

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240003352

APPLICANT REQUESTS: placed on the Permanent Disability Retired List (PDRL) in the rank/grade sergeant first class (SFC)/E-7.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- E-mail with unit, the administrative sergeant advised the applicant he was being considered for promotion and he needed to complete and return several documents for processing
- Screenshot of a computer database shows:
 - Applicant's name
 - He was eligible (does not state what he was eligible for)
 - Date of rank
 - Pay entry base date
 - Enlisted grade of E-6
 - Duty status of Active Guard/Reserve (AGR)
 - Military Occupational Specialty (MOS) of 92Y (Unit Supply Specialist)
 - Accepted (does not state who accepted and what was accepted)
 - Statewide (does not state what statewide means)
- Statement from [REDACTED], First Sergeant for the 40th Infantry Division stated:
 - He confirmed the applicant was on the Fiscal Year 2021 (FY21) Enlisted Promotion List
 - The applicant was undergoing a Medical Evaluation Board (MEB) during the time of the promotion board
 - According to Title 10 United States Code (USC), section 1372 (Grade of Retirement for Physical Disability: members of the Armed Forces), the applicant should have been retired in the rank/grade of SFC/E-7

- Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions), paragraph 1-24j referenced Soldiers not being removed from the promotion list who are undergoing a medical separation

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:

- On 20 January 2021, he submitted his documents for consideration for promotion to SFC
- During the same period of time, he was being evaluated for a medical retirement
- On or about the first week in June 2021, he was recommended for promotion to SFC
- Immediately after his recommendation for promotion, he was asked if he would accept a promotion at an emergency response unit
- He accepted the position
- Approximately 2-days later, his command sergeant major (CSM) suggested he revisit accepting the position assignment due to the unit's mission due to his medical condition
- Putting mission first, he agreed to decline assignment to the emergency response unit
- A short time later, his medical evaluation was expedited and his retirement date was set for 30 June 2021
- This did not give him the opportunity to receive his promotion to SFC/E-7
- A screenshot of the promotion list shows he was eligible and accepted for promotion
- his rank/grade on the PDRL should be corrected to SFC/E-7 in accordance with Title 10 USC, section 1372
- his promotion was overlooked due to his expedited medical retirement

3. A review of the applicant's service record shows:

- On 30 April 1999, he enlisted in the Army National Guard of the United States (ARNGUS) and he had continuous service through extensions or reenlistments
- On 9 August 1999, he was ordered to initial active duty for training by Orders Number 86-9, dated 25 May 1999
- On 20 January 2000, he was awarded MOS 91B (Medical Specialist) by Orders Number 006-215, dated 6 January 2000

- On 20 January 2000, he was released from active duty and reverted to the control of the ARNGUS
- On 16 January 2005, he was ordered to Full Time National Guard Duty (FTNGD) in an AGR status by Orders Number 25-1045, dated 25 January 2005, he had continuous FTNGD through follow on orders
- On 1 August 2005, he was promoted to the rank/grade of sergeant (SGT)/E-5 and awarded MOS 92Y2O (Unit Supply Specialist) by Orders Number 258-1032, dated 15 September 2005
- On 21 October 2006, the applicant received a referred evaluation report and rated as marginally achieved course standards for the Warrior Leaders Course (WLC) due to failure to meet height/weight standards and failure of the Army Physical Fitness Test (APFT), he was considered an academic course graduate
- On 15 June 2007, he was promoted to the rank/grade staff sergeant (SSG)/E-6 by Orders Number 173-1059, dated 22 June 2007
- During the period of 13 through 24 October 2007, he achieved course standards for the Basic Noncommissioned Officer Course (BNCOC) Phase I
- During the period of 5 through 19 April 2008, he achieved course standards for BNCOC Phase II
- On 16 September 2010, his battalion commander barred him from reenlistment due to:
 - On 10 May 2007, he marginally graduated from WLC due to failure of the APFT and body composition standards
 - 27 January 2009, he was formally counseled for insubordinate conduct towards a warrant officer and placement under direct supervision to ensure he met his duty obligations
 - 13 February 2009, he was formally counseled for failure to meet his duty obligations
 - 3 August 2009, he was formally counseled for his poor work performance, lack of communications and conduct unbecoming
- On 18 October 2010, he accepted non-judicial punishment for failure to obey a lawful order, his punishment included: reduction in rank/grade to SGT/E-5 and forfeiture of pay suspended for 180-days
- On 10 November 2010, the punishment from the Article 15 was vacated and he was reduced to SGT/E-5
- On 21 October 2010, he was reduced in rank/grade to SGT/E-5 for misconduct with the same date of rank by Orders Number 5-1007, dated 5 January 2011
- On 13 September 2013, he was promoted to the rank of SSG/E-6 by Orders Number 276-1035, dated 3 October 2013
- On or about 17 April 2017, his chain of command recommended him for consideration for promotion to the next higher grade

