

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230000510

APPLICANT REQUESTS: advancement to the rank of Master Sergeant (MSG)/E-8 on the Retired List.

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

- DD Form 149 (Application for Correction of Military Record)
- Letter addressed to the Board
- Two (2) DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- Two (2) Sworn Statements
- Two (2) movement orders
- Three (3) DA Forms 2173 (Statement of Medical Exam and Duty Status)
- National Guard Bureau memorandum
- DA Form 4187 (Personnel Action)
- Connecticut National Guard memorandum
- Leave and Earnings Statement
- 2022 Connecticut Army National Guard (CTARNG) 2022 MSG Promotion/Selection and Order of Merit List (OML)
- NGB Form 105 (Authorization for Individual Inactive Duty Training)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings)
- U.S. Army Physical Disability Agency order D 339-05
- Veterans Affairs (VA) benefit letter
- VA service-connected disability compensation letter
- Medical documents (273 pages)

FACTS:

1. The applicant states, in effect, he satisfactorily qualified for promotion to MSG during his active and National Guard service under the provisions of section 13~1, 1212, United States Code and AR 15-80, AR 635-40. Although he retired on 3 February 2023 as a sergeant first class (SFC)/E-7, he feels that his permanent physical disability that was sustained while serving on active duty (OFS) prevented him from continuing with his career and attaining the rank of MSG/E-8.

2. The applicant provides:

a. Two (2) DD Forms 214 as follows:

- From 5 September 2019 to 10 November 2020, SFC/E-7, honorable, Release from Active Duty, AR 635-200, Chapter 4, completion of required active service
- From 24 November 2020 to 21 May 2021, SFC/E-7, honorable, Release from Active Duty, AR 635-200, Chapter 4, completion of required active service

b. Two (2) Sworn Statements, dated 25 June 2020 and 10 November 2021, both written by the applicant detailing two separate events that resulted in him being injured.

c. Two (2) movement orders as follows:

(1) Connecticut National Guard orders 07-238-0007, dated 26 August 2019, reflects the applicant was ordered to active duty in support of Operation Freedom's Sentinel, with a report date to the Fort Hood Mobilization Station of 8 September 2019, for a period of 4000 days.

(2) Headquarters III Corps and Fort Hood orders HO-267-0135, dated 24 September 2019, reflects the applicant was deployed in a Temporary Change of Station (TCS) status in support of Operation Freedom's Sentinel, Bagram, Afghanistan, with a proceed date of on or about 11 October 2019, and not to exceed 364 days.

d. Three (3) DA Forms 2173 as follows:

(1) Kandahar, 28 May 2020, the applicant injured his left shoulder while securing cargo. He experienced excruciating pain with movement. The injury was considered to have been incurred in line of duty. The exam took place on 24 June 2020.

(2) Kandahar, 28 May 2020, the applicant injured his left shoulder while securing cargo. He experienced excruciating pain with movement. The injury was considered to have been incurred in line of duty. The exam took place on 15 September 2020.

(3) AASF, 8 November 2021, item 13 (ICD-10 Code) states, "M75112 Incomplete rotator-cuff tear/rupture of l shoulder, not trauma; M7542 Impingement syndrome of left shoulder." It further indicates the injury/condition existed prior to service and the start of current duty. The exam took place on 26 October 2021.

e. National Guard Bureau memorandum, dated 17 November 2020, Subject: Line of Duty Determination, reflects the "Left Shoulder Rotator Cuff Tear/ Laceration and Glenoid Labrum Tear that occurred during Active Duty is approved "IN LINE OF DUTY".

f. DA Form 4187, dated 18 February 2021, reflects the applicant requested to be considered for attendance at the Master Leader Course, via Distance Learning. The form is void of a signature of certification/approval/disapproval.

g. Connecticut National Guard memorandum, dated 1 November 2021, Subject: Notification of Eligibility for Retired Pay for Non-Regular Service (20 years), informs the applicant that he has completed the required years of service and will be eligible for retired pay upon his application at age 60 unless he qualifies for a reduced eligibility age in accordance with Title 10, U.S. Code, Section 12731(f).

h. Leave and Earnings Statement for the period covered "dated 221209."

i. 2022 Connecticut Army National Guard (CTARNG) 2022 MSG Promotion/Selection and Order of Merit List (OML), effective 16 December 2021, reflects the applicant was identified as being in "Zone 2" and "OML 44."

j. NGB Form 105, dated 9 November 2021, reflects the applicant was on inactive duty training on 9 November 2021, from 1700 hours to 2100 hours.

k. DA Form 199 reflects, the Physical Evaluation Board convened on 29 November 2022 and found the Soldier [the applicant] physically unfit and recommended a rating of 40 percent and that his disposition be permanent disability retirement.

l. U.S. Army Physical Disability Agency order D 339-05, dated 5 December 2022, reflects the applicant was released from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability, with an effective date of retirement of 3 February 2023 and placed on the retired list as of 4 February 2023. His retired grade of rank was E-7.

m. VA benefits letter, dated 7 October 2022, reflects the applicant was initially awarded a combined rating evaluation of 60 percent on 11 November 2020. His combined rating evaluation was increased to 70 percent, with an effective date of 24 May 2022.

n. VA service-connected disability compensation letter, dated 16 December 2022, provides a snapshot of the applicant's current benefit paid for his combined evaluation of 70 percent.

o. Medical documents (273 pages).

