

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 April 2024

DOCKET NUMBER: AR20230009823

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show she retired due to disability in the rank/grade of staff sergeant (SSG)/E-6 vice sergeant (SGT)/E-5.

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states due to being an Active Guard Reserve (AGR) Soldier, and due to introduction of the new personnel system (IPPS-A), her command and the U.S. Army Human Resources Command could not process her paperwork in a timely manner. Her action request is in IPPS-A.

2. Review of the applicant's service records shows:

a. She enlisted in the U.S. Army Reserve on 9 June 2010. She was trained in and held military occupational specialty 42A, HR Specialist. She reenlisted in the U.S. Army Reserve on 18 September 2017.

b. She entered active duty in the Active Guard Reserve (AGR) program on 30 September 2013.

c. On 28 July 2018, Headquarters, 88th Regional Support Command published Orders 15-209-00002, promoting the applicant to sergeant (SGT)/E-5, effective 1 August 2015.

d. On 4 January 2023, an informal physical evaluation board (PEB) convened and found the applicant's medical condition unfitting. The informal PEB recommended a 70% combined disability rating with her disposition as placement on the temporary disability retired list (TDRL) with reexamination during October 2023.

e. On 10 March 2023, Orders 0004188350.00 were published placing the applicant on the TDRL effective 25 May 2023, in the rank/grade of SGT/E-5.

f. She retired on 24 May 2023, and she was placed on the TDRL on 25 May 2023. Her DD Form 214 shows she was placed on the TDRL in accordance with chapter 4 of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations). She completed 9 years, 7 months, and 25 days of active service. Her DD Form 214 shows:

- Block 4a (Grade, Rate or Rank) SGT and 4b (Pay Grade) E-5
- Block 12i (Effective Date of Pau Grade) 2015-08-01

g. There is no evidence in the applicant's service records that show she was recommended for promotion or promoted to SSG. The applicant's Enlisted Record Brief does not reflect she was promotable.

3. On 18 January 2024, a legal advisory at the U.S. Army Physical Disability Agency (USAPDA) provided an advisory opinion in the processing the applicant's case. The legal advisor stated:

a. Based on the evidence presented, the USAPDA recommends denial of the request for the reasons set forth in more detail, below.

b. Background: At the time her disability retirement, the applicant served in the U.S. Army, Active Guard Reserve (AGR), with total service of 12 years, 5 months, and 5 days. Her Informal Physical Disability Board (IPEB) convened on 4 January 2023. The PEB deemed the applicant unfit for the condition Unspecified Anxiety Disorder, assessed a rating of 70%, and recommended placement of the Temporary Disability Retired List (TDRL). She concurred with the recommendation and signed DA Form 199 on 24 January 2023. By Orders dated 10 March 2023, she was directed to be retired effective 25 May 2023.

c. Analysis: Army Regulation (AR) 15-185 (ABCMR), para. 2-9, states that, with respect to the allegations of errors related to military records, there is a presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The applicant has failed to carry her burden of demonstrating error or injustice. Notably, she has not presented any evidence demonstrating that she was otherwise eligible for promotion at the time she was in the Disability Evaluation System (DES) process. See AR 600-8-19 (Enlisted Promotions and Reductions), dated 16 May 2019 (superseded on 26 October 2023), para. 1-21a. In any event, the U.S. Army Physical Disability Agency (USAPDA) lacked (and lacks) legal authority to promote the applicant. In accordance with AR 600-8-19, para. 1-21e, a copy of her promotion/retirement orders should have been sent via email to the Army Human Resources Command (AHRC) (usarmy.knox.hrc.mbx.tagd-jr-enlisted-

promotions@mail.mil) 10 days prior to the effective date of promotion. The USAPDA suggests that AHRC is in the best position to address her concerns.

d. Conclusion: Based on the evidence presented, the USAPDA recommends denial of the request for the forgoing reasons.

4. The applicant was provided with a copy of this advisory opinion to give her an opportunity to comment or provide a rebuttal. She did not respond.

5. By regulation (AR 600-8-19), per the provisions of 10 USC 1372, Soldiers on a promotion list who are retired for physical disability (10 USC 1201 or 1204) or who are placed on the 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

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. By regulation (AR 600-8-19), per the provisions of 10 USC 1372, Soldiers on a promotion list who are retired for physical disability (10 USC 1201 or 1204) or who are placed on the 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. The Board found no evidence that the applicant was eligible for promotion at the time she was in the Disability Evaluation System process. Thus, the Board determined the applicant did not demonstrate error or injustice.

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.

█

---

█ █

█

█

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 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 TDRL 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

2. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) prescribes policies and procedures governing promotions and reductions of Army enlisted personnel. Paragraph 1-19e. Per the provisions of 10 USC 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 1-11 (the NCO Professional Development System) requirements, in paragraph 1-29, are waived). For promotion to SGT-SSG, forward a copy of RA promotion/retirement orders 10 days prior to the effective date of promotion to the following email address, [usarmy.knox.hrc.mbx.tagd-jr-enlisted-promo-tions@mail.mil](mailto:usarmy.knox.hrc.mbx.tagd-jr-enlisted-promo-tions@mail.mil) for inclusion into the total Army personnel data base.

3. Army Regulation 15-185 (ABCMR) states ABCMR members will review all applications that are properly before them to determine the existence of an error or injustice. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proof.

//NOTHING FOLLOWS//