources Record for the service member does not contain any source service documents.

6. On 6 February 2025, the applicant was provided with a copy of the HRC advisory opinion to allow for comments or rebuttal. As of today, he has not responded.

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.
2. The evidence of record shows the applicant was reduced in grade from SSG/E-6 to sergeant (SGT)/E-5 pursuant to nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), dated 19 October 2005. The offenses included multiple instances of indecent assault and solicitation of prohibited relationships with junior enlisted personnel, which constituted serious violations of Army standards and values. The applicant's personnel file contains DA Form 2627 indicating his reduction, and his DD Form 214 reflects his final rank as SGT with an effective date of 19 October 2005. There is no evidence of suspended reduction or subsequent restoration to SSG/E-6.
3. The applicant's reduction in grade for misconduct and subsequent unfavorable NCOER ratings for Army Values during the same period demonstrate that he did not satisfactorily maintain the rank of SSG/E-6. His retirement orders and DD Form 214 correctly reflect his final grade as SGT/E-5. The Board concluded there was no error or injustice warranting relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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, 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. 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.

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 2-5 (Unsatisfactory service) states, 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.

b. 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 held, unless paragraph 2-5 applies with regard to that next lower grade.

4. AR 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system. In pertinent part:

a. Paragraph 7-12a (Reduction orders) provides that, reduction, except for UCMJ, Article 15, is announced in orders.

b. Paragraph 7-12c states, when a reduction is for misconduct under UCMJ, a DA Form 2627 (Record of Proceedings under UCMJ, Article 15) is prepared per AR 27-10 (Military Justice).

c. Paragraph 7-13c (Effective date of reduction) provides that a reduction based on Nonjudicial Punishment will be effective on the date the commander imposing the punishment signed below Item 4 of DA Form 2627, if not suspended, or the date the appropriate commander signed DA Form 2627-2 (Record of Supplementary Action Under UCMJ, Article 15) vacating a suspended punishment of a reduction in grade.

d. Paragraph 7-14a (Restoration to former grade) states, grade restoration may result from setting aside, mitigation, or suspension of Nonjudicial Punishment. Procedure and means of restoring grades and announcing these actions are set forth in AR 27-10.

5. AR 635-5 (Personnel Separations – Separation Documents) prescribes the separation documents that must be prepared for soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It establishes standardized policy for preparing and distributing the DD Form 214. Paragraph 2-4h provides detailed instructions and source document(s) for completing each block of the DD Form 214. It states for Block 4a (Grade, Rate or Rank) to enter active duty grade or rank and pay grade at time of separation from ERB/ORB.

//NOTHING FOLLOWS//