

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2025

DOCKET NUMBER: AR20240010525

APPLICANT REQUESTS:

- correction of his record to show his rank/grade to sergeant first class (SFC)/E-7, was restored so he may receive retired pay as an SFC, the highest grade he held
- placement on the retired list in the highest rank/grade held of SFC/E-7 with combined 30-years of service

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement providing details of his actions and errors in judgment which led to his negative actions in his career
- U.S. Army Human Resources Command (AHRC) Orders Number 68-31, discussed in paragraph 3
- DA Form 4980-12 (Meritorious Service Medal Certificate), 14 November 2007 for exceptionally meritorious service during the period of 18 October 1998 through 31 August 2008
- Headquarters (HQs), III Corps and Fort Hood Orders Number 277-0164, discussed in paragraph 3
- HQs, III Corps and Fort Hood Orders Number 095-0116, discussed in paragraph 3
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for service ending 31 August 2008, discussed in paragraph 3
- DD Form 363A (Certificate of Retirement) dated 31 August 2008, he retired in the rank of Staff Sergeant (SSG) from the Regular Army (RA)
- list of supporting documents
- letter of support from Colonel (COL) [REDACTED] (Retired), 30 April 2024, in 2005 the applicants brigade commander
 - applicant served as his personal security detachment
 - superior individual who produces results
 - applicant was trusted with the command teams lives
 - he understands what trauma does to individuals and how war trauma impacts their actions during deployments

- the applicant's actions were out of character which lead to his reduction in rank that does not define him
- knowing then what is known now, the applicant would have received treatment instead of punishment
- congressional privacy release form
- Department of Veterans Affairs (VA) [REDACTED] Veterans Health Care System letter, 2 September 2009,
 - applicant currently in treatment for Post-traumatic Stress Disorder (PTSD)
 - applicant was diagnosed with service connected anxiety disorder through the VA system
 - letter to be forwarded for an extension of authorization to ship household goods to accommodate his mental health treatment
- VA [REDACTED] Veterans Health Care System letter, 12 January 2010
 - applicant is a patient in the Temple PTSD treatment program
 - applicant is a member of weekly Cognitive Processing Therapy group
 - the group addresses issues regarding combat PTSD and the applicant is an active participant
 - the applicant continues to have significant symptoms of PTSD based on his combat experience
- VA letter, 22 July 2010; applicant's service connected disability was increased for his PTSD
- VA letter, 4 October 2017; individual unemployable was moot as the applicant's service connected disability was evaluated at 100 percent
- AHRC letter, 4 March 2022; reconsideration of his claim for Combat Related Special Compensation was approved:
 - PTSD 70 percent
 - Gastroesophageal Reflux Disease including Irritable Bowel Syndrome 60 percent
 - Traumatic tension headaches 50 percent
 - Chronic fatigue syndrome 40 percent
 - Lumbosacral strain 10 percent
 - Cervical spine strain 10 percent
 - Traumatic Brain Injury (TBI) 10 percent
 - Fibromyalgia 10 percent
 - Allergic rhinitis 10 percent
 - Tinnitus 10 percent

- Chronic sinusitis 30 percent
- Office of the Under Secretary of Defense Memorandum dated 25 August 2017, Subject: Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military Records Considering Requests by Veterans for Modification of their Discharged Due to Mental Health Conditions, discussed in the references
- City of Harker Heights Business License for the Lucille's Link and Bar-B-Q
- Assumed Name Records Certificate of Ownership for Unincorporated Business or Profession dated 25 January 2011, the applicant is the owner of the Lucille's Links and Bar-B-Q
- Veteran Owned Business Certificate of Membership dated 12 January 2012, [REDACTED] a veteran owned business
- [REDACTED] Sales and Use Tax Permit, 1 February 2022, [REDACTED] issued a [REDACTED] sales and use tax permit
- First Army, Division West Certificate of Appreciation [REDACTED] recognized for support of the unit's hail and farewell event
- VA Certificate of Appreciation [REDACTED] recognized for participation in the VA annual Welcome Home Celebration on 22 September 2012
- Halloween Hoopla Certificate of Appreciation [REDACTED] recognized for participation in the annual Halloween Hoopla
- [REDACTED] Society certificate identified the applicant as a member in good standing in 2015
- [REDACTED] Society Judge certificate the applicant was formally trained and taken the oath and sworn to uphold the code of conduct of a judge
- [REDACTED] Food Manager Certification Program certificate the applicant completed the certification

