

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230011943

APPLICANT REQUESTS: to be promoted to the rank/grade of sergeant (SGT)/E-5 due to her medical board separation with entitlement to backpay.

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum – Subject: Sergeant/Staff Sergeant Promotion Selection Board, January 2010
- DA Form 3357 (Board Recommendation)
- Memorandum – Subject: Informal Reconsideration of Matters Regarding Informal Physical Evaluation Board (IPEB) Findings dated 1 January 2012
- Orders Number 199-4501, 18 July 2011
- Memorandum – Subject: Continuation on Active Duty under Section 1230(h) of Title 10 United States Code (USC), 18 June 2013
- Veterans Affairs (VA) Rating Decision, 6 December 2019

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 states prior to being medically retired from military service, she was on the SGT/E-5 promotion list. She contests that she was not afforded the opportunity to go before the Army Grade Determination Review Board prior to being retired and notes that undergoing the Integrated Disability Evaluation System (IDES) process was stressful. Her inquiries concerning promotion were disregarded during this period and argues that she should be promoted to SGT based on the provisions of Title 10 USC, section 3964.

3. A review of the applicant's service records show:

- a. On 23 August 2005, the applicant enlisted in the Regular Army.

b. On 25 January 2008, the applicant was advanced to the rank/grade of specialist (SPC)/E-4.

c. On 19 August 2011, the applicant elected to extend her current enlistment for 1 month.

d. On 15 September 2011, the applicant was approved to remain on active duty until she reached the medical retention determination point, is found fit for duty, has completed processing through the Physical Disability Evaluation System, or 30 September 2012.

e. On 26 March 2014, an Informal Physical Evaluation Board convened finding the applicant physically unfit for continued military service with a recommendation that she be permanently medically retired with a disability rating of 30 percent. The applicant concurred with the board's recommendation, waived her rights to a formal hearing and declined to request reconsideration of her ratings by the VA.

f. On 14 April 2014, Headquarters, U.S. Army Cyber Center of Excellence issued Orders Number 104-0901 reassigning the applicant to the transition center for separation processing.

g. On 7 June 2014, the applicant was permanently medically retired at the rank of SPC.

4. The applicant provides:

a. Memorandum – Subject: Sergeant/Staff Sergeant Promotion Selection Board, January 2010, reflective of the commander's approval of the January 2010 junior enlisted promotion board results. The applicant's name is listed with a recommendation that she be placed on the SGT promotion list with a total of 359 points comprised of 211 administrative points and 148 board points.

b. DA Form 3357 reflective of the applicant being recommended for promotion and awarded 148 points on the January 2010 promotion board.

c. Memorandum – Subject: Informal Reconsideration of Matters Regarding IPEB Findings dated 1 January 2012, reflective of the applicant's submitted request to have her disabling conditions reconsidered by a Formal PEB.

d. Orders Number 199-4501 dated 18 July 2011, reflective of the applicant being reassigned to the Eisenhower Army Medical Center, Warrior Transition Unit, effective 26 July 2011.

e. Memorandum – Subject: Continuation on Active Duty under Section 1230(h) of Title 10 USC dated 18 June 2013, reflective of the applicant being extended on active duty for a period not to exceed 365 days.

f. VA rating decision dated 6 December 2019, reflective of the applicant's rated conditions and percentages applied to each as assessed by the VA.

5. The applicant did not provide nor does review of her available personnel records reflect evidence of orders promoting her to the rank/grade of SGT/E-5.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined her record is absent evidence that shows she was promoted to sergeant (SGT)/E-5 or recommended for promotion to SGT/E-5 prior to her medical retirement on 7 June 2014. Based on the evidence, the Board denied relief.

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.

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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. 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. Title 10 USC, section 3964 (Advancement on the Retired List) entitles certain retired members (enlisted service members and warrant officers) who retired with less than 30 years of active service to be advanced to the highest grade satisfactorily held when their active service plus service on the retired list totals 30 years.
3. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) in effect at the time states in paragraph 1-20 (Promotion of Soldiers Pending Referral to a Military Occupational Specialty Medical Retention Board, Medical Evaluation Board, or Physical Evaluation Board) in effect provides that Soldiers on a promotion list at the time of retirement for disability will be retired for disability at the promotion list grade. Further, the Soldier will be promoted to the designated grade effective the day before placement on the retired list.

//NOTHING FOLLOWS//