

IN THE CASE OF: ██████████

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230010088

APPLICANT REQUESTS:

1. Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 8 November 1995 to reflect promotion to the rank/grade of sergeant (SGT)/E-5 with applicable back pay for severance pay.
2. Disability compensation for not being able to work after being discharged.
3. A personal appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Letter
- Character Letter, ██████████
- Areas of Injury Data Sheet
- Mishaps and Mistreatment from his Unit Leadership Data Sheet
- U.S. Senator ██████████ Letter, 21 April 1994
- U.S. Senator ██████████ Letter, 31 May 1995
- Applicant Letter to Senator ██████████
- Medical Records and billing statements
- Active Duty Medical Records
- Personal Letters for Request to Press Charges

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 requests disability compensation for not being able to work after being discharged. Disability compensation post-service does not fall under the purview of the Board. The Board will not consider the applicant's request for disability compensation

post-service. The Board will consider the applicant's request for promotion to the rank/grade of SGT/E-5 and a personal appearance before the Board.

3. The applicant states, in pertinent part:

a. He was in the understanding that his promotion to SGT was in process prior to his auto accident and harassing incidents with his chain of command. Prior to his discharge he was terrorized, mistreated, threatened, denied adequate medical care when injured, and caused undo stress by his chain of command which caused mental health issues. He should have been promoted and paid accordingly for his disability severance and pension at the rank of SGT rather than specialist four (SP4).

b. In 1992, he made the cutoff for SGT for his military occupational specialty while stationed in Germany. He was told that he would need to go before the promotion boards (Company and Sergeant Major) and did it successfully and with great support from various leadership. However, both the Sergeant Major's Board and the Basic Noncommissioned Officer Course were significantly delayed.

c. While awaiting the Sergeant Major's Board and leadership course, he was injured and received harassment from his leadership over his medical profile which limited his physical ability at the time, caused him to be accused of being ingenuine about his injuries, and delayed his ability to complete the requirements for promotion.

d. Upon transferring to his next unit at the 1st Cavalry Division, 115th Forward Support Battalion, Fort Hood, TX, he began pursuing the completion of his leadership course requirements but was medically separated due to his injuries sustained in Germany.

e. He worked hard for his promotion while in service. He should not have been denied promotion because of unjust harassment from his leadership due to an injury sustained while on active duty that was out of his control.

4. A review of the applicant's available service record reflects the following:

a. On 16 August 1989, he enlisted in the Regular Army at the rank/grade of private (PVT)/E-1 for a period of 4 years.

b. On 14 May 1993, he reenlisted in the Regular Army for a period of 2 years at the rank/grade of specialist (SPC)/E-4.

c. On or about 19 August 1990 he was assigned to B Company, 299th Support Battalion, Germany.

d. DA Form 2-1 (Personnel Qualification Record) reflects the following:

(1) Item 4 (Assignment Considerations) "unable to take the Army Physical Fitness Test in its entirety. No crawling, marching, jumping or running."

(2) Item 17 (Civilian Education and Military Schools) is void of an entry for completion of the Primary Leadership Development Course or the required Noncommissioned Officer Professional Development Course for promotion to the rank/grade of SGT/E-5.

(3) Item 18 (Appointments and Reductions):

- Private (PVT)/E-1, effective 16 August 1989
- Private (PV2)/E-2, effective 16 February 1990
- Private First Class (PFC)/E-3, effective 16 August 1990
- SPC/E-4, effective 1 December 1990

e. On 27 June 1995, a Physical Evaluation Board convened finding the applicant physically unfit for fibromyalgia, back, multiple levels manifested by pain with physical activity, bilateral plantar fasciitis secondary to pes planus requiring profile and aggravated by wearing boots, and recommended separation with severance pay if otherwise qualified at the rating of 10 percent. He concurred with the recommendations and waived a formal hearing of his case.

f. On 14 August 1995, the U.S. Army Physical Evaluation Board issued a Memorandum, Subject: Line of Duty Determination for review of an injury that occurred in a motor vehicle accident in Mainz, Germany on 11 September 1992 in which he was rear ended on the autobahn.