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 in effect:

- He requests the re-computation of his retired pay in accordance with Title 10 USC, section 3964 to reflect his highest grade held of SFC/E-7
- He retired in the rank/grade of SSG/E-6, he served satisfactorily in the rank/grade of SFC/E-7
- He accrued 36-years of combined service and retirement

- He believes he is eligible for advancement to SFC/E-7 on the retired list
- He has been undergoing a 3-month treatment program for PTSD at the VA
- He has been participating in Cognitive Processing Therapy
- He has a profound insight how his PTSD, TBI and traumatic tension headaches influenced his behavior and decision in combat
- PTSD heightened his vigilance, triggered intrusive memories and distorted his perception of threats, which led to responses that differed his normal reaction
- TBI disrupted his cognitive functions such as attention, memory and decision making which potentially impacted his ability to accurately assess situations under stress
- He acknowledged the gravity of his actions and accepts full responsibility for the consequences have brought upon him
- He took proactive steps to address those challenges
- He receives medication and support from the VA as his ongoing journey towards healing
- He received the Meritorious Service Medal for his 20-years of service
- He has remained active in his community
- He is the owner of a small business
- He was recognized by the commanding general for his contributions to a hail and farewell event
- The VA had honored him for his voluntary contributions to the Welcome Home Celebration for veterans
- He believes the circumstances of his service warrant consideration for advancement to the rank/grade SFC/E-7 on the retired list

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

- On 25 August 1988, the applicant enlisted in the RA and he had continuous service through reenlistments
- Enlisted Record Brief shows:
 - He was awarded the Combat Infantryman Badge (2nd Award)
 - His Date of Rank (DOR) of SFC/E7 – 1 April 2004
 - His DOR for SSG/E-6 – 28 January 2005
 - He served in Southwest Asia during the period of 25 December 1990 through 17 May 1991
 - He served in Iraq during the period of 17 March 2004 through 26 March 2005
 - He served in Iraq during the period of 3 October 2006 through 11 December 2007
- On 12 March 1991, he was awarded the Combat Infantryman Badge for engagement in active ground combat during the period of 24 through

28 February 1991 by Orders Number 12-78

- On 1 June 1998, he was promoted to the rank/grade of SSG/E-6, effective on with a DOR of 1 June 1998 by Orders Number 141-12
- On 1 April 2004, he was promoted to the rank/grade of SFC/E7, effective on with a DOR of 1 April 2004 by Orders Number 68-31
- On 26 May 2004, he was awarded the Combat Infantryman Badge (2nd Award) for participating in ground combat operations under enemy hostile action fire to liberate Iraq in support of Operation Iraqi Freedom during the period of 7 through 25 April 2004 by Orders Number 147-04
- On 18 January 2005, he was charged with:
 - One specification of failure to obey General Order Number 1 by wrongfully possessing and consuming an alcoholic beverage on or about 10 September 2004
 - One specification of committing an indecent assault upon a female not his wife by grabbing her arm and trying to kiss her with the intent to gratify his sexual desires on or about 10 September 2004
 - On 19 January 2005, he was referred to a summary court-martial
- On 28 January 2005, the Summary Court-Martial convened at Camp Taji, Iraq
 - He was found guilty on both specifications and sentenced to reduction to the rank/grade of SSG/E-6 and forfeiture of pay
 - On 28 January 2005, the sentence was adjudged and effective date of any forfeiture and reduction in grade
 - He did not object to trial by summary court-martial
 - He was not represented by counsel
 - He was advised of his right to submit written matters to the convening authority, including a request for clemency and the right to request review by the Judge Advocate General
- On 17 November 2005, the Army Board for Correction of Military Records denied his request for reinstatement of his rank/grade to SFC/E7 due to the Summary Court-Martial being conducted in accordance with established procedures
- On 31 August 2008, the applicant was released from active duty and placed on the retired list effective 1 September 2008 by Orders Number 277-0164, which was emended by Orders Number 095-0116 to show the retirement authority as Title 10, USC, section 3964
 - placed on the retired list in the rank/grade SSG/E6 with an effective date of 28 January 2005
 - Title 10 USC, section 3914 authorized his retirement

