

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20240000139

APPLICANT REQUESTS: correction of DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending on 21 July 2010 to reflect:

- sergeant (SGT)/E-5 instead of specialist (SPC)/E-4
- Kuwait Liberation Medal

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 119-0255, 29 April 2010

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 in pertinent part that because he was on active duty prior to being medically discharged, he should have been promoted to SGT. He further provides that his unit was awarded the Kuwait Liberation Medal for their service in Iraq. However, authorization for this service medal is not reflected on his DD Form 214.
3. A review of the applicant's available service records reflects the following:
  - a. On 26 October 2005, the applicant enlisted in the Army National Guard (ARNG) for 8 years with duty as a 63B (Wheeled Vehicle Mechanic).
  - b. On 15 March 2008, the applicant was advanced to the rank/grade of SPC/E-4.
  - c. On 11 February 2009, the applicant was ordered to active duty in support of Operation Iraqi Freedom.

d. On 27 February 2009, a Suspension of Favorable Personnel Actions (SFPA) flag was initiated on the applicant for failing the Army Physical Fitness Test (APFT) and exceeding height/weight requirements.

e. On 6 June 2009, the applicant's flag was removed.

f. On 15 April 2010, a Physical Evaluation Board convened finding the applicant physically unfit for continued military service with a recommendation that he be medically retired. The applicant concurred with the boards findings and waived his rights to a formal hearing.

g. On 29 April 2010, the U.S. Army Installation Management Command issued Orders Number 119-0255 releasing the applicant from assignment and duty due to physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability, effective 21 July 2010, with placement on the retirement list on 22 July 2010 at the rank of SPC, under the provisions of Title 10, USC, section 1201 and 1372.

h. On 21 July 2010, the applicant was medically retired. DD Form 214, item 4a./b. (Grade, Rate or Rank/Pay Grade) reflects "SPC/E-4"; item 12f. (Foreign Service) reflects "2 months 13 days"; item 12i. (Effective Date of Pay Grade) reflects "15 March 2008"; item 13. (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) reflects:

- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal (w/ Campaign Star)
- Army Service Ribbon
- Armed Forces Reserve Medal (w/ "M" device)

4. A review of the applicant's available service records are void of a DA Form 2-1 (Personnel Qualification Record), Automated Record Brief/Enlisted Record Brief or any other source document reflective of his promotion status.

#### 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 counsel's statement, 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 and available military records, the Board determined there is insufficient evidence to support

the applicant's contentions for correction to his records showing his rank as sergeant (SGT)/E-5 instead of specialist (SPC)/E-4. The Board determined his record is absent evidence that shows he was promoted to SGT/E-5 prior to his discharge. Based on regulatory guidance, promotion to SGT/E-5 are announced with official orders.

2. Furthermore, the Board agreed the applicant does not meet the criteria for award of the Kuwait Liberation Medal. Per regulatory guidance the period for the award was between 17 January 1991 and 28 February 1991 and 2 August 1990 and 31 August 1993. Evidence shows on 26 October 2005, the applicant enlisted in the Army National Guard (ARNG) and was not ordered to active duty for deployment until 11 February 2009, in support of Operation Iraqi Freedom. Based on the preponderance of 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. Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions), 30 April 2010, in effect at the time provides the enlisted promotions and reductions function of the military personnel system.

a. Paragraph 1-20 (Promotion of Soldiers Pending Referral to a Military Occupational Specialty (MOS)/Medical Retention Board, Medical Evaluation Board, or Physical Evaluation Board) provides that Soldiers who are pending referral to a MOS/medical retention board or physical evaluation board 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.

b. Chapter 7 (Enlisted Promotion and Reduction of Army National Guard Personnel) provides policies, procedures and systems to advance, promote, laterally appoint and administrative reduction for all ARNG and ARNGUS enlisted Soldiers. This chapter will be used to advance, promote, laterally appoint and reduce Soldiers called or ordered to active Federal service (AFS) under Title 10, USC, section 12301(d) in support of contingency operation and Title 10, USC, section 12302 and 12304 as described in the instructions issued for the call or order.

c. Section IV (Promotion to SGT through Sergeant Major (SGM)) provides that to be eligible for consideration, selection, and promotion to SGT through SGM, Soldiers must:

- be considered and placed in the selection objective of the current promotion list; all Soldiers must go through the board process before they may be selected and promoted
- be in promotable status; SPC with Warrior Leader Course credit are promotable to SGT
- be participating satisfactorily in the active ARNGUS
- 6 months time in grade for promotion to SGT

d. Promotion list – a listing of Soldiers selected for promotion by boards are identified on a list maintained by the promotion authority.

3. AR 600-8-22 (Military Awards) provides Department of the Army (DA) policy, criteria, and administrative instructions concerning individual and unit military awards.

a. Paragraph 9-15 (Kuwait Liberation Medal – Saudi Arabia) is awarded to Servicemembers of the Armed Forces of the United States who participated in Operation Desert Storm between 17 January 1991 and 28 February 1991 in one or more of the following areas: Persian Gulf; Red Sea; Gulf of Oman; that portion of the Arabian Sea that lies north of 10 degree north latitude and west of 68 degree east longitude; the Gulf of Aden; or the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates. To be eligible personnel must meet one of the following qualifications:

- be attached to or regularly serving for 1 or more days with an organization participating in ground or shore operations
- be attached to or regularly serving for 1 or more days aboard a naval vessel directly supporting military operations
- actually participate as a crewmember in one or more aerial flights supporting military operations in the areas designated above
- serve on TDY for 30 consecutive days during the period 17 January 1991 to 28 February 1991

b. Paragraph 9-16 (Kuwait Liberation Medal – Government of Kuwait) is awarded to Servicemembers of the Armed Forces of the United States who served in support of Operations Desert Shield and Desert Storm between 2 August 1990 and 31 August 1993 in one or more of the following areas: the Arabian Gulf; the Red Sea; the Gulf of Oman; that portion of the Arabian Sea that lies north of 10 degree north latitude and west of 68 degree east longitude; the Gulf of Aden; or the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates. To be eligible personnel must meet one of the following qualifications:

- be attached to or regularly serving for 1 or more days with an organization participating in ground or shore operations
- be attached to or regularly serving for 1 or more days aboard a naval vessel directly supporting military operations
- actually participate as a crewmember in one or more aerial flights supporting military operations in the areas designated above
- serve on TDY for 30 consecutive days during the period 2 August 1990 to 31 August 1993

//NOTHING FOLLOWS//