

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 May 2024

DOCKET NUMBER: AR20230011187

APPLICANT REQUESTS: in effect, amend Orders 022-017, dated 22 January 2021 and his DD Form 214 for the period ending on 26 January 2021 to show he was placed on the retired list in the rank of sergeant first class (SFC)/E-7.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 26 January 2021
- Orders 022-017 Promotion to SFC/E-7, dated 22 January 2021

FACTS:

1. The applicant states, he received promotion from staff sergeant (SSG) to SFC for administrative purposes, effective the date of his retirement 26 January 2021. His military records do not reflect this promotion. When he went to renew his retired identification card, they said his records reflected he was a SSG/E-6. He has his official promotion orders from the Texas Army National Guard (TXARNG) for promotion from SSG/E-6 to SFC/E-7 with an effective date of 26 January 2021.

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

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), which shows the applicant enlisted in the ARNG on 21 May 2009. DA Forms 4836 (Oath of Extension of Enlistment or Reenlistment) shows he extended his enlistment in the ARNG on 24 May 2012 and 15 April 2015.

b. DD Forms 214, show the applicant as a member of the ARNG, entered active duty on:

(1) 7 September 2009 and was honorably released to the ARNG on 5 February 2010. The type of separation was release from active duty training.

(2) 4 January 2012 and was honorably released to the TXARNG on

25 November 2012. He was ordered to active duty in support of Operation Enduring Freedom.

(3) 22 May 2010 and was honorably released to the ARNG on 3 January 2012. He was released from Active Duty to continue on active duty in another status.

(4) 26 November 2012 and was honorably released to the Warrior Transition Battalion on 3 November 2019. He had been ordered to Active Guard/Reserve (AGR) Duty Status. He was AGR from 26 November 2012 through 20 October 2019 (DD Form 215 Correction to DD Form 214).

c. The applicant was retained on active duty to participate in Reserve Component medical hold transfer for completion of medical care and treatment by orders MM-9277-00011, dated 4 October 2019; orders MM-9317-00029, dated 13 November 2019; and orders MM-0254-00015, dated 10 September 2020.

d. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), dated 26 October 2020 shows the Board found the applicant physically unfit for duty and recommended a rating of 100 percent and that the applicant be permanently retired for disability. The applicant concurred with the Board's recommendation and waived a formal hearing in his case. He did not request reconsideration of his Department of Veterans Affairs ratings.

e. Orders 022-017, published by the TXARNG, dated 22 January 2021 shows he was promoted to the rank of SFC/E-7 effective 26 January 2021. The orders indicate he was medically retired.

f. DD Form 214 shows the applicant was honorably transferred to U.S. Army Reserve Control Group (Retired), in the rank of SSG/E-6 on 26 January 2021. He was discharged for disability, combat related.

3. On 8 March 2024, the Chief, Special Actions Branch, National Guard Bureau (NGB) provided an advisory opinion, which states:

a. The applicant requests the ARNG review his claim regarding his eligibility to be medically retired at the rank of SFC/E-7. NGB recommended approval of the applicant's request.

b. The applicant, a member of the TXARNG states he was medically retired from the ARNG as a SSG after going through the PEB and being found unfit for military service. The applicant should have been medically retired as a SFC in accordance with Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions) and AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

c. AR 600-18-19 paragraph 1-20(a) states that Soldier's in the disability evaluation system (DES) process who are pending a medical fitness determination (referral to a medical evaluation board or PEB) remain otherwise eligible for promotion consideration, selection, and pin-on. No Reserve Component (RC) Soldier will lose his or her promotable status.

d. AR 635-4 paragraph 4-230(c), defines the rank and individual Soldier would have been promoted had it not been for the physical disability for which the Soldier was determined unfit for. Active Army and RC enlisted Soldiers on a promotion list, will list the highest grade on their medical retirement orders. The United States Army Physical Disability Agency (USPDA) has corrected the applicant's medical retirement grade to SFC.

e. Based on the evidence presented, and a thorough review of the documents by the TXARNG, NGB concluded the applicant's request to be medically retired in the rank of SFC be approved.

f. The TXARNG review of the applicant's claim showed he was number one on their state troop promotion list. The TXARNG additionally stated the applicant was in good standing and did not have any restrictions or adverse actions that would have prevented him from promotion to SFC.

g. The USAPDA has amended their physical disability information report showing the applicant's medical retirement rank as SFC. The state will need to initiate orders promoting the applicant to SFC/E7.

h. The opinion was coordinated with the TXARNG.

4. On 13 March 2024, the applicant was provided a copy of the advisory opinion to allow him the opportunity to respond. On 13 March 2024, the applicant stated thank you so much for emailing him the advisory opinion. He was very pleased to see the decision.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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, available military records and National Guard Bureau -Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for approval finding the applicant should have

been medically retired as a sergeant first class (SFC) in accordance with regulatory guidance.