- On 31 August 2008, he was honorably retired and assigned to the U.S. Army Reserve Control Group (Retired Reserve), he completed 20-years and 6-days of active service, it also shows in:
 - Item 4a (Grade, Rate or Rank): SSG
 - Item 4b (Pay Grade): E-6
 - Item 12h (Effective Date of Pay Grade): 28 January 2005
 - Item 18 (Remarks): served in Southwest Asia 25 December 1990 through 17 May 1991, Iraq 17 March 2004 through 26 March 2005 and 3 October 2006 through 11 December 2007
- On 30 September 2008, the Army Review Boards Agency notified him he was not eligible to be advanced on the retired list to the rank/grade SFC/E-7 under Title 10 USC, section 3964, he must wait until he reached 30-years of combined service and retirement to apply for advancement
- On 25 August 2018, he obtained 30-years of combined service and retirement
- On 13 January 2022, the Army Grade Determination Review Board denied his request to be advanced on the retired list because of his Summary Court-martial conviction while he was an SFC/E7

4. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a correction to his record to show a change to his rank/grade to sergeant first class (SFC)/E-7 so he may receive retired pay as an SFC. He contends he experienced an undiagnosed mental health condition, including PTSD, and a Traumatic Brain Injury (TBI) that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 25 August 1988 and had continuous service through reenlistments.
- He served in Iraq during the period of 17 March 2004 through 26 March 2005, and again from 3 October 2006 through 11 December 2007.
- The applicant was found guilty by a Summary Court-Martial of possessing and consuming an alcoholic beverage and of committing an indecent assault upon a female not his wife by grabbing her arm and trying to kiss her with the intent to gratify his sexual desires on or about 10 September 2004. He was sentenced to reduction in rank and forfeiture of pay.
- The applicant was honorably retired on 31 August 2008 and assigned to the U.S. Army Reserve Control Group (Retired Reserve). He completed 20-years and 6-days of active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts that during his deployment to Iraq in 2005, his actions and errors in judgement resulted in reduction in rank. He indicated PTSD, TBI, and "other mental health" as issues or conditions related to his request. A letter from the Central Texas Veterans Health Care System dated 2 September 2009 showed that the applicant was engaged in treatment for PTSD, and a VA Benefits letter dated 22 July 2010 showed that he is service connected at 70% for PTSD. Another VA Benefits letter dated 4 October 2017 showed a combined rating of 100% with 10% for TBI and 70% for PTSD. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed a TBI Evaluation was completed on 11 April 2008, and the applicant reported multiple IED attacks but denied ever losing consciousness. He reported initial symptoms of mild TBI, including headaches, and feeling dazed, but these symptoms resolved while he was in theater. He reported that headaches have started since he returned from deployment, and he expressed having several symptoms of PTSD. The provider diagnosed PTSD and noted that he may have sustained a mTBI during his deployment, but his symptoms were more indicative of PTSD. An Initial Compensation and Pension (C&P) Evaluation for PTSD was conducted on 17 August 2008, and although multiple symptoms of PTSD were endorsed, he was diagnosed with Anxiety Disorder, not otherwise specified (NOS) and Cognitive Disorder NOS, which was presumed due to TBI. Personality changes due to TBI were also noted. The evaluator opined that the TBI is "much more likely to cause decreased memory, decreased concentration, and decreased logical reason as seen on this exam than is PTSD. The character of his performance during this examination, i.e. the calm, even cheerful manner in which he gave his wrong answers, is quite consistent with TBI, possible malingering, but unlikely to be due to emotional interference." A second examination was conducted on 19 June 2010, and the applicant noted worsening social and occupational functioning. He endorsed the required number and severity of symptoms to warrant a diagnosis of PTSD, and these symptoms included some of the previously endorsed symptoms that resulted in the TBI diagnosis. This evaluator did not diagnosis TBI.

