

IN THE CASE OF: ██████████

BOARD DATE: 3 April 2024

DOCKET NUMBER: AR20230009254

APPLICANT REQUESTS:

- promotion to Sergeant First Class (SFC)/E-7, with a retroactive date determined by the Army Board for Correction of Military Records (ABCMR)
- receive maximum pay as a SFC with 26 years of service
- add the seven (7) awards that he was previously awarded onto his DD Form 214

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

DD Form 149 (Application for Correction of Military Record)

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, in effect:

a. It is not impossible to be promoted to a higher rank following a medical retirement as evidenced by Staff Sergeant ██████████ U.S. Marine Corps (retired). Senior leadership in the U.S. military does not have the authority to manipulate and circumvent U.S. Service Members' (SM) awards and military documentation to conspire against the SM in any way shape or form. Documentation include, but not limited to graduation certification certificates, Enlisted Record Briefs (ERBs), and Noncommissioned Officer Evaluation Reports (NCOERs).

b. He was missing seven (7) awards that he received years after he was medically retired on 21 February 2015. The seven missing awards was not included on his Enlisted Record Brief (ERB), nor were they included in his Official Military Personnel File (OMPF). Due to the incompetence and injustice on the part of his senior leadership in all of the units he served with during his military service, his awards were manipulated and circumvented.

c. There was a great amount of discrimination and animosity that he experienced from his senior leadership, because he was a staff sergeant (SSG/E-6) performing and being rated as a SFC. He served as the Headquarters and Firing Platoon Observer / Controller – Trainer (O/C-T) on the JMRC Vampire Team, Joint Multinational Readiness Center (JMRC), the 7th Army Multinational Training Command (7th AMTC), the Amberg Training area, and the Vilseck and Grafenwoehr Training areas.

d. Despite having completed the 32-hour, the 120-hour, and the 152-hour Observer/Controller – Trainer (O/C-T) Academy, he did not receive his graduation certificates until a year and a half later. Naturally, this resulted in his ERB and OMPF being incomplete and not updated, which may have caused him to be less competitive for promotion to SFC during his primary and secondary zone eligibility in 2011 and 2012.

e. His medical profile kept him out of the field; therefore, he was assigned the duties as the 2nd Brigade, 1st Armored Division Emergency Operations Center Non-Commissioned Officer In Charge (NCOIC), a SFC duty position. He should have been rated as such on his Noncommissioned Officer Evaluation Report (NCOER); however, he was not. He believed it was due to him being on a medical profile issued to him by the physicians at the [REDACTED] Medical Center. On 23 February 2013, his first day with the 4th Battalion, 27th Field Artillery, 2nd Brigade, 1st Armored Division located at Fort Bliss, Texas, he was slotted as a “Surplus Soldier” and remained as such until he was medically retired on 21 February 2015.

3. The applicant listed more than a dozen documents that he was providing in support of his request; however, none of the listed documents were submitted.

4. A review of the applicant’s service record shows:

a. He enlisted in the Regular Army on 31 May 1995.

b. He was promoted to sergeant/E-5, effective 17 December 1999. He was later promoted to staff sergeant/E-6, effective 1 September 2008.

c. DA Form 199 (Informal Physical Evaluation Board (PEB) proceedings) reflects the PEB convened on 17 September 2014. The Board found the applicant physically unfit and recommended a rating of 80 percent and that his disposition be placed on the Temporary Disability Retired List (TDRL), with a reexamination during June 2015. The applicant concurred and waived a formal hearing of his case on 24 September 2014.

d. DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was honorably retired on 20 February 2015, under the provisions of Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation),

chapter 4, disability (temporary, enhanced), separation code SEK. He served 19 years, 8 months, and 20 days of net active service this period; 2 years, 4 months, and 12 days of total prior active service; and, 10 years, 10 months, and 1 day of total prior inactive service. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows the following:

