

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20240001399

APPLICANT REQUESTS: promotion to the rank/grade sergeant (SGT)/E-5.

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

- DD Form 149 (Application for Correction of Military Record)
- Junior Enlisted Promotion Recommended List
- Enlisted Record Brief
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Rating Decision, 30 March 2020
- VA Rating Decision, 7 July 2021
- Headquarters (HQs), U.S. Army Physical Disability Agency (USAPDA) Orders Number D356-15
- Excerpt from Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions)
- Army Board for Correction of Military Records website screenshot

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 requests to be promoted to the rank/grade SGT/E-5 due to his medical retirement. He was medically retired and placed on the Temporary Disability Retired List (TDRL) in the rank/grade of specialist (SPC)/E-4 when he was unable to continue to serve in the Army because of a Traumatic Brain Injury (TBI) and behavioral health conditions from a training injury. He was in a promotable status at the time of his retirement.
3. A review of the applicant's service record shows:
 - a. On 25 March 2014, the applicant enlisted in the Regular Army and had continuous service through one reenlistment.

- b. On 30 October 2019, an informal Physical Evaluation Board (PEB) found the applicant physically unfit for retention for social anxiety disorder, social phobia with depressed mood and recommended he be placed on the TDRL with a 70 percent disability rating. The applicant concurred with the findings of the PEB and waived a formal hearing and did not request reconsideration of his VA ratings.
- c. On 18 November 2019, Orders Number 322-0001, issued by HQs, U.S. Army Garrison, Fort Carson, released the applicant from active duty and placed him on the TDRL, effective 27 January 2020 in the rank/grade of specialist (SPC)/E-4 with a 70 percent disability rating.
- d. On 26 January 2020, the applicant was honorably retired from active duty and assigned to the U.S. Army Reserve Control Group (Retired Reserve). DD Form 214 shows the applicant completed 5-years, 10-months and 2-days of active service. It also shows in:
 - Item 4a (Grade, Rate or Rank): SPC
 - Item 4b (Pay Grade): E-4
 - Item 12i (Effective Date of Pay Grade): 25 March 2016
 - Item 18 (Remarks): temporary medical retired list
 - Item 28 (Narrative Reason for Separation): disability, temporary (enhanced)
- e. On 9 December 2021, an informal PEB found the applicant physically unfit for retention due to social anxiety disorder, social phobia with depressed mood. The VA rated him as major depressive disorder with social anxiety disorder, generalized anxiety disorder and alcohol use disorder with TBI. The PEB recommended he be placed on the Permanent Disability Retired List (PDRL) with a 100 percent disability. The applicant concurred with the findings of the PEB and waived a formal hearing.
- f. On 22 December 2021, Orders Number D356-15, issued by HQs, USAPDA, removed the applicant was from the TDRL, effective 22 December 2021, and placed him on the PDRL with 100 percent disability under the provisions of Title 10, USC, section 1201.

4. The applicant provides:

- a. Junior enlisted promotion recommended list as of 8 August 2018 which shows the applicant was recommended for promotion to the rank/grade of SGT/E-5 in military occupational specialty of 92F (Petroleum Supply Specialist) with 186 promotion points.
- b. VA rating decision dated 30 March 2020 which shows the applicant was granted a 70 percent disability for social anxiety disorder with depressed mood and obsessive compulsive disorder with fair insight, with TBI with several other medical conditions.

c. VA rating decision dated 7 July 2021 which shows the applicant was granted a 100 percent disability for major depressive disorder with social anxiety disorder, generalized anxiety disorder and alcohol use disorder with TBI with several other medical conditions.

d. An excerpt from AR 600-8-19, paragraph 1-21 (Promotion of Soldier in the Disability Evaluation System (DES)) where the applicant highlighted subparagraphs:

(1) a. Soldiers in the DES process who are pending a medical fitness determination remain otherwise eligible for promotion consideration, selection and pin-on. It also states no Soldiers who is in the DES process will lose his or her promotable status solely because a promotion list expires prior to a vacancy for promotion becomes available.

(2) e. Per provision of Title 10 USC, section, 1372, Soldiers on a promotion list who are retired for physical disability or who are placed on the TDRL at the time or retirement for disability will be retired for disability at the promotion list grade. The Soldier will be promoted effective the day before placement on the retired list or TDRL regardless of cutoff scores, sequence numbers or position availability. In all cases, the Soldier must be otherwise be eligible for promotion, requirements of the noncommissioned officer professional development system are waived.

5. On 12 August 2024, in the processing of this case, the U.S. Army Human Resources Command (AHRC) provided an advisory opinion regarding the applicant's request for promotion to the rank/grade of SGT/E-5. The advisory official recommended the applicant's request be approved. The Veterans Inquiry Branch of AHRC will use this response to correct his DD Form 214 to reflect he was promoted to the rank/grade of SGT/E-5 effective 26 January 2020 per AR 600-8-19. A promotion order was not included due to the applicant's separation from the Army and no longer in the personnel system Integrated Personnel and Pay System-Army. A promotion transaction cannot be completed. He is not entitled to back pay.

6. On 14 August 2024, the Army Review Boards Agency Case Management Division provided the applicant the advisory opinion for review and comment. The applicant has not responded.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.

2. The Board concurred with the conclusion of the advisory official that the evidence confirms the applicant should have been promoted to SGT prior to his placement on the TDRL. The Board determined the applicant's DD Form 214 should be corrected to show he was promoted to SGT/E-5 effective 26 January 2020.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

 GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by correcting his DD Form 214 as follows:

- Replace the entry in item 4a with "SGT"
- Replace the entry in item 4b with "E05"
- Replace the entry in item 12i with "2020 01 26"

X

CHAIRPERSON

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) in effect at the time, prescribes the enlisted promotions and reductions function of the military personnel system. Paragraph 1-21 (Promotion of Soldiers in the Disability Evaluation System), Soldiers in the DES process who are pending a medical fitness determination (referral to a medical evaluation board remain otherwise eligible for promotion consideration, selection, and pin-on. The issuance of a permanent profile of "3" or "4" alone will not be used as the sole basis for determining PMOS disqualification. No Soldier who is in the DES process will lose his or her promotable status solely because a promotion list expires prior to a vacancy for promotion becoming available. Per the provisions of Title 10 USC section, 1372, Soldiers on a promotion list who are retired for physical disability or who are placed on the temporary disability retired list (TDRL) at the time of retirement for disability will be retired for disability at the promotion list grade. The Soldier will be promoted effective the day before placement on the retired list or TDRL regardless of cutoff scores, sequence numbers, or position availability. In all cases, the Soldier must otherwise be eligible for promotion (the NCOPDS requirements in paragraph 1-29 are waived).
3. Title 10 USC, section 1372 (Grade on retirement for physical disability: members of armed forces), 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 Title 10 USC section, 1201 or 1204, or whose name is placed on the TDRL under Title 10 USC section, 1202 or 1205, is entitled to the grade equivalent to the highest of the following:
 - a. 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. 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. 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. 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//