

IN THE CASE OF: ██████████

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230006165

APPLICANT REQUESTS: in effect, to be medically retired as a higher grade. Also, a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- National Personnel Records Center letter, 31 January 2023
- 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, 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 he was medically retired in a lower grade. He had the points but was told by his squad leader at the time he was unable to lead because of his injuries from combat. He was told he could not lead after being shot 11 times.
3. The applicant enlisted in the Regular Army on 11 August 2010. He held military occupational specialty 11B (Infantryman).
4. He served in Afghanistan from 2 March 2011 – 29 August 2011.
5. He was advanced to specialist (SPC) on 11 August 2012.
6. His enlisted record brief does not reflect the applicant as being promotable in Section I (Assignment Information). It also does not reflect completion of Warrior Leaders Course in Section VI (Military Education).
7. There is no evidence nor did the applicant present any evidence that reflects he should have been promoted to the next higher grade or was in a promotable status.

8. Orders 015-1106, issued by Headquarters, United States Army North (Fifth Army), Joint Base San Antonio, Fort Sam Houston, TX, on 15 January 2014, shows the applicant was retired effective 27 March 2014, due to permanent disability 100% in the rank of SPC.

9. He was honorably retired in the rank of SPC and pay grade E-04, due to Disability, Permanent (Enhanced) on 27 March 2014, under the provisions of Army Regulation 635-40, chapter 4. His DD Form 214 shows he completed 3 years, 7 months, and 17 days net active service this period.

10. By regulation, AR 15-185 (ABCMR) applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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. Documentation available for review, specifically his enlisted record brief does not reflect that the applicant had either been promoted or was in a promotable status prior to his discharge. After due consideration of the request, the Board determined the evidence presented did not meet the burden of proof sufficient to warrant a recommendation for relief and a correction to his record to show he retired at the rank of Sergeant 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 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 to show he held the rank of Sergeant at the time of discharge.

2/28/2024

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, U.S. Code, 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) 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. AR 600-8-19 (Enlisted Promotions and Reductions) prescribes policies and procedures governing promotions and reduction of Army enlisted personnel. Paragraph 1-21 pertains to promotion of Soldiers in the disability evaluation system. It states Soldiers who are on a promotion list at the time of separation for disability with entitlement to disability severance pay will be paid such compensation at the promotion list grade. Further, the Soldier will be promoted effective on the Soldier's separation date. The Noncommissioned Officer Professional Development System (NCOPDS) requirements in paragraph 1-29 are waived.

4. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) currently in effect, prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. Paragraph 4-30 pertains to the grade on retirement or separation for physical disability. It states the grade at which a Soldier is retired or receives disability severance pay will be the highest of the options listed below in accordance with the provisions of Title 10, U.S. Code, section 1212 and section 1372 respectively:

a. Current grade. No time-in-grade is required

b. Highest grade satisfactorily held. In accordance with Army Regulation 15-80 (Army Grade Determination Review Board and Grade Determinations) Soldiers determined unfit who are not currently serving in the highest grade served will be referred by the U.S. Army Physical Disability Agency to the Army Grade Determination Review Board, unless the Soldier is entitled to a higher or equal grade by operation of law or the Soldier, upon being advised of his entitlement to a review fails to submit matters.

c. Grade to which the Soldier would have been promoted had it not been for the physical disability for which the Soldier was determined unfit. In general, this provision pertains to Soldiers on a promotion list. For Active Army and Reserve Component enlisted disability cases, this option is implemented under the provisions of Army Regulation 600-8-19 (Enlisted Promotions and Reductions).

//NOTHING FOLLOWS//