

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 September 2023

DOCKET NUMBER: AR20230002631

APPLICANT REQUESTS: correction of his service record to reflect he was promoted to the rank/grade of sergeant (SGT)/E-5.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings)
- DA Form 199 (Physical Evaluation Board (PEB) Proceedings)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 graduated from the Primary Noncommissioned Officer Course (PNCOC) in October 1981. He later was assigned overseas and reenlisted in 1983 and appeared before the SGT/E-5 board. At that time, he had sufficient points, time in grade and time in service to be promoted. He then received orders to return to the Continental United States. While stateside, he underwent heart surgery and was placed in a medical hold unit and went before a MEB and PEB which determined that he was physically unfit for retention in the U.S. Army. He was released from active duty before he was able to get his promotion. He believes he met all the requirements for the promotion and requests for his service records to reflect he was promoted to the rank/grade of SGT/E-5.

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

- a. The applicant enlisted in the Regular Army (RA) on 27 May 1980.
- b. The applicant achieved course standards for PNCOC during the period of 15 October through 13 November 1981.

c. On 9 December 1981, Orders Number 236-62, issued by Headquarters (HQs), 5th Infantry Division (Mechanized) and Fort Polk, the applicant was promoted/advanced to the rank of specialist four (SP4)/E-4, effective 9 December 1981 with a date of rank of 1 December 1981.

d. On 11 February 1983, Orders Number 42-3, issued by the 574th Personnel Service Company, the applicant was discharged from the RA, effective 10 February 1983 for an immediate reenlistment in the RA.

e. The applicant reenlisted in the RA on 11 February 1983.

f. On 23 March 1984, Orders Number 28-1, issued by the U.S. Army Medical Department Activity, the applicant was assigned to the Medical Holding Company, Fort Polk, LA, effective 30 March 1984.

g. On 4 June 1984, the MEB determined the applicant had the medical conditions of coarctation of the aorta, status post-surgical repair, uncomplicated post-surgical course with the exception of persistent chest wall pain and hypertension which made him physically unfit for retention. The applicant was referred to a PEB.

h. On 25 June 1984, the PEB determined the applicant was physically unfit for retention and recommended he be separated from the service with severance pay and receive a combined disability rating of 20-percent due to persistent chest wall pain post-surgical repair of coarctation of the aorta.

i. On 9 July 1984, Orders Number 62-1, issued by the U. S. Army Medical Department Activity, the applicant was ordered to proceed on permanent change of station to an address in NY, effective 20 July 1984 to wait for final orders and disposition as directed by the Secretary of the Army in connection with the PEB proceedings.

j. On 7 August 1984, Orders Number 151-126, issued by HQs, 5th Infantry Division (Mechanized), and Fort Polk, the applicant was discharged from active duty effective on 9 August 1984 with disability severance pay in the rank/grade of SP4/E-4.

k. The applicant was honorably discharged from active duty on 9 August 1984 under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-24e (3) (Physical disability with severance pay). It also shows in items:

- 4a (Grade, Rate, Rank): SP4
- 4b (Pay Grade): E4
- 12h (Effective Date of Pay Grade): 9 December 1981

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. However, in the absence of sufficient documentation showing he was permanently promoted prior to his expiration of term of service and, in applying the presumption of administrative regularity, the Board found insufficient evidence of an error or injustice which would warrant recommendation for relief.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below referencing corrections to the applicant's DD214 which will more accurately depict the military service of the applicant.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	██████	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
██████	██████	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.

ADMINISTRATIVE NOTE(S):

1. Reference the enclosed request for correction of military records from the subject individual to correct his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending August 9, 1984, by adding the Army of Occupation of Berlin Medal.
2. A review of the records listed below (enclosed) is sufficient to substantiate correction of the DD Form 214 without action by the Board.
  - DD Form 214 service ending August 9, 1984
  - DA Form 2-1 (Personnel Qualification Record)
3. Please correct the applicant's DD Form 214 by amending it as shown in paragraph 1 above. Provide the applicant a copy of the corrections. Please ensure that the corrections are recorded in the applicant's official military personnel record.

REFERENCES:

1. Title 10, USC, 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 (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation) in effect at the time, establishes the Army Physical Disability Evaluation System according to the provisions of chapter 61 of Title 10, USC and Department of Defense Directive 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a member is unfit because of physical disability to perform the duties of his office, grade, rank, or rating. Paragraph 4-24e, based upon the final decision of the CG, USAPDA or the ADPAB, the CG, MILPERCEN will issue retirement orders or other disposition instruction, (3) Separation for physical disability with severance pay. (See 10 USC 1203 or 1206.)
3. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribes policies and procedures for career management of Army enlisted personnel, classification and reclassification of enlisted Soldiers in a military occupational specialty (MOS), utilization of enlisted personnel, denying reenlistment under the Qualitative Management Program., testing Active Army enlisted Soldiers under the Individual Training Evaluation (ITE), administering Special Duty Assignment (Proficiency Pay), award of a Selective Reenlistment Bonus to an enlisted member and an Enlistment Bonus (EB) to an enlistee and promotions and reductions in grade. Paragraph 7-6, for promotion to the rank of SGT/E5 Time in grade: 18 months as a E-4 and Time in service: (PZ) 36 months and (SZ) 18 months and must appear before a promotion selection board.
4. Title 10 United States Code (USC), section 121 (Disability severance pay), (c) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in 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 separated and which was found to exist as a result of a physical examination.
5. Title 10, USC, section 1372 (Grade on retirement for physical disability: members of armed forces) states, 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:

a. 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.

b. 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.

c. 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.

d. 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.

//NOTHING FOLLOWS//