2. The Board determined in accordance with regulatory guidance Soldier's in the disability evaluation system (DES) process who are pending a medical fitness determination (referral to a medical evaluation board under AR 40-400, or physical evaluation board under AR 535-40) remain otherwise eligible for promotion consideration, selection, and pin-on. The opine noted that no Reserve Component (RC) Soldier will lose his or her promotable status. Based on the advising opine, the Board granted relief to amend Orders 022-017, dated 22 January 2021 and his DD Form 214 for the period ending on 26 January 2021 to show he was placed on the retired list in the rank of sergeant first class (SFC)/E-7.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending Orders 022-017, dated 22 January 2021 and his DD Form 214 for the period ending on 26 January 2021 to show he was placed on the retired list in the rank of sergeant first class (SFC)/E-7.

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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. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system.
 - a. Cha 1-29 (Noncommissioned Officer Professional Development System Requirement for Promotion and Conditional Promotion) provides that Soldiers must complete the following professional military education (PME) courses: Completion of Structured Self Development (SSD) 2 is an eligibility requirement for recommendation to SSG; graduation of the Advanced Leaders Course (ALC) is a promotion requirement to SSG; completion of SSD-3 is an eligibility requirement for promotion consideration to SFC; graduation of the Senior Leaders Course (SLC) is a promotion requirement to SFC.
 - b. Paragraph 1-21 (Promotion of Soldiers in the Disability Evaluation System) provides that Soldiers in the Disability Evaluation System (DES) process who are pending a medical fitness determination (referral to a medical evaluation board (MEB), or physical evaluation board (PEB)) remain otherwise eligible for promotion consideration, selection, and pin-on.
 - c. Title 10 USC 1372, Soldiers on a promotion list who are retired for physical disability or who are placed on the temporary disability retired list (TDRL) 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; the NCOPD requirements in paragraph 1-29 above are waived.
2. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation) 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.
 - a. Section II (Medical Evaluation Board (MEB)) provides that an MEB is convened to determine whether a Soldier's medical condition(s) meets medical retention standards. A MEB may determine that a Soldier's condition(s) meet medical retention standards and recommend the Soldier be returned to duty.

b. Paragraph 4-10 (Preparation for the Medical Evaluation Board) provides that after the Soldier, or a designated representative, submits VA Form 21–0819 to the Medical Service Corps (MSC), the Soldier may claim additional conditions, but the VA will not evaluate the added claimed conditions until after separation from Service unless the PEB refers the condition for further VA or MEB evaluation before issuing a final fitness determination, or if the MEB approving authority concludes that adding a new medical condition is necessary to ensure the MEB findings adequately reflect the complete spectrum of a Soldier's injuries and illnesses.

c. Paragraph 4-13 (Soldiers Opportunities for Further Review) provides that following the MEB decision, the Physical Evaluation Board Liaison (PEBLO) will inform the Soldier of their election options. These election options include both an option to request an impartial medical review (IMR) and an option to submit a rebuttal of the MEB findings. The purpose of the IMR is to inform the Soldier whether (in the IMR reviewer's opinion) the MEB findings adequately reflect the complete spectrum of the Soldier's injuries and illnesses. Generally, a Soldier may request one IMR. If the PEB returns a Soldier's case for further Veteran Affairs (VA) and MEB evaluation of a new medical condition as provided, the Soldier will have an opportunity to request another IMR; however, it will be limited in scope to addressing the MEB findings for the PEB returned condition. The Soldiers signature on the findings indicates one of the following:

- the Soldier concurs with the MEB decision
- the Soldier request an IMR
- the Soldier does not request an IMR, does not concur with the MEB findings, and has an additional seven days to submit a written rebuttal

d. Paragraph 4-15 (Medical Evaluation Board Rebuttal) provides that given the Soldier has not requested an IMR, the Soldier may submit a written MEB rebuttal to the PEBLO within seven days after signing. In general, the Soldier may submit only one written MEB rebuttal. The Medical Treatment Facility commander will appoint a physician or other appropriately credentialed provider to address the Soldier's MEB rebuttal. Within seven days of the MEB approval authority receiving the MEB rebuttal, the MEB approval authority will uphold the original MEB, amend the findings, or return it to the MEB.

e. Paragraph 4-22 (Informal Physical Evaluation Board (IPEB) Process) provides that all cases will be initially adjudicated by an IPEB. The IPEB conducts a documentary review of the case file without the presence of the Soldier to make an initial decision on the Soldier's fitness for continued service. The IPEB may obtain additional documents necessary for proper adjudication and will include them in the case file. The IPEB will make the determinations according to the adjudication policy of this regulation. These determinations are documented on DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings). Within three days of receiving the IPEB findings, the PEBLO will

provide the Soldier the PEB findings and a copy of the VA proposed ratings and benefits estimate letter. The PEBLO will inform the Soldier of the PEB and VA findings, the Soldier's election options, and the Soldier's right to consultation with legal counsel. The Soldier has 10 days from their receipt from the PEBLO of the IPEB findings to make their election. The Soldier has the following election options to IPEB decisions:

- accept the PEB decision, thereby waiving his or her right to a formal hearing
- non-concur with the PEB decision and demand or request, as applicable, a formal hearing with or without a statement of appeal
- non-concur with the PEB decision with or without submitting a statement of appeal without demanding a formal hearing
- accept or request reconsideration of the VA preliminary ratings. The VA will only reconsider when there is new medical evidence or sufficient justification of an error to warrant reconsideration

3. Army Regulation (AR) 15-185 (ABCMR) paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//