

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240003078

APPLICANT REQUESTS: in effect, correction of his records to show he was permanently retired for disability in the rank/grade 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)
- Army Career Tracker Screenshot of Applicant's Order of Merit List (OML) as of 21 May 2021

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. The applicant states he was promotable with an OML of 383 out of 2224. He was informed he could be eligible for advancement, but he was on terminal leave and did not question it.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 16 April 2008.
 - b. On 1 October 2014, he was promoted to SSG/E-6.
 - c. On 24 February 2021, a PEB convened and found the applicant physically unfit and recommended a rating of 60 percent and permanent disability retirement.
 - d. The applicant was honorably retired due to permanent disability on 27 August 2021 in the rank/grade of SSG/E-6 with an effective date of pay grade of 1 October 2014.

4. The applicant provides a screenshot from his Army Career Tracker, which shows his OML of 383 out of 2224 as of 21 May 2021.

5. In the processing of this case an advisory opinion was received from the U.S Army Human Resources Command. On 21 January 2025, the Chief, Senior Enlisted Promotions for the promotions branch stated the applicant was evaluated on the Fiscal Year 2021 SSSG Evaluation Board and received an OML of 383. The Fiscal Year 2021 SSG Evaluation List began promotions on 1 October 2021. [Applicant] separated on 27 August 2021, making him ineligible for a Disability Evaluation System (DES) promotion on that date as all promotions came from the Fiscal Year 2019 SFC Promotion List.

a. During the switch to evaluation boards, the naming of the boards changed, no longer reflecting the rank to which selected and promoted (promotion board), but to the rank in which evaluation (Evaluation Board). During this transition period, there was no promotion or evaluation board for Fiscal Year 2020 for the rank of SSG or SFC. Therefore, the Fiscal Year 2019 SFC promotion board was extended to promote those SSGs for promotion to SFC over a two-year period into the fall of 2021.

b. The Fiscal Year 2019 SFC Promotion List, which [Applicant] was not selected for promotion on, promoted through the 31 September 2021. Meaning, any promotions through the end of September 2021 came exclusively from the Fiscal Year 2019 SFC Promotion List to include those Soldiers who were medically retired or separated under the DES. In order to receive a DES promotion, the Soldier has to be on a valid list used currently for promotion but was discharged prior to receiving the promotion.

6. On 22 January 2025, the applicant was provided with a copy of the advisory opinion for review and/or comment.

7. 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. 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 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.

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 her record is absent evidence that shows he was promoted to sergeant first class (SFC)/E-7. The Board reviewed and concurred with the U.S. Army Human Resources Command's advising official finding the applicant was non-selected for the Fiscal Year 2019 selection board to SFC/E-7 and therefore was not on a valid promotion list prior to his discharge.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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.

5/12/2025

 

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, 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. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) provides for the promotion and reduction of enlisted Soldiers. Paragraph 1-20(c) states per the provisions of Title 10, U.S. Code, 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. Title 10, USC, section 1372 (Grade on retirement physical disability, members of the 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. 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 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//