e. The applicant initiated mental health treatment through the VA on 11 March 2009 and reported symptoms of PTSD associated with the death of his "battle buddy" as well as exposure to dead soldiers, noting that their brigade lost 118 soldiers during their last tour in Iraq. He was referred for psychotherapy for PTSD and started on an antidepressant and a medication for nightmares. He has utilized VA for PTSD treatment intermittently since then, and his most recent contact was in September 2022 for medication refill.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. As to the applicant's request for a change of rank in order to receive retirement pay as an E-7, offering an opinion on this specific request is beyond the scope of this BH Advisor's expertise.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, and a TBI at the time of the misconduct. Documentation from a TBI Evaluation in April 2008 indicated the applicant reported some initial symptoms of a mild TBI following an IED attack, but he denied any loss of consciousness. He was diagnosed with PTSD. VA records showed he completed a C&P exam in August 2008 that resulted in diagnoses of Anxiety Disorder NOS and Cognitive Disorder NOS. However, a second C&P exam in June 2010 attributed the cognitive symptoms to a diagnosis of PTSD and did not diagnose Cognitive Disorder. There was no evidence of any neuropsychological testing, and the VA records showed a service connection rating of 10% for TBI, which is associated with mild loss of memory, attention, concentration, and executive functioning without objective evidence on testing. The applicant is 70% service connected for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. Records showed he deployed to Iraq from March 2006 to March 2007 and again from October 2006 to December 2007.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed the applicant did report symptoms of PTSD and TBI in April 2008, while on active service, and he is service connected through the VA for both of these conditions. VA records showed he has received treatment for PTSD, but there is insufficient evidence of a TBI of the severity that would mitigate the applicant's misconduct. While alcohol use can be a natural sequela to mental health conditions associated with exposure to traumatic or stressful events, there is no nexus between his mental health condition, including PTSD and TBI, and his misconduct related to committing indecent assault on a female: 1) these types of misconduct are not part of the natural history or sequelae of his mental health conditions; 2) his asserted mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

h. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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. Upon review of the applicant's petition and military records, the Board considered the facts and circumstances surrounding the applicant's allegations. On 1 April 2004, he was promoted to the rank/grade of SFC/E-7. On 18 January 2005, he was charged with, one specification of failure to obey General Order Number 1 by wrongfully possessing and consuming an alcoholic beverage on or about 10 September 2004, one specification of committing an indecent assault upon a female not his wife by grabbing her arm and trying to kiss her with the intent to gratify his sexual desires on or about 10 September 2004, on 19 January 2005, he was referred to a summary court-martial. On 28 January 2005, the Summary Court-Martial convened at Camp Taji, Iraq, he was found guilty on both specifications and sentenced to reduction to the rank/grade of SSG/E-6. On 28 January 2005, the sentence was adjudged and effective date of any forfeiture and reduction in grade.
2. On 17 November 2005, the Army Board for Correction of Military Records denied his request for reinstatement of his rank/grade to SFC/E-7 due to the Summary Court-Martial being conducted in accordance with established procedures.
3. On 30 September 2008, the Army Review Boards Agency notified him he was not eligible to be advanced on the retired list to the rank/grade SFC/E-7 under Title 10 USC, section 3964, he must wait until he reached 30-years of combined service and retirement to apply for advancement.
4. On 13 January 2022, the Army Grade Determination Review Board denied his request to be advanced on the retired list because of his Summary Court-martial conviction while he was an SFC/E-7
5. The Board determined the applicant's retirement in the rank/grade of SSG was appropriate due to the Summary Court-Martial and found no error or injustice. The Board denied relief.
6. The Board considered the following Kurta Questions:
 - a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, and a TBI at the time of the misconduct. Documentation from a TBI Evaluation in April 2008 indicated the applicant reported some initial symptoms of a mild TBI following an IED attack, but he denied any loss of consciousness. He was

diagnosed with PTSD. VA records showed he completed a C&P exam in August 2008 that resulted in diagnoses of Anxiety Disorder NOS and Cognitive Disorder NOS. However, a second C&P exam in June 2010 attributed the cognitive symptoms to a diagnosis of PTSD and did not diagnose Cognitive Disorder. There was no evidence of any neuropsychological testing, and the VA records showed a service connection rating of 10% for TBI, which is associated with mild loss of memory, attention, concentration, and executive functioning without objective evidence on testing. The applicant is 70% service connected for PTSD.

