

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 August 2023

DOCKET NUMBER: AR20230003019

APPLICANT REQUESTS:

- correction of his rank/pay grade at the time of retirement to reflect sergeant first class (SFC)/E-7 instead of staff sergeant (SSG/E-6)
- new discharge orders
- updated NGB Form 22 (National Guard Report or Separation and Record of Service)
- updated DD Form 214 (Certificate of Release or Discharge from Active Duty)

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

- DD Form 149 (Application for Correction of Military Record)
- 2018 SFC Order of Merit List (OML)
- Orders Number 174-007, 23 June 2020
- Orders Number D117-0021, 27 April 2022
- Excerpt from Army Regulation (AR) 600-8-19

FACTS:

1. The applicant states, he is requesting that his retirement rank be corrected to SFC, and new discharge documents reflecting the correct rank/pay grade. His promotion order was published but not uploaded to the Interactive Personnel Electronic Records Management System (iPERMS).

2. The applicant provides the following documentation:

a. The 2018 SFC OML, which shows his name, the last four of his social security number, and a selectable date of 14 July 2017.

b. Orders Number 174-007, issued by the Oregon Military Department, Joint Force Headquarters, Oregon National Guard, Salem, Oregon, dated 23 June 2020, which shows his promotion to SFC/E-7. It shows an effective date of 23 June 2020, with a date of rank of 23 June 2020.

c. Orders Number D117-0021, issued by the Department of the Army, Headquarters, United States Army Physical Disability Agency, Joint Base San Antonio, Fort Sam Houston, Texas, dated 27 April 2022, shows he was placed on the temporary disability retired list (TDRL) on 25 June 2020 and removed from the TDRL on 27 April 2022. It also shows he was granted 100% disability and his disability was based on an injury or disease received in the line of duty (LOD) as a direct result of armed conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law, and his disability resulted from a combat related injury. His retired rank on his orders was shown as SSG.

d. An excerpt from AR 600-8-19, which states Soldiers on a promotion list who are retired for physical disability or who are placed on the TDRL at the time of retirement for disability will be retired for disability at the promotion list grade. The Soldier will be promoted effective the day before placement on the retired list or TDRL regardless of cutoff scores, sequence numbers, or position availability. In all cases, the Soldier must otherwise be eligible for promotion.

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

a. Following a period in the United States Marine Corps, he enlisted in the Army National Guard of the United States on 11 December 2007 for a period of 6 years in the pay grade of (E-4)/SPC.

b. Orders Number 263-1012, issued by Joint Force Headquarters, California Army National Guard, Sacramento, California, dated 20 September 2011 show the applicant was promoted to the grade of rank SSG, with an effective date of 26 August 2011.

c. DA Form 1059 (Service School Academic Evaluation Report), dated 16 February 2018, shows the applicant completed the Maneuver – Senior Leaders Course (SLC), phase I on 16 February 2018.

d. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment) shows on 23 February 2018, he voluntarily extended his current enlistment agreement for 3 years.

e. DA Form 1059 dated 1 March 2018, shows the applicant completed the Maneuver – SLC Phase II.

f. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings, dated 5 March 2020 shows an informal PEB found the applicant physically unfit and recommended a combined disability rating of 100%, and that his disposition be placed on TDRL and with a re-examination during December 2020. On 16 March 2020, the applicant was informed and counseled on the findings and recommendations of the informal PEB. He concurred with the findings and waived a formal hearing of his case.

g. On 24 June 2020 he was honorably retired by reason of temporary disability. His DD Form 214 shows in:

- Block 4a (Grade, Rate or Rank): SSG
- Block 4b (Pay Grade): E-6
- Block 14 (Military Education) (as it pertains to promotion): Maneuver Senior Leader Course – Phase 2

h. NGB Form 22 (National Guard Report of Separation and Record of Service), shows he was honorably released from the Army National Guard on 24 June 2020, by reason of placement on the TDRL. His NGB shows in:

- Block 5a (Rank): SSG
- Block 5b (Pay Grade): E-6
- Block 6 (Date of Rank): 26 August 2011
- Block 12 (Military Education) (as it pertains to promotion): Maneuver Senior Leader Course; Infantryman Advanced Leader Course; Structured Self Development Level 3; Warrior Leader Course

i. DA Form 199, dated 8 April 2022, shows an informal PEB found the applicant physically unfit and recommended a rating of 100%, and that the applicant's disposition be permanent disability retirement. On 18 April 2022, the applicant was informed and counseled on the findings and recommendation of the informal PEB. He concurred with the findings and waived a formal hearing of his case.

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 Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board noted that an informal Physical Evaluation Board found the applicant physically unfit and recommended the disposition to be permanent disability. In accordance with statutory and regulatory guidance, as he was otherwise eligible for promotion, the Board found his request to have merit and a recommendation for relief is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the following to show sergeant first class (SFC)/E-7 effective as of 2 June 2020

- D117-0021 dated 27 April 2022 to show SFC//E-7
- his DD214 for the period ending 24 June 2020 showing in:
 - block 4a: SFC
 - block 4b: E07
- NGB Form 22 showing in:
 - block 5b: E7
 - block 5a: SFC
 - block 5b: E7
 - block 6: 20200602

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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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

2. Army Regulation 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, prescribes the policies and procedures governing promotions and reductions of Army enlisted personnel.

a. Paragraph 1–21, states Soldiers in the Disability Evaluation System (DES) process who are pending a medical fitness determination (referral to a medical evaluation board under AR 40-400, or physical evaluation board under AR 635-40) remain otherwise eligible for promotion consideration, selection, and pin-on.

b. Per the provisions of 10 USC 1372, Soldiers on a promotion list who are retired for physical disability or who are placed on the temporary disability retired list (TDRL) at the time of retirement for disability will be retired for disability at the promotion list grade. The Soldier will be promoted effective the day before placement on the retired list or TDRL regardless of cutoff scores, sequence numbers, or position availability. In all cases, the Soldier must otherwise be eligible for promotion.

c. Paragraph 1-29, states completion of SSD/DLC 3 is an eligibility requirement for promotion consideration to SFC. Graduation of the Senior Leaders Course (SLC) is a promotion requirement to SFC.

3. Title 10, U.S. Code (USC), section 1372(3) governs the grade upon retirement of members of the Armed Forces who retire for physical disability. This law provides that a member 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 retired.

3) The permanent regular or reserve grade to which he would have been promoted had it not been for 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.

//NOTHING FOLLOWS//