

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 July 2024

DOCKET NUMBER: AR20230014500

APPLICANT REQUESTS: correction of his records to show he was placed on the disability retired list in the rank of sergeant first class (SFC)/E-7 vice staff sergeant (SSG)/E-6.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Letter
- Memorandum for Record from applicant's Commander
- DD Form 214, Certificate of Release or Discharge from Active Duty, 2009-2010
- NCO Evaluation Reports
- Permanent Physical Disability Retirement Report, 20 November 2016
- Permanent Disability Retirement Order, 20 November 2016

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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. On the DA Form 149, the applicant states during his medical board, his case was never forward to the Army Grade Determination Review Board for consideration for promotion. During his medical board, he was a staff sergeant/E-6 sitting in a sergeant first class/E-7 position/slot. During the medical board, he was unable to be promoted and attend the NCO Education System (NCOES) courses. He was medically retired in his current grade without a review/determination.
3. On the personal letter, the applicant states he requests to be advanced to the highest grade that he held satisfactorily while honorable serving in the United States Army due to being separated in a lower grade without the benefit of a review by the Army Grade Determination Review Board (AGDRB). Although he retired on 20161225 in the grade of E-6, he previously held the grade of E-7 prior to his disability retirement. He was appointed to a Detachment NCO (E-7) position while being an E-6 during the

medical evaluation board. [Note: The applicant's record contains no evidence the applicant was promoted or appointed to or held the grade of SFC/E-7 during his military service].

4. The applicant's commander provides a Memorandum for Record in which he states the applicant served as the Detachment NCOIC of the 924th Transportation Detachment (TC DET) in Fresno, CA. He held this position, serving in a pay grade above his rank from 1 October 2012 to December 2016 as the Detachment NCOIC Position on the 924th TC DET MTOE was an E7 position. He (the author) was the battalion commander of the 469th Combat Service Support Battalion from September 2014 to June 2016 and had responsibility for the training and readiness of 924th TC DET during this time when I served in the rating chain of SSG [REDACTED]. The applicant performed his duties and responsibilities as the DET NCOIC superbly and always placed the mission and his Soldiers needs above his own. His responsibilities being the Senior Enlisted Advisor to the Detachment OIC for 21 Soldiers and making sure this unit increased its readiness in order to deploy. The applicant carried out the commander's intent and ensured that 924th TC DET Soldiers maintained their discipline, individual readiness, training, morale, and lived up to the Army Values.

5. Review of the applicant's service records shows:

a. He enlisted in the U.S. Army Reserve on 28 March 1998 and held military occupational specialty 63S, Heavy Wheel Vehicle Mechanic.

b. He served through multiple reenlistments, in a variety of assignments, including active duty mobilization (service in Afghanistan), and he was promoted to staff sergeant (SSG)/E-6 on 1 November 2003.

c. A memorandum from the U.S. Army Physical Disability Agency, dated 20 November 2016, advised the applicant that in accordance with the findings and recommendation of the United States Army Physical Disability Agency (USAPDA), he had been found to have a disability and will be permanently retired with a disability rating of 70 percent. The attached Department of the Army order announces the effective date of his retirement, and his retired pay will be computed from this date.

d. On 20 November 2016, the USAPDA published Order D 325-80 releasing the applicant from assignment and duty because of physical disability under conditions that permit your retirement for permanent physical disability.

- Date placed on retired list: 25 December 2016
- Retired grade of rank: E-6
- Authorized place of retirement: Not Applicable Percentage of disability: 70%

- Authority: Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation)
- Statute authorizing retirement: 1204
- Disability retirement: 6 Year(s), 1 Month(s), 22 Day(s)
- Basic Pay: 18 Year(s), 8 Month(s), 27 Day(s)
- Disability is based on injury or disease received in LOD as a direct result of Armed Conflict or caused by an instrumentality of war and incurred in the LOD during a war period as defined by law: YES

6. There is no evidence in the applicant's service records that show she was recommended for, was promoted to, or held the rank of SFC/E-7 at any time during his USAR service.