b. Did the condition exist, or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. Records showed he deployed to Iraq from March 2006 to March 2007 and again from October 2006 to December 2007.

c. Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed the applicant did report symptoms of PTSD and TBI in April 2008, while on active service, and he is service connected through the VA for both of these conditions. VA records showed he has received treatment for PTSD, but there is insufficient evidence of a TBI of the severity that would mitigate the applicant's misconduct. While alcohol use can be a natural sequela to mental health conditions associated with exposure to traumatic or stressful events, there is no nexus between his mental health condition, including PTSD and TBI, and his misconduct related to committing indecent assault on a female: 1) these types of misconduct are not part of the natural history or sequelae of his mental health conditions; 2) his asserted mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

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.

4/16/2025

X

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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.
3. AR 635-200 (Active Duty Enlisted Administrative Separations) in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance. Chapter 12 sets policies and procedures for voluntary retirement of Soldiers because of length of service and governs the retirement of Soldiers (active Army, ARNG and USAR) who are retiring in an enlisted status. Retirement normally will be in the grade the Soldier holds on the date of retirement. As an exception, ARNG and USAR Soldiers serving on active duty at the time of retirement in a grade lower than their highest enlisted grade in which they served satisfactorily, who were administratively reduced in grade not as a result of their own misconduct, will retire at the highest enlisted grade in which they served.
4. AR 15-80 (Army Grade Determination Review Board and Grade Determinations) in effect at the time, 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 (SA).
 - a. Paragraph 2-3 (Automatic grade determinations), most grade determinations do not require action by the AGDRB or the exercise of discretion by other authorities because they are automatic grade determinations that result from the operation of law and this regulation. For example, under section 3961(b), Title 10, United States Code (10 USC 3961(b)), an enlisted Soldier will normally retire at the grade held on the date of retirement.

b. Paragraph 2-5 (Unsatisfactory service), Service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when: a. The highest grade was a result of a terminal leave promotion. b. Reversion to a lower grade was:

- expressly for prejudice or cause
- owing to misconduct
- caused by nonjudicial punishment pursuant to UCMJ, Art. 15
- result of the sentence of a court-martial

c. 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.

d. Paragraph 3-1, for enlisted cases, the AGDRB will make final determinations on behalf of the SA. It will determine the highest grade in which a Soldier has served satisfactorily for purposes of service/physical disability retirement, computation of retired pay or separation for physical disability. While enlisted Soldiers may be reduced in grade by courts-martial, nonjudicial punishment proceedings (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.

e. Paragraph 3-2 (Thirty-year cases), a. Section 3964, Title 10, USC, entitles certain retired members of the Army who are retired with fewer than 30-years of active service, when such member's active service plus service on the retired list totals 30-years, to be advanced on the retired list to the highest grade served on active duty satisfactorily. The AGDRB reviews each case individually to determine the highest grade served on active duty satisfactorily. This is not an automatic advancement on the retired list. Section 3964 does not apply in retirement for nonregular service (reserve retirement) cases when the retiree was not on active duty (or, in the case of members of the National Guard, when the retiree was not on full-time National Guard duty) at the time of retirement.

5. Title 10 USC, section 3964 (Higher grade after 30 years of service: warrant officers and enlisted members), (a) Each retired member of the Army covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case

of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Army. (b) This section applies to; (1) warrant officers of the Army; (2) enlisted members of the Regular Army; and (3) reserve enlisted members of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty).

6. Title 10 USC, section 3965 (Restoration to former grade: retired warrant officers and enlisted members), each retired warrant officer or enlisted member of the Army who has been advanced on the retired list to a higher commissioned grade under section 3964 of this title Show, and who applies to the Secretary of the Army within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted status, as the case may be.

//NOTHING FOLLOWS/