3. A review of his service record shows:

a. On 28 October 2009, the applicant enlisted in the Connecticut Army National Guard as a sergeant (SGT)/E5.

b. The applicant's promotions are as follows:

- To staff sergeant/E-6, effective 19 December 2014
- To sergeant first class/E-7, effective 29 March 2019

c. A Physical Evaluation Board convened on 29 November 2022 and found the Soldier [the applicant] physically unfit and recommended a rating of 40 percent and that his disposition be permanent disability retirement.

d. NGB Form 22 reflects the applicant was honorably transferred to The Retired Reserve on 2 February 2023, under the provisions of NGR 600-200 (paragraph 6-36s), AR 135-175 (paragraph 14-1k(l)(c)), AR 135-91 (paragraph 5-14c), and AR 635-40 (paragraph 4-24b(J)). The applicant served 13 years, 3 months, and 6 days of net service this period. At the time of transfer, the applicant's rank/pay grade was sergeant first class/E-7.

e. The applicant was released from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability, with an effective date of retirement of 3 February 2023 and placed on the retired list as of 4 February 2023. His retired grade of rank was E-7.

4. Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions) prescribes policies and procedures governing promotion and reduction of Army enlisted personnel. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

5. National Guard Bureau advisory opinion, dated 27 December 2023, recommends disapproval further stating:

a. The applicant was medically retired 3 February 2023 from a disability sustained while on active duty. The applicant is requesting to be retired as an E8 vice E7. He provides 2022 published promotion list, DD Form 214, approved line of duty determination and medical retirement orders. Applicant states he would have been promoted to E8 if medically able to continue service.

b. After review of the applicant's submission. The applicant does not meet the requirements to be medically retired at the grade of E8. The applicant appeared on the 2022 published promotion list in zone 2, not meeting time in grade. The applicant declined consideration for promotion in 2023 and did not appear on the published 2023 Master Sergeant promotion list at the time of his retirement.

c. It is the recommendation of this office that the applicant's request be disapproved. Applicant was medically retired 3 February 2023 and was not on the effective promotion list at the time of his medical retirement.

6. In response to the advisory opinion, the applicant states via letter to the Board:

a. "In response to the denial of my application to be medically retired at E8. In response to the National Guard Bureau Recommendation letter dated 7 December 2023, I would like to raise an issue in response to paragraph B stating, "The SM declined consideration for promotion in 2023 and did not appear on the published 2023 Master Sergeant promotion list at the time of his retirement."

b. "The sole reason that I declined consideration for promotion was following the advice of my chain of command, who stated that because I was in the process of being medically retired imminently through the IDES process, I could not pursue my next grade since I would be incapable of attending schools and completing training. This is the sole reason I was not on that list at the time of my retirement. I would like this to be considered in the further review of my application. Had I received the correct guidance, in retrospect, I would have made sure that I was on the promotion list."

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant retired due to disability in the rank of SFC on 3 February 2023. He contends that he should be retired as an E-8 vice E-7. The Board reviewed and agreed with the advisory official's finding the applicant does not meet the requirements to be medically retired at the grade of E8. The applicant appeared on the 2022 published promotion list in zone 2, not meeting time in grade. The applicant declined consideration for promotion in 2023 and did not appear on the published 2023 MSG promotion list at the time of his retirement. The applicant was neither promotable nor promoted to E-8 at the time of disability separation, therefore, the Board determined relief is not warranted.

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.

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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. Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions) prescribes policies and procedures governing promotion and reduction of Army enlisted personnel. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

a. Chapter 7 prescribes policies, procedures, and systems to advance, promote, laterally appoint, and administrative reduction for all ARNG and ARNGUS enlisted Soldiers, except those included in the end strength of the AA and who are covered by the AA promotion system.

b. Paragraph 7-6 (Establishment of retroactive effective dates) states, The Army Board for Correction of Military Records has directed that these issues be handled by the States with the guidance of Chief, National Guard Bureau (CNGB) (NGB-ARH). CNGB (NGB-ARH) is the approving authority for cases for which the State AG is the promotion authority.

//NOTHING FOLLOWS//