

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230005720

APPLICANT REQUESTS: promotion to the rank/grade of staff sergeant (SSG)/E-6 based on his medical retirement.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states, in pertinent part, he should be promoted to the rank/grade of SSG/E-6 with his early medical retirement.
2. A review of the applicant's available service record reflects the following:
 - a. On 11 January 2016 he enlisted in the Regular Army for a period of 5 years.
 - b. DA Form 2166-9-1 (Noncommissioned Officer (NCO) Evaluation Report (Sergeant (SGT)), covering the period of 1 July 2019 to 16 October 2019, shows he was promoted to the rank/grade of SGT/E-5 on 1 July 2019.
 - c. On 20 July 2020, he enlisted in the U.S. Army Reserve at the rank of SGT/E-5 with an effective date of 11 January 2021, immediately following his expiration term of service from his current enlistment.
 - d. DA Form 2166-9-1, covering the period of 17 September 2020 to 21 December 2020 shows he was reduced in rank to specialist (SPC)/E-4 for striking a fellow Soldier in the face while under the influence of alcohol, receiving an Article 15, under the provisions of the Uniform Code of Military Justice for poor decision making.
 - e. DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 10 January 2021 reflects an honorable release from active duty for completion of required active service. Item 4a (Grade, Rate or Rank) shows "SPC" and item 12 (Record of Service) shows service from 11 January 2016 to 10 January 2021 for a net active service this period of 5 years.

f. On 30 October 2022, a Physical Evaluation Board (PEB) was conducted finding the applicant physically unfit and a recommendation that he be placed on the permanent disability retired list with a rating of 70 percent at the rank of SPC.

g. On 21 November 2022, Headquarters, United States Army Physical Disability Agency issued a Memorandum for Permanent Disability Retirement and Orders Number D 325-15 (under the authority of Title 10, United States Code (USC), section 1204) releasing him 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 of 70 percent, with an effective date of retirement of 20 January 2023 at the rank of SPC/E-4.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant was reduced in rank to specialist (SPC)/E-4 for striking a fellow Soldier in the face while under the influence of alcohol, receiving an Article 15, under the provisions of the Uniform Code of Military Justice for poor decision making. The Board found no evidence the applicant was promoted to SGT/E-5 again prior to his discharge. Furthermore, the applicant's record is absent any evidence that he was selected for promotion to SSG.

2. The Board agreed, this board is not an investigative body. The Board determined despite the absence of the applicant's promotion records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions for promotion to the rank/grade of staff sergeant (SSG)/E-6 based on his medical retirement. Therefore, the Board denied relief.

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 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.

2/18/2024

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. Army Regulation 15-80 (Army Grade Determination Review Board):

a. Paragraph 2-4, states a grade determination is an administrative decision to determine appropriate retirement grade, retirement pay, or other separation pay. Although a lower grade determination may affect an individual adversely, such determinations under this regulation are not punitive. The AGDRB will consider each case on its own merits. Generally, determination will be based on the Soldier's overall service in the grade in question, either on active duty or other service qualifying the Soldier for retirement, receipt of retired pay, or separation for physical disability. Circumstances pertinent to whether such service is found satisfactory include medical

reasons, which may have been a contributing or decisive factor in a reduction in grade, misconduct, or substandard performance.

b. Paragraph 2-5, states service in the highest grade or an intermediate grade normally will be considered to have been unsatisfactory when reversion to a lower grade was:

- Expressly for prejudice or cause
- Owing to misconduct
- Caused by nonjudicial punishment pursuant to UCMJ, Article 15
- The result of the sentence of a court-martial

2. AR 600-8-19 (Enlisted Promotions and Reductions) 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. Per the provisions of Title 10, USC, section 1372, Soldiers on a promotion list who are retired for physical disability (10 USC 1201 or 1204) or who are placed on the temporary disability retired list (TDRL) (10 USC 1202 or 1205) 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 in accordance with paragraph 1–10 (the NCOES requirements in paragraph 1–28 are waived).

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, 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:

- 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
- 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
- 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
- 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//