g. On 5 September 1995, the U.S. Total Army Personnel Command issued a Memorandum, Subject: Line of Duty Determination rendering a presumptive finding that the applicant sustained injury to his back, neck, and both feet on 11 September 1992 while in Mainz, Germany.

h. On 28 September 1995, Headquarters III Corps and Fort Hood issued Orders Number 271-0210 reassigning him to the U.S. Army transition point for transition processing and honorable discharge with disability severance pay in the rank/grade of SPC/E-4 at 10 percent disability compensation, effective 8 November 1995.

i. DD Form 214 (Certificate of Release or Discharge from Active duty), ending 8 November 1995 reflects an honorable discharge for disability with severance pay in the rank of SPC. Item 12 (Record of Service) shows service from 16 August 1989 to

8 November 1995 for a net active service this period of 6 years, 2 months, and 23 days. Item 18 (Remarks) shows "disability severance pay - \$15,868.80."

5. The applicant provides the following:

a. Character Letter, from his sister, [REDACTED] expressing the changes incurred after his service in the Army and the positive impact he continues to have with her and others outside of the military.

b. Areas of Injury Data Sheet listing the medical issues he has suffered while serving on active duty and the issues that have continued after his service ended.

c. Mishaps and Mistreatment from his Unit Leadership Data Sheet describing the incidents he incurred while on active duty with his leadership at each assigned unit.

d. U.S. Senator [REDACTED] Letter, dated 21 April 1994, replying to his request for assistance with toxic leadership and harassment at his unit while stationed in Germany.

e. U.S. Senator [REDACTED] Letter, dated 31 May 1995, notifying him that his issues with leadership have been forwarded on to the Department of the Army for further assistance.

f. Applicant Letter to Senator [REDACTED], wherein the applicant requested assistance for the issues he experienced within his unit leadership.

g. Medical Records provided in support of his medical conditions while in the service as well as Veterans Affairs care post-service.

h. Active-Duty Medical Records showing the injuries he sustained while on active duty.

i. Personal Letters for Request to Press Charges wherein the applicant requested to press charges against SGT [REDACTED] first lieutenant (1LT) [REDACTED], and captain (CPT) [REDACTED] for harassment and unprofessionalism.

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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of

the applicant’s petition and available military records, the Board determined the applicant’s record is absent evidence that shows he was promoted to SGT/E-5 prior to his discharge. The Board noted there is insufficient evidence to support the applicant completed the Primary Leadership Development Course or the required Noncommissioned Officer Professional Development Course for promotion to the rank/grade of SGT/E-5. The Board found the applicant’s request is without merit as the available evidence does not support the applicant was ever promoted to the rank of sergeant. Therefore, the Board denied relief.

2. 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.

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.

5/6/2024

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, USC, 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) in effect at the time states in paragraph 3-1, Field grade commanders in units authorized a commander in the grade of lieutenant colonel or higher have promotion authority to the ranks of SGT and SSG; however, the Promotions Work Center maintains the promotion standing list and issues the orders. Board appearance, promotion point calculation, promotion list maintenance, and the final execution of the promotions occur in the field in a decentralized manner. Promotion point cutoff scores are determined and announced monthly for each Military Occupational Specialty (MOS) on the basis of the scores reported by the field and the needs of the Army, by grade and MOS.
3. AR 635-5 (Separation Documents) in effect at the time, provides the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. For Block 4a (Grade, Rate or Rank) and Block 4b (Pay Grade) to enter the active-duty grade and pay grade at the time of separation, respectively.

4. Title 10, USC, section 1212 states, upon separation from the Armed Forces under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying the member's years of service computed under section 1208 of this title by twice the amount of monthly basic pay to which he would be entitled if serving on active duty on the date when he is separated. The minimum years of service of a member is 3 years.

5. 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, is entitled to the grade equivalent to the highest 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.

6. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) paragraph 4-30c states the grade at which a Soldier is retired or receives disability severance pay, will be the 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.

7. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. 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.

//NOTHING FOLLOWS//