Iraq Campaign medal w/3 campaign stars	Army Service Ribbon
Meritorious Service Medal	Overseas Service Ribbon (5th Award)
Army Commendation Medal (5th Award)	USN Sea Service Deployment Ribbon
Army Achievement Medal (3rd Award)	Armed Forces Reserve Medal w/M Device
Meritorious Unit Commendation (2nd Award)	Combat Action Badge
Army Good Conduct Medal (6th Award)	Parachutist Badge
Army Reserve Component Achievement Medal	Driver and Mechanic Badge – Mechanic, Wheeled, Tracked Bar
National Defense Service medal w/Bronze Service Star	Expert Marksmanship Badge w/Automatic Rifle Bar
Armed Forces Expeditionary Medal (2nd Award)	Sharpshooter Marksmanship Badge w/Grenade Bar
Global War on Terrorism Expeditionary Medal	German Marksmanship Award (Schutzenschnur Gold)
Global War on Terrorism Service Medal	Navy “E” Ribbon
Korea Defense Service Medal	Expert Marksmanship Badge w/Rifle Bar
Noncommissioned Officer Professional Development Ribbon (2nd Award)	Expert Marksmanship Qualification Badge w/Field Artillery Bar

e. DA Form 199 reflects the Board found the applicant physically unfit and recommended a rating of 90 percent and that his disposition be placed on the Permanent Disability Retirement. The applicant concurred and waived a formal hearing of his case on 29 January 2015.

f. U.S. Army Physical Disability Agency order D040-15, dated 9 February 2016, reflects the applicant was removed from the Temporary Disability Retired List on 9 February 2016 and placed on the Permanent Disability Retirement. His standard name line indicates he was a staff sergeant at the time the order was published.

5. AR 600-8-19 (Enlisted Promotions and Reductions), prescribes the enlisted promotions and reductions function of the military personnel system. It is linked to the AR 600–8 series and provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support promotions and reductions. It provides the objectives of the Army’s Enlisted Promotions System, which include filling authorized enlisted spaces with the best qualified Soldiers.

6. AR 635-5 (Personnel Separations - Separation Documents), prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

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 there is insufficient evidence to support the applicant was selected by a centralized promotion board to the rank of sergeant first class. The Board noted there is no evidence the applicant was in a promotable status prior to his discharge. Evidence shows the applicant was found physically unfit and recommended a rating of 90 percent and his disposition be placed on the Permanent Disability Retirement. The applicant concurred and waived a formal hearing.

2. Furthermore, the Board determined the applicant provide no indication of the seven awards he believes are missing from his DD Form 214. The Board agreed his DD Form 214 is current with all his awards. Based on this, 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.

5/14/2024

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) 600-8-19, prescribes the enlisted promotions and reductions function of the military personnel system. It is linked to the AR 600-8 series and provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support promotions and reductions. It provides

the objectives of the Army's Enlisted Promotions System, which include filling authorized enlisted spaces with the best qualified Soldiers.

a. Paragraph 5-3 states, sergeant first class through sergeant major promotion selection boards. Because promotions are based on requirements within a geographical area the senior NCO promotion system is more effective where consolidated selection boards and recommended lists are established.

b. Paragraph 5-5a states, the senior enlisted selection and promotion system outlined in this section prescribes the policy governing the promotion of unit Soldiers to SFC, MSG, and SGM. The selection and promotion process for senior enlisted ranks is centralized at promotion authority headquarters.

c. Paragraphs 5-5c and 5-5d state, all Soldiers within the announced zone will be considered by the promotion selection board unless a declination statement has been provided by the Soldier. In no case will promotions be made to SFC and above for Soldiers in an over-strength status. Transfers to and from an over-strength status will not be made for the purpose of increasing promotion opportunities.

3. Army Regulation 635-5 (Personnel Separations - Separation Documents) provides, the DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement, or discharge. Paragraph 2-4h(13) states, list awards and decorations for all periods of service in the priority sequence specified in AR 600-8-22. Each entry will be verified by the soldier's records.

//NOTHING FOLLOWS//