

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 April 2024

DOCKET NUMBER: AR20230003260

APPLICANT REQUESTS: a grade determination from specialist (SPC)/E-4 to sergeant (SGT)/E-5 due to his disability retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 205-955 Lateral Appointment to Corporal (CPL)/E-4
- Orders Number 206-923 Lateral Appointment to CPL
- Email Promotion Request
- Memorandum, Subject: Permanent Disability Retirement
- Orders Number D 328-15 Retirement Order
- Memorandum for Record (MFR), Subject: Enlisted Promotion Selection
- MFR, Subject: Request to Amend Retirement Date
- Email Grade Determination

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 is requesting a grade determination from SPC/E-4 to SGT/E-5 on his military records. He was on the promotion list from 2017, prior to his disability. The right documents for grade determination were not submitted on time, prior to his retirement orders.
3. The applicant's service record contains the following documents for the Board's consideration:
 - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) dated 22 May 2014 shows the applicant enlisted in the Army National Guard (ARNG), in the grade of E-4, for a period of 8 years.

b. Orders Number 206-921, published by the State [REDACTED] Adjutant General's Department, dated 25 July 2017, laterally appointed the applicant to SPC/E-4 [sic], effective 18 August 2017.

c. Orders Number 191-993, published by the State [REDACTED] Adjutant General's Department, dated 10 July 2018, transferred the applicant, in the rank of CPL, effective 10 July 2018. Orders Number 255-957, published by the same Headquarters, dated 12 September 2018 amended the orders by adding the additional instruction, the servicemember Enlisted Promotion System (EPS) selected the applicant for promotion, while mobilized. Transfer order was moving the applicant to higher grade position.

d. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), dated 29 October 2021, show the PEB found the applicant, in the rank of CPL, physically unfit for duty and recommended a rating of 80 percent and permanent disability retirement. The applicant concurred with the findings and waived a formal hearing of his case.

e. Orders Number D 328-15, published by Headquarters, U.S. Army Physical Disability Agency (USAPDA), dated 24 November 2021, placed the applicant, in the rank of CPL, on the retired list on 24 December 2021 with 80 percent disability under the provisions of Title 10, United States Code, section 1204.

f. Orders Number 0001584749.00, published by [REDACTED] Medical Readiness Detachment, dated 23 December 2021, transferred the applicant to the Retired Reserve.

g. The applicant's service record was void of DA Forms 1059 (Service School Academic Evaluation Report) showing his military education.

3. The applicant provides the following documents, not previously considered, for the Board's consideration:

a. Orders 205-955 published by State [REDACTED] Adjutant General's Department, dated 24 July 2017, laterally appointed the applicant to CPL effective 18 August 2017. The orders state "list exhausted selection from EPS list - Soldier must complete Structured Self Development 1 before promotion to sergeant (SGT)."

b. Orders Number 206-923, published by the State [REDACTED] Adjutant General's Department, dated 25 July 2017, laterally appointed the applicant to CPL, effective 18 August 2017. The orders state, commanders will ensure that Soldiers selected and assigned to a higher grade position, without the required Professional Military Education (PME) for promotion, are enrolled within 120 days of assignment, in the required course, to meet PME and timeline requirements. Commanders must also counsel Soldiers that they are required to complete PME within the required timeframe.

c. Email from the Human Resource Noncommissioned Officer (HR NCO), dated 18 November 2021, which states the applicant told her Mr. [REDACTED] was in need of the promotion list the applicant was promoted off of. The HR NCO did not have access to the EPS lists from 2017. She had his lateral appointment order that promoted him to CPL, and it stated he was selected from the EPS list for promotion. He had a U5 Assignment Consideration Code, which meant he would be promoted to SGT once he met all of the requirements. The applicant was not eligible to be on the promotion list because he had not been promoted to SGT.

d. Memorandum for the applicant, from Headquarters, USAPDA, dated 24 November 2021, advising the applicant of the findings and recommendations of the USAPDA. He had been found to have a disability and would be permanently retired with a disability rating of 80 percent.

e. MFR, Subject: the applicant's enlisted promotion selection, dated 3 March 2022, authored by the applicant's immediate commander which states, in effect, the applicant was on a promotion list and selected for promotion to SGT. Additional instructions included commanders will ensure that Soldiers selected and assigned to a higher grade position without the required PME for promotion, are enrolled within 120 days of assignment in the required course to meet the PME timeline requirements. The applicant did not complete PME therefore he was not promoted to SGT. He was not able to attend PME due to a medical profile.

f. MFR, Subject: Request to Amend Retirement Date for the applicant, dated 3 March 2022, which states in effect, the applicant's current discharge date was 23 December 2021. The commander was formally requesting an amendment to the applicant's discharge date to 31 May 2022 to allow him the opportunity to formally out process from [REDACTED] ARNG.

g. Email regarding grade determination of the applicant, which states the Army Review Boards Agency stated the applicant's case had been administratively closed due to him being out of the Army before the Army Grade Determination Board was completed. The applicant would have to petition the Board for a grade determination.

4. MEDICAL REVIEW: The Army Review Boards Agency Medical Advisor reviewed the supporting documents for this case and opined that the applicant's disabilities certainly contributed to his inability to complete the courses and qualifications required for promotion to E5.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.
2. The Board found the applicant was eligible for promotion to SGT/E-5 but was not promoted to that rank/grade solely due to the fact that his disabling conditions prevented him from attending the PME required for promotion. Based on a preponderance of the evidence, the Board determined the facts in this case support promoting the applicant in accordance with the provisions of Title 10, USC, section 1372.

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 and Army National Guard records of the individual concerned be corrected by showing he was promoted to SGT/E-5 the day prior to his placement on the retired list.

9/18/2024

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, 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 600-8-19 (Enlisted Promotions and Reductions) in effect at the time, prescribes the enlisted promotions and reductions function of the military personnel system. It states per the provisions of Title 10, USC, section 1372, Soldiers on a promotion list who are retired for physical 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 regardless of cutoff scores, sequence numbers, or position availability. In all cases, the Soldier must otherwise be eligible for promotion.
3. 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, 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//