- During the period of 12 through 26 April 2017, he achieved course standards for the Senior Leaders Course
- On or about 3 April 2018, his chain of command recommended him for consideration for promotion to the next higher grade
- On or about 3 April 2019, his chain of command recommended him for consideration for promotion to the next higher grade
- During the rating period of 31 August 2018 through 30 August 2019, he failed to meet body fat composition standards, his rater rated his overall performance as did not meet standard, his senior rater rated his overall potential as qualified but showed difficulty working with others
- On 7 April 2021, the U.S. Army Physical Disability Agency revised the findings of a formal Physical Evaluation Board (PEB) and he was found not to be physically fit for retention standards and recommended to be placed on the PDRL with a 70 percent disability for post traumatic stress disorder and abdominal pain
- On 30 June 2021, he was released from active duty and placed on the PDRL, under the provisions of Title 10, USC, section 1201, effective 1 July 2021 with a 70 percent disability and retired in the rank/grade SSG/E-6 by Orders Number 153-0002, dated 2 June 2021
- On 30 June 2021, he was released from active duty and assigned to the U.S. Army Reserve Control Group (Retired Reserve), DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:
 - Item 4a (Grade, Rate or Rank): SSG
 - Item 4b (Pay Grade): E-6
 - Item 12i (Effective Date of Pay Grade): 13 September 2013
- On 1 July 2021, he was assigned to the PDRL due to a permanent disability by Orders Number 1626863, dated 24 January 2022

4. On 24 January 2025, in the processing of this case, the National Guard Bureau (NGB) provided an advisory opinion regarding the applicant's request to be placed on the retired list in the rank/grade of SFC/E-7. The advisory official recommended disapproval of his request. The PEB found the applicant to be unfit for retention standards due to multiple medical conditions which prevented continuation of his service in the ARNGUS. Therefore, he was medically retired with a 70 percent disability rating and placed on the PDRL effective 1 July 2021.

a. In accordance with Army regulations and laws for Soldiers who are on the promotion list and meet the promotion criteria, they will be placed on the retired list in the next higher grade they would have been promoted had it not been for the physical disability for which the Soldier was found to be unfit for retention.

b. A review of the applicant's service record found the applicant was retired from the ARNGUS effective 30 June 2021 and the Fiscal Year 2021 (FY21) Enlisted Promotions List was published on 22 July 2021. A review of the FY20, Enlisted Promotions List, the applicant's name could not be found. The screenshot provided by the applicant is a roster of Soldiers who were eligible for promotion and their elections which units use to identify assigned Soldier's administrative data and promotion eligibility and not an official promotion list.

5. On 29 January 2025, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

6. On 12 February 2025, the applicant responded stating he was not denied promotion, his name was removed from the promotion list for SFC by his CSM who assured him his records would be revisited for promotion during his final days of the MEB.

a. Shortly after his name was removed from the promotion list, the division G4 contacted him regarding a vacant SFC position, which he thought was unusual due to being so close to his medical board. He did reach out to his CSM for assistance and guidance; however, he did not respond. The CSM went as far as to block him on the Facebook application to avoid communicating with him.

b. The advisory from the NGB references Army regulations regarding medical promotions and regular promotions, not the facts of his particular case. The advisory also stated the screenshot was a roster containing the name of Soldiers who were eligible for promotion and their elections which confirms he was eligible and on the list. The screenshot may not have been the actual list, but it provides documentation that he was eligible at the time.

The applicant also provided the:

- screenshot which shows a roster of names that were eligible for promotion which stated he was eligible and accepted for promotion sent by Readiness NCO
- Facebook screenshot of his message to the CSM with a check mark which confirms it was read with no reply

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of

the applicant’s petition, available military records and the National Guard Bureau – Special Actions Branch advisory opinion, the Board concurred with the recommendation for disapproval. The Board determined that the Physical Evaluation Board (PEB) found the applicant unfit for retention due to multiple medical conditions that prevented continuation of service in the ARNGUS. As a result, the applicant was medically retired with a 70 percent disability rating and placed on the Permanent Disability Retired List (PDRL), effective 1 July 2021.

2. The advisory opinion noted that the screenshot provided by the applicant was a roster of Soldiers eligible for promotion and their elections—used administratively by units to track personnel data and promotion eligibility—but did not constitute an official promotion list. Furthermore, the Board observed that the applicant’s retirement from the ARNGUS became effective on 30 June 2021, while the Fiscal Year 2021 (FY21) Enlisted Promotions List was published on 22 July 2021. The Board determined that the burden of proof rests with the applicant regarding the alleged removal of his name from a promotion list. Based on the advising opinion and the absence of evidence verifying the applicant’s promotion to Sergeant First Class (SFC)/E-7, which would support placement on the PDRL in that rank/grade, the Board denied relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.



