

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230012328

APPLICANT REQUESTS:

- medical retirement at the rank/grade of sergeant (SGT)/E-5
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 129-048, 9 May 2013
- Personal Information Report

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 he was medically retired due to injuries sustained while in the Army National Guard (ARNG). He was promoted to SGT on 9 May 2013. However, on 6 November 2015, he was medically retired at the rank/grade of specialist (SPC)/E-4. He contests that he was only 6 months away from achieving 3 years of time-in-grade.
3. A review of the applicant's service records show:
 - a. On 28 March 2002, the applicant enlisted in the ARNG.
 - b. On 26 June 2003, the applicant was promoted to the rank/grade of SPC/E-4.
 - c. On 7 July 2003, the applicant was ordered to active duty in support of Operation Enduring Freedom.
 - d. On 27 May 2004, the applicant was honorably released from active duty.

e. On 22 October 2008, the applicant reenlisted for 6 years in the rank/grade of SPC/E-4.

f. On 9 May 2013, the LAARNG issued Orders Number 129-048 announcing the applicant's promotion to the rank/grade of SGT/E-5, effective 8 May 2013 in accordance with Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions) paragraph 7-20.

g. On 16 May 2013, the LAARNG issued Orders Number 136-019 announcing the revocation of Orders Number 129-048.

h. On 5 March 2014, the LAARNG issued Orders Number 064-027 reassigning the applicant from the Rear Detachment to the Headquarters at the rank/grade of SPC/E-4, effective 5 March 2014

i. On 12 May 2015, the applicant, at the rank/grade of SPC/E-4, elected to extend his enlistment in the ARNG by 1 year.

j. On 16 September 2015, an Informal Physical Evaluation Board (PEB) convened finding the applicant physically unfit for continued military service with a recommendation that he be permanently medically retired. The applicant concurred with the board's recommendation and declined the right to reconsideration.

k. On 2 October 2015, the U.S. Army Physical Disability Agency issued Orders Number D 275-09 permanently medically retiring the applicant, effective 6 November 2015 at the rank/grade of SPC/E-4.

4. The applicant provides a Personal Information Report reflective of pertinent personnel related information to include service dates and deployment periods. Under "Reserve/Guard Association Periods" it reflects that the applicant served in the ARNG from 7 April 2002 – 27 March 2008 ending at the rank/grade of SPC/E-4; 22 October 2008 – 5 November 2015 ending at the rank/grade of SGT/E-5.

5. On 7 May 2024, the National Guard Bureau, Chief, Special Actions Branch, provided an advisory opinion recommending approval of the applicant's request noting that he was medically boarded by the PEB and was found unfit for continued military service due to a medical disability and therefore was medically retired at the rank/grade of SPC/E-4. The applicant provided documentation that he was promoted to the rank/grade of SGT/E-5 with an effective date of 8 May 2013, however these orders were later revoked. The LAARNG failed to provide justification for why the revocation occurred simply stating that the revocation means "it never happened." Additionally, the LAARNG provided records reflective of the promotion order being revoked, however the fact remains that the applicant was still on an order of merit list, and never removed and

no reason was provided for the removal that would indicate a negative reason for removal and therefore he would still be eligible for promotion in accordance with the governing regulation.

6. On 17 May 2024, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments. The applicant acknowledged receipt and offered no contentions.

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 his record is absent evidence that shows he was promoted to sergeant (SGT)/E-5 prior to his medical retirement on 6 November 2015. The Board reviewed the National Guard Bureau's advisory recommending approval finding the applicant was medically boarded by the physical evaluation board and was found unfit for continued service and was retired in the rank/grade of specialist (SPC)/E-4. The LAARNG published orders promoting the applicant to SGT/E-5, yet those orders were subsequently revoked. The Board did not concur with the advisory noting that orders are not revoked for no reason; and therefore 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. AR 600-8-19 (Enlisted Promotions and Reductions) 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 who are pending referral to a PEB under AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) will not be denied promotion (if already promotable) on the basis of medical disqualification if they are otherwise qualified for promotion. Per the provisions of Title 10, USC, Section 1372, 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.
3. AR 15-185 (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 applicant's 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//