

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20240005475

APPLICANT REQUESTS:

- correction to his rank on the Permanent Disability Retired List (PDRL) Orders to reflect sergeant first class (SFC) vice staff sergeant (SSG) with backpay
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Detailed Summary with Images
- Email correspondence with Physical Evaluation Board (PEB)
- Orders Number 257-0004, dated 13 September 2012
- Email correspondence with the U.S. Army Human Resource Command (HRC)
- Sergeant First Class Fiscal Year 2012 (FY12) Promotion List excerpt
- Order Number 264-2, dated 20 September 2012
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 21 September 2012
- DA Form 199 (Informal PEB Proceedings), dated 11 December 2014
- Email correspondence with the Veteran Evaluation Liaison Officer (VELO)
- Removal from Temporary Disability Retired List (TDRL), dated 15 January 2015
- Defense Finance and Accounting Service (DFAS) Letter, dated 5 February 2015
- Email correspondence with TDRL
- Title 10 United States Code (USC), Chapter 69 (Retired Grade) excerpt
- Army Regulation 600-8-19 (Enlisted Promotions and Demotions) excerpt
- All Army Activities (ALARACT) Message 146/2003 excerpt

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 believes his retired rank should reflect SFC, but his records still list him as SSG. His name appeared on the FY12 Promotion list to SFC with an effective date of rank (DOR) of 20 September 2012, one day before his retirement. Both his TDRL orders and is DD Form 214 were issued showing his retired rank as SFC. However, the PDRL orders list his rank as SSG even though they had the DA Forms 199 as reference, reflecting his rank correctly as SFC. Additionally, his retired compensation from the DFAS office shows he is paid at the rank of SSG. He has attempted to resolve the issue for more than 11 years and was only recently informed to apply to the ABCMR for assistance.

3. The applicant provides:

- a. A detailed summary with images highlighting the applicant's points for correction to his record to reflect his rank and pay as SFC upon retirement.
- b. Email correspondence with the PEB office showing communications of the applicant being listed on the FY12 Promotion list for SFC while in process for his medical retirement review.
- c. Email correspondence with the U.S. Army Human Resource Command (HRC) showing he was provided with the promotion orders to SFC with an effective date of 20 September 2012.
- d. The SFC FY12 promotion roster listing the applicant for promotion to SFC.
- e. Email correspondence with the Veteran Evaluation Liaison Officer (VELO) reflecting their assistance with attempting to resolve his issue for compensation and rank reflecting as SSG vice SFC.
- f. A memorandum dated 15 January 2015, from the U.S. Army Physical Disability Agency (USAPDA) shows the applicant was removed from Temporary Disability Retired List (TDRL) and placed on the PDRL in the rank of SSG.
- g. A letter from DFAS Retired and Annuity Pay, dated 5 February 2015 lists his compensation options due to his transfer from TDRL to PDRL in the rank of SSG.
- h. Email correspondence with USAPDA informing the applicant on the procedures to apply to the ABCMR for a records correction.
- i. The below listed policies, laws, or regulations in support of his request for correction to his rank:
 - Title 10 United States Code (USC), Chapter 69 (Retired Grade) excerpt

- Army Regulation 600-8-19 (Enlisted Promotions and Demotions) excerpt
- All Army Activities (ALARACT) Message 146/2003 excerpt

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

- a. He enlisted in the Regular Army on 25 July 2002.
- b. Orders 210-158 directed the promotion of the applicant to SSG with a date of rank of 1 August 2008.
- c. Orders 257-0004 dated 13 September 2012, released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permitted his placement of the TDRL. He was retired in the grade of SFC, effective 21 September 2021.
- d. Order Number 264-2 dated 20 September 2012, directed his promotion from SSG to SFC with an effective date of 20 September 2012.
- e. On 21 September 2012, he was retired from active duty. His DD Form 214 shows he completed 10 years, 1 month, and 27 days of active service. Block 4a (Grade, Rate or Rank) shows his rank as SFC.
- f. A DA Form 199 shows on 11 December 2014 an informal PEB convened and found the applicant physically unfit. The PEB recommended a combined rating of 50% and that the applicant's disposition be permanent disability retirement. His rank was listed as SFC. On 9 January 2015, the applicant concurred with the findings and waived a formal hearing of his case.

5. On 14 January 2025, the U.S. Army Human Resources Command (HRC), Chief, Senior Enlisted Promotions, Promotions Branch provided an advisory opinion in the processing of this case. He opined:

- a. There is only one order that establishes a Soldier's rank/grade and that is their official promotion order. His separation order/TDRL order was correct as it was published on 13 September 2012 while he was still a SSG. On 20 September 2012 they published his SFC promotion order with an effective date of 20 September 2012. This is the only official order which establishes his rank/grade, his DOR, and the effective date of his promotion to SFC. Based on this order, his DD Form 214 was updated as well to reflect his SFC rank at discharge. The above three documents establish that he is medically retired, he was placed on the TDRL, and this placement was done at the rank of SFC. These three documents provided to DFAS should have corrected his TDRL pay, and it is advised that they be resubmitted to DFAS for correction.

b. The available service record and the U.S. Army's official military personnel files reflect list the applicant as SFC. Even though he was incorrectly identified as a SSG on his placement on the Permanent Disability Retirement List (PDRL), the PDRL order does not establish rank.