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 NOTES:

1. Reference the enclosed request for correction of military records from the subject individual to correct his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period of service August 9, 1999 through January 20, 2000, by:
 - a. Delete Item 24 (Character of Service): Uncharacterized
 - b. Add: Item 24: Honorable
2. A review of the records listed below (enclosed) is sufficient to substantiate correction of the DD Form 214 without action by the Board.
 - DD Form 214 period of service August 9, 1999, through January 20, 2000
 - Orders Number 006-215, 6 January 2000, Headquarters, U.S. Army Medical Department Center and School and Fort Sam Houston, 91B MOS awarded, 20 January 2000
 - Army Regulation 635-8 (Separation Processing and Documents)
3. Please correct the applicant's DD Form 214 by deleting and adding the items shown in paragraph 1 above. Provide the applicant a copy of the corrections. Please ensure that the corrections are recorded in the applicant's official military personnel record.

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 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 or whose name is placed on the temporary disability retired list is entitled to the grade equivalent to the highest of the following: (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. (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.

3. Army Regulation (AR) 15-80 (Army Grade Determination Review Board and Grade Determinations), establishes policies, procedures, and responsibilities of the Army Grade Determination Review Board (AGDRB) and other organizations delegated authority to make grade determinations on behalf of the Secretary of the Army (SA). Paragraph 3–3. Physical disability cases: An enlisted Soldier being processed for physical disability separation or disability retirement, not currently serving in the highest grade served, will be referred to the AGDRB for a grade determination, unless the Soldier is entitled to a higher or equal grade by operation of law (see 10 USC 1212 and 10 USC 1372). 10 USC 1212 and 10 USC 1372 provide generally that a Soldier separated for physical disability will have retired or severance pay calculated based upon the higher of current grade, highest grade satisfactorily served (if not the current grade), or the grade to which one would have been promoted had it not been for the physical disability (that is, was on an approved promotion list). Soldiers denied advancement under this provision are not eligible for consideration later as a 30-year case.

4. AR 600-8-19 (Enlisted Promotions and Reductions) prescribes enlisted promotion and demotion (previously known as reduction) functions.

a. Paragraph 1-24a, promotion of Soldiers in the Disability Evaluation System a. Soldiers in the Disability Evaluation System (DES) process who are pending a medical fitness determination remain otherwise eligible for promotion consideration, selection, and pin-on. Soldiers approved for continuation on AD or Active Reserve duty after being found physically unfit by the DES process 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.

b. Paragraph 1-24 f, per the provisions of 10 USC 1372, Soldiers on a PRR (for the ARNG, the PSL is the OML for position vacancies) or who are established as most qualified or fully qualified for promotion by a HQDA evaluation board who are retired for physical disability (10 USC 1201 or 1204) or who are placed on the TDRL (10 USC 1202 or 1205) 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, OML/sequence numbers, or position availability. In all cases, the Soldier must otherwise be eligible for promotion in accordance with paragraph 1 – 11 (except for the Professional Military Education requirement which is waived).

c. Paragraph 1-24j, Soldiers pending a medical retention decision or medical separation will not be removed from a promotion list or OML until promoted or until after being determined fit for duty and afforded 180 days to retain promotion eligibility, provided they are otherwise qualified and eligible with this regulation.

5. AR 635-40 (Disability Evaluation for Retention, Retirement or Separation) establishes the Army Disability Evaluation System (DES) according to the provisions of Title 10, United States Code, Chapter 61 (10 USC Chapter 61) and DODD 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations. Paragraph 4-30 (Grade on retirement or separation for physical disability), the grade at which a Soldier is retired or receives disability severance pay will be the highest of the options listed below in accordance with the provisions of 10 USC 1212 and 10 USC 1372, respectively, and as implemented by AR 15–80 for determinations of highest grade satisfactorily held.

a. Current grade. No time-in-grade is required.

b. (Highest grade satisfactorily held), in accordance with AR 15–80, Soldiers determined unfit who are not currently serving in the highest grade served will be referred by the USAPDA to the AGDRB, unless the Soldier is entitled to a higher or equal grade by operation of law (10 USC 1212 and 1372) or the Soldier upon being advised of his entitlement to a review fails to submit matters. If a Soldier referenced in this paragraph does not receive a review by the AGDRB before the placement on the disability retired list, separation with severance pay for disability, or receives a review and is dissatisfied with the determination, the Soldier may apply to the Army Board for Correction of Military Records for a review of their retired grade.

c. (Grade to which the Soldier would have been promoted had it not been for the physical disability for which the Soldier was determined unfit), in general, this provision

pertains to Soldiers on a promotion list. For Active Army and RC enlisted disability cases, this option is implemented under the provisions of AR 600-8-19.

//NOTHING FOLLOWS//