

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230012021

APPLICANT REQUESTS: in effect, correction of U.S. Army Physical Disability Agency (USAPDA) Order D 172-05, dated 21 June 2023, to show his retired grade of rank as O-5.

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

- Online DD Form 149 (Application for Correction of Military Record)
- USAPDA Order D 172-05
- Fiscal Year (FY) 2023 (23) Reserve Component (RC) LTC (Lieutenant Colonel) AMEDD (Army Medical Department) Promotion Selection Board (PSB) Results
- Email Correspondence

FACTS:

1. The applicant states, on 21 June 2023, the Army retired him and placed him on the Permanent Disability Retired List (PDRL); he subsequently learned that, in March 2023, the RC AMEDD PSB selected him for promotion to LTC/O-5. On 7 August 2023, the promotion list was approved and the list was subsequently published, on 17 August 2023.

a. The applicant argues, "Members who appear on a promotion selection list but are retired by disability are retired at the rank that they would have been promoted to. However, I was unable to be retired at O-5, as my separation date occurred prior to the list publication date." The list seemed to take longer than usual to be approved and published (i.e., outside the typical 90-120-day window). The applicant notes he had no control over when the Army would retire him.

b. In support of his request, the applicant provides a copy of USAPDA Order D 172-05 and the promotion list reflecting his selection. Additionally, the applicant includes email correspondence, in which the applicant asked USAPDA if they could amend his retired grade of rank. USAPDA responded, "Unfortunately, this (grade of rank adjustment) cannot be completed since the results for the promotion selection list were published after your date of separation."

2. A review of the applicant's service record reveals the following:

a. On 23 December 2000, following the completion of over 7 years of enlisted and commissioned service in the Regular Army, the applicant executed his oath of office as a commissioned officer in the Tennessee Army National Guard (TNARNG).

b. The applicant served continuously in the TNARNG until, on 21 July 2023, USAPDA Order D 172-05 retired the applicant in the grade of O-4; effective 22 July 2023, USAPDA placed the applicant on the PDRL.

3. On 12 December 2023, the National Guard Bureau (NGB) provided an advisory opinion and recommended disapproval of the applicant's request.

a. The NGB cites paragraph 4-30c (Grade on Retirement or Separation for Physical Disability – Grade to which Soldier Would Have Been Promoted had it Not Been for the Physical Disability), Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation). This provision requires that, to be medically retired at the next higher grade, the officer must be on an approved promotion list prior to the effective date of retired list transfer.

b. The USAPDA reviewed the arguments presented by the applicant to the Board and concluded that the applicant's current grade, as stated on his PDRL order, is accurate and requires no correction.

4. On 15 December 2023, the Army Review Boards Agency provided the applicant a copy of the advisory opinion for review and the opportunity to submit a statement or additional evidence on his own behalf; the applicant did not submit a response.

#### 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. The applicant was permanently retired due to disability in the grade of O-4; effective 22 July 2023. On or before his disability retirement, he was not on an approved promotion list. The Board reviewed and agreed with the NGB advisory official's finding to be medically retired at the next higher grade, the officer must be on an approved promotion list prior to the effective date of retired list transfer. Since the applicant was not on an approved list on or before his disability retirement, the Board determined the applicant's current grade, as stated on his permanent disability retired list order, is accurate and requires no correction.

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:

AR 635-40, currently in effect, states the following in paragraph 4-30:

a. The grade at which a Soldier is retired will be the highest of the options listed below, in accordance with the provisions of Title 10 (Armed Forces), United States Code (USC), section 1372 (Grade on Retirement for Physical Disability):

(1) Current grade. No time-in-grade is required.

(2) Highest Grade Satisfactorily Held. Pertains to Soldiers not currently serving in the highest grade held and is determined in accordance with AR 15-80 (Army Grade Determination Review Board and Grade Determinations).

(3) Grade to which Soldier Would Have Been Promoted had it Not Been for the Physical Disability. In general, this provision pertains to Soldiers on a promotion list. For Active Army and RC officers, upon USAPDA confirming that the officer meets the requirements below, as applicable, the officer's orders will list the higher grade at the order's lead line for retired grade. Promotion orders are not issued.

- The officer is on an approved (and confirmed, if required) promotion list prior to the effective date of transfer to the retired list
- The officer must not be serving under a suspension of favorable personnel action on the effective date of transfer

//NOTHING FOLLOWS//