



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03569

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be amended to reflect the rank/pay grade of technical sergeant/E-6.

APPLICANT'S CONTENTIONS

Special Order Number [Work-Product] (Amendment) indicates a medical retirement/discharge at the grade of technical sergeant/E-6. The DD Form 214 was not updated to reflect the Special Order amendment. He was awarded the rank/grade of technical sergeant/E-6 effective 27 Sep 18, and he wishes for his military record to reflect it.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force technical sergeant (E-6).

On 26 Jun 18, according to Special Order Number [Work-Product], the applicant was relieved from active duty, organization and station of assignment, effective 27 Sep 18. Effective 28 Sep 18, he was permanently disability retired in the rank/grade of staff sergeant (E-5) per Air Force Instruction (AFI) 36-3212, *Physical Evaluation for Retention, Retirement and Separation*, with a compensable percentage for physical disability of 30 percent.

On 23 Jul 18, according to Special Order Number [Work-Product] (Amendment), Special Order [Work-Product] was amended to reflect effective 28 Sep 18, the applicant was permanently disability retired in the grade of E-6 per AFI 36-3212 and Title 10, United States Code, Section 1372 (10 USC § 1372), with a compensable percentage for physical disability of 30 percent.

On 27 Sep 18, according to DD Form 214, the applicant was furnished an honorable discharge, in the grade of E-5, with a separation code and corresponding narrative reason for separation of SEJ, Disability, Permanent, IDES. He was credited with 10 years, 10 months, and 1 day of active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

APPLICABLE AUTHORITY/GUIDANCE

AFBCMR Docket Number BC-2023-03569

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10 USC § 1372 - *Grade on retirement for physical disability: members of armed forces.*

Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

(1) The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

(2) The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

(3) The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of a physical examination.

(4) The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination.

AIR FORCE EVALUATION

AFPC/DPFDD (Disabilities) recommends denying the application. There is no indication an error or injustice occurred. Under 10 USC § 1372, a member is entitled to be retired in the grade to which he or she would have been promoted had it not been for the physical disability for which he or she is retired.

On 26 Jun 18, Special Order Number [Work-Product] was published announcing the applicant's permanent disability retirement, effective 28 Sep 18, in the grade of E-5. On 23 Jul 18, Special Order Number [Work-Product] was published amending the original retirement order to reflect the applicant was being disability retired in the grade of E-6 in accordance with 10 USC § 1372 due to a recent selection for promotion. Promotions to E-6 are normally announced in Jul, with promotions beginning in Aug. This amendment affected his retirement grade only since his line number to E-6 had not yet incremented and he had not actually pinned on E-6. The retirement order and amendment were correctly issued stating the applicant's grade was E-5 at the time of release from active duty on 27 Sep 18, and he was permanently disability retired in the grade of E-6, effective 28 Sep 18, due to having a projected promotion.

The applicant's official personnel and pay records would not reflect the grade of E-6 because his line number did not actually increment, and he did not pin on prior to his date of separation. His retirement order and DD Form 214 reflect E-5 because that was the grade he held on his date of separation. However, his retiree identification card would reflect his grade as E-6 since that is the grade in which he was retired.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 21 May 24 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. Therefore, the Board recommends against correcting the applicant's records. The applicant's rank/grade at the time of his separation was staff sergeant/E-5, as accurately reflected on his DD Form 214. His promotion to technical sergeant/E-6, pursuant to 10 USC § 1372, did not take effect until 28 Sep 18, the date of his retirement. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by 10 USC § 1552, and Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2023-03569 in Executive Session on 19 Jul 24:

Work-Product

Panel Chair

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Panel Member

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Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 22 Sep 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDDSP, w/atch, dated 21 Mar 24.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 21 May 24.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

2/11/2025

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