7. On 17 May 2024, the U.S. Army Reserve Command (USARC) provided an advisory opinion in the processing of the applicant's case. The USARC official referenced Army Regulation 600-8-19, Enlisted Promotions and Reductions, and stated:

a. Records indicate] Applicant] was medically boarded and placed on the Retired List effective 25 December 2016. His retired grade of rank is listed as SSG/E-6, with a date of rank of 1 September 2012. [Applicant] was not in promotable status, nor was he on the Permanent Promotion Recommended List (PPRL) for SFC at the time of his retirement.

b. In accordance with AR 600-8-19, paragraph 1-20c, per the provisions of Title 10, U.S. Code, 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. [Applicant] did not meet these criteria, as he was not on a promotion list. A review of the February and September Fiscal Year SFC Promotion Board consideration list indicates [Applicant] was not eligible for promotion consideration. He did not complete Advanced Leadership Course (ALC), nor the Structured Self Development – 3 distance learning courses. Completion of each course was a requisite for SFC board consideration. Although [Applicant's] NCO Evaluation Reports and commander's letter confirm he occupied a SFC duty position as an SSG, this does not meet the regulatory requirement of promotion list membership.

c. A review of RLAS records indicates SSG [REDACTED] did not have a Suspension of Favorable Personnel Action (Flag) in his records; therefore, this did not prevent his consideration for promotion to SFC. Additionally, the applicant did not receive a grade determination board upon retirement since he was ineligible for promotion consideration. After exhaustive review of this case, this Headquarters cannot recommend relief for the applicant regarding his request for promotion to SFC at retirement. The applicant was not on a promotion list, as required by Army regulation.

8. The applicant responded to the advisory opinion and asked the Board to reject the recommendations of advisory opinion, from the Department of Army. He states:

a. He performed his duties to their fullest. Because of his injuries and Army Regulations/policies, he was unable to attend NCOES schools because of the results of temporary profiles" from his primary care physician at the VA Medical Center. Because of the temporary profiles, NCOES schools would not accept him, and his Command was not able to schedule him for schools. As per TR 600-21 Training school/institution Commander/Commandant cannot waived the record APFT requirements stipulated. As AR 350-1, Soldiers with temporary profiles preventing full participation that are not a result of operational deployment will be removed or deferred from NCOES school attendance consideration by the immediate commander until the temporary profile is removed. Because of this regulation, his commanders would not schedule him for NCOES schools.

b. Regarding Structured Self Development (SSDD), All Army Activities Message Number 346/2012, prevented him from enrolling into the said course{s) needed. He was unable to enroll on his own to complete the course because he was unable to complete my NCOES courses. Although he faced diversities due to my injuries and with Army Regulations/policies, he still led from the front, and took the responsibilities of an E-7 as a Detachment NCO, for the 924th TTP while being processed in a medical board. He is asking that a wrong be corrected after the fact.

9. By law (10 USC 1372), a Soldier separating for a physical disability receives severance or retired pay based on the highest of (1) the pay grade at time of separation, (2) the highest grade satisfactorily served, or (3) the grade to which the Soldier had been approved for promotion. If the Soldier is not serving in his or her highest grade or on an approved promotion list to what would have been the highest grade, the Physical Disability Agency forwards the disability case to the AGDRB for a determination of whether the Soldier served satisfactorily at a higher grade.

10. By regulation (AR 15-0), if the member was medically retired or separated in a lower grade without the benefit of a review by the AGDRB, then the member should apply for correction of military records by completing a DD Form 149 and mailing it, along with a copy of any relevant documents the member may have, to the ABCMR. The ABCMR has jurisdiction to correct errors or injustices, and can act in place of the AGDRB in these cases.

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. Upon review of the applicant's petition, available military records and Headquarters, United States Army Reserve Command -Enlisted Management Branch advisory opinion, the Board concurred with the advising official recommendation for denial finding the applicant was medically placed on the list at the rank of SSG/E-6. The opine noted, the applicant was not in a promotable status, nor was the applicant on the permanent promotion recommended list (PPRL) for sergeant first class (SFC) at the time of his retirement.

2. The Board determined there is insufficient evidence to support the applicant's contentions for correction of his records to show he was placed on the disability retired list in the rank of sergeant first class (SFC)/E-7 vice staff sergeant (SSG)/E-6. The Board agreed, based on the preponderance of evidence the applicant did not meet the criteria for promotion due to not completing the advanced leadership course (ALC) nor the structured self-development- 3 distance learning courses. Furthermore, the Board found the applicant did not meet the regulatory requirement of promotion list membership and he was not on any promotion list. Therefore, 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.

[REDACTED]

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.

ADMINISTRATIVE NOTE(S):

REFERENCES:

1. Title 10, U.S. Code, 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, U.S. Code, § 1372 - Grade on retirement for physical disability: members of armed forces, 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, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:
 - a. (1)The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.
 - b. (2)The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

c. (3)The permanent 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.

d. (4)The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination.

//NOTHING FOLLOWS//