

IN THE CASE OF: ██████████

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230009643

APPLICANT REQUESTS: promotion to the rank of specialist (SPC)/E-4

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 215 (Correction to DD Form 214)
- Department of Veterans Affairs (VA) Rating Decision
- Letter from VA

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, due to her mental health issues, she was retired due to a permanent disability; therefore, she would like her rank increased due to time in service, since she should have been eligible for promotion to the rank of SPC/E-4. The promotion would support her VA 100 percent (%) disability.
3. The applicant provides the following documents:
 - a. VA Rating Decision, dated 14 July 2021 shows she received service connected disability for depressive disorder due to chronic pain, with depressive features, with anxious distress granted at 70% effective 14 June 2021. The service connection had been established as related to the service-connected disability of left shoulder impingement syndrome and rotator cuff tendonitis, bilateral pes planus, right carpal tunnel syndrome with median neuropathy, and left carpal tunnel with median neuropathy.

b. Letter from the VA, dated 15 July 2021 shows the applicant's combined disability rating was 100% effective 14 June 2021.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Regular Army on 23 September 2000 and entered active duty on 18 October 2000.

b. DA Form 3947 (Medical Evaluation Board (MEB) Proceedings), dated 2 December 2002 shows the applicant's rank as private first class (PFC)/E3 and that her diagnoses were:

(1) Bilateral carpal tunnel syndrome, status post bilateral release in March and June 2002, incurred while entitled to base pay, did not exist prior to service, and incurred in the line of duty.

(2) Chronic left shoulder pain, incurred while entitled to base pay, did not exist prior to service, and incurred in the line of duty.

The board recommended the applicant be referred to a Physical Evaluation Board (PEB). The applicant did not desire to continue on active duty. Continuance on active duty was not medically contraindicated. The findings of the board were approved on 2 December 2002 and the applicant agreed with the board's findings on 10 December 2002.

c. Memorandum, Subject: Physical Condition of the applicant, in the rank of PFC, dated 9 December 2002 states the applicant was physically incapable of performing her duties as a 31U (Signal Support Systems Specialist) due to bilateral carpal tunnel release-chronic pain, weakness, left shoulder pain, weakness. This document also noted that the applicant was a good soldier and she had already graduated from Advanced Individual Training, however, her physical condition limits her capabilities to serve as a 31U and in any other military occupational specialty.

d. A statement from the applicant's PEB liaison officer, dated 11 December 2002 states per her conversation with the applicant's commander, the applicant was promoted to SPC/E4 in error. A DA Form 4187 (Personnel Action) was being done to revoke the promotion as the applicant was being separated by MEB/PEB and could not be promoted. Her leave and earnings (LES) statement reflected the promotion. The LES is available for the Board's review.

e. DA Form 199 (PEB Proceedings), dated 12 December 2002 shows the PEB found the applicant, in the rank of PFC/E3, unfit for duty and recommended a combined

rating of 20 percent. The applicant concurred with the board's findings and waived a formal hearing of her case.

f. DD Form 214, for the period ending 4 February 2003 shows the applicant was in the rank of PFC/E3 with a date of rank of 18 April 2001. She had completed 2 years, 3 months, and 17 days of active duty service. She was honorably transferred to U.S. Army Reserve (USAR) Control Group (Reinforcement). She received disability severance pay in the amount of \$5,214, and was released from active duty due to disability, severance pay.

g. DD Form 215, dated 18 February 2016, corrected the DD Form 214 by transferring her to USAR Control Group (Retired), deleting the disability severance pay, and discharged her due to retirement for disability, permanent.

h. The applicant's service record is void of her promotion to PFC/E3, promotion to SPC/E4, and the DA Form 4187 revoking her promotion to SPC/E4.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board found insufficient evidence indicating the applicant was fully eligible for advancement to SPC/E-4 prior to her separation, noting that the limited evidence available indicates she was not, in fact, eligible for advancement to a higher grade. Based on a preponderance of the evidence, the Board determined the rank and grade shown on her DD Form 214 are not in error or unjust.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	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.

8/27/2024

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 (Enlisted Promotions and Reductions) Section II (Process Enlisted Promotions to PV2, PFC and SPC) in effect at that time, provides the following requirements for promotion to SPC: 26-months' time in service and 6-months' time in grade; Soldier must not be flagged or barred from reenlistment. Paragraph 1-10 (Non-promotable Status) provides that Soldiers in the rank of PFC-master sergeant are non-promotable to a higher grade when the Soldier is undergoing medical evaluation proceeding to determine ability to perform in recommended Military Occupational Specialty. Once a PEB determines that a Soldier is no longer qualified for continued active service, he/she will be removed from the promotion list.
3. Title 10, USC, section 1372 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

4. AR 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. For block 4 (Grade, Rate, or Rank) verify that active duty grade or rank and pay grade are accurate at time of separation. For block 12i (Effective Date of Pay Grade), from the most recent promotion document (or reduction instrument), enter the effective date of promotion or reduction to the current pay grade.

//NOTHING FOLLOWS//