6. On 21 January 2025, the advisory opinion was forwarded to the applicant for his acknowledgment and/or response. The applicant provided the following in his rebuttal:

a. While he is glad to see that the ABCMR agrees that he is a SFC (Ret), DFAS has only compensated him as a SSG since his retirement in 2012 and has refused to accept any documents from him as proof they were wrong. The USAPDA refuses to cut new orders despite proving that they cut the PDRL orders incorrectly. Both agencies demanded that HRC send a request to them to cut new PDRL orders and to send those orders and a message to DFAS to correct his retired rank and pay issues to include back pay to his retirement date. This also includes his TDRL time, difference in pay from disability and retired pay (since he was forced to take the lower disability pay based on incorrect rank) and his combat-related special compensation (CRSC) pay including back pay.

b. Additionally, he was instructed by DFAS to wait to submit his CRSC pay request until his rank was fixed. As a result of the error, he has lost over 6 years of retirement pay. Although there is a 6 year back pay limit, he should not be held to that as he was instructed to wait even though a change in rank is not listed as criteria for updating CRSC pay.

c. He would like to confirm and ensure that the ABCMR will be sending a request to the USAPDA to cut new orders and the orders be forwarded to himself and DFAS. He is hopeful the orders will enable DFAS to properly assess backpay effective upon his retirement in 2012.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation 600-8-19 (Enlisted Promotions and Demotions) Chapter 7-8. Service remaining obligation states:

a. The following service remaining obligations, from effective date of promotion, are required for promotion to SGT through SGM:

- To SGT and SSG, 12 months.
- To SFC through SGM, 36 months.

b. Service will be obligated from the effective date of promotion and Soldiers must extend within 90 days to meet the above requirements. However, Soldiers are exempt from this requirement if they are:

- Eligible through prior service for higher grade at time of retirement.
- Able to serve at least 6 months in the grade but will be involuntarily separated due to medical disqualification, action by a non-punitive board, or will reach their maximum years of service by grade (RCP), or maximum age.
- Currently undergoing a medical board process and are unable to extend. These Soldiers may be promoted, and, if found fit for retention they will immediately extend to meet the remaining service obligations, or be reduced without board action.

BOARD DISCUSSION:

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

a. The applicant contends that his rank reflected on his Permanent Disability Retirement List (PDRL) order does not accurately reflect his final grade held due to a promotion order published after his medical retirement processing. A thorough review reveals:

- The applicant was selected and formally promoted to Sergeant First Class (SFC) in accordance with an official promotion order
- The rank of Staff Sergeant (SSG) listed on the PDRL order does not align with the applicant's properly documented grade
- The applicant's records did not reflect any disqualifying factors or revocation of the promotion order
- Department of Defense Financial Management Regulation, Volume 7A, and applicable Army personnel regulations affirm that retirement and associated pay should be based on the highest grade satisfactorily held

b. Therefore, the Board determined that an administrative error occurred resulting in an inaccurate retirement grade. The applicant's transition to the PDRL should have reflected the rank of SFC.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable

decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:XX	:XX	:XX	GRANT FULL RELIEF
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:	:	:	GRANT PARTIAL RELIEF
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:	:	:	GRANT FORMAL HEARING
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:	:	:	DENY APPLICATION
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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 Army records of the individual concerned be corrected by showing he was placed on the PDRL in the rank/grade of SFC/E-7.

X //signed//

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) Chapter 7-8. Service remaining obligation states:
 - a. The following service remaining obligations, from effective date of promotion, are required for promotion to SGT through SGM:
 - To SGT and SSG, 12 months.
 - To SFC through SGM, 36 months.
 - b. Service will be obligated from the effective date of promotion and Soldiers must extend within 90 days to meet the above requirements. However, Soldiers are exempt from this requirement if they are—
 - Eligible through prior service for higher grade at time of retirement.
 - Able to serve at least 6 months in the grade but will be involuntarily separated due to medical disqualification, action by a non-punitive board, or will reach their maximum years of service by grade (RCP), or maximum age.
 - Currently undergoing a medical board process and are unable to extend. These Soldiers may be promoted, and, if found fit for retention they will immediately

extend to meet the remaining service obligations, or be reduced without board action.

4. Title 10, U.S. Code, Chapter 69, Section 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. 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//