

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2025

DOCKET NUMBER: AR20240009857

APPLICANT REQUESTS: correction to his service record to show he was promoted to the rank of master sergeant (MSG)/E-8 at the time of medical retirement with applicable back pay.

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum, Subject: Minutes of the First Sergeant/E-8 Enlisted Promotion System (EPS) Selection Board Fiscal Year 2013 (FY13) showing he was selected for promotion to MSG by the Board for FY13 with a ranking of 25th
- Title 10 U.S. Code 1372 (Grade on retirement for physical disability: members of armed forces) excerpt showing guidelines for eligibility for promotion to MSG upon medical retirement due to his eligibility and selection for promotion prior to his Medical Evaluation Board (MEB) Proceedings

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, in pertinent part:
 - He was selected for the MSG promotion list in 2013 prior to his MEB but was medically retired before he was promoted
 - He was unaware that he should have been retired at the higher rank
3. A review of the applicant's service record shows the following:
 - Having prior enlisted service in the U.S. Army Reserve, on 30 September 1985 he enlisted in the District of Columbia Army National Guard (DCARNG)
 - On 8 February 2005, a Memorandum for Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter) was issued

- Orders Number 316-014, dated 12 November 2009 was issued for promotion to the rank of sergeant first class (SFC)/E-7 with a retroactive effective date of 17 May 2008
- His record is void of the documents finding him physically unfit and recommending he be permanent disability retired
- NGB Form 22 (National Guard Report of Separation and Record of Service) shows honorable retirement for permanent disability retired in the rank of SFC, with service from 30 September 1985 to 12 January 2014 for a net service period of 28 years, 3 months, and 13 days
- Orders Number 015-011, dated 15 January 2014 was issued for retroactive honorable discharge from the DCARNG and assignment to the U.S. Army Retired Reserve effective 13 January 2014
- ABCMR Docket Number AR20150000040, decided on 26 May 2016 wherein he requested his separation from the DCARNG voided and that he be referred to the Integrated Disability Evaluation System (IDES) for disability evaluation by a medical evaluation board (MEB) and a physical evaluation board (PEB). The Board Decided he met the criteria for a referral to IDES
- Following the ABCMR decision, a PEB convened, on an undisclosed date, finding him physically unfit and recommended a rating of 70 percent and that he be permanent disability retired
- Order Number D 011-29, dated 11 January 2018 was issued for retroactive placement on the retired list, at 70 percent disability, in the rank of SFC/E-7
- Orders Number 054-006, dated 23 February 2018 was issued amending Orders Number 015-001 to reflect retroactive placement on the permanent disability retired list effective 12 January 2014 in the rank of SFC/E-7

4. On 8 April 2025, the National Guard Bureau, Chief, Special Actions Branch provided an advisory opinion recommending approval of the applicant's request stating, in pertinent part:

a. He previously had an ABCMR determination that granted him relief by allowing him to medically retire by the U.S. Army Physical Disability Agency (USAPDA) with a 70 percent veteran's disability due to injuries incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict.

b. He claims that he was unaware until recently that Army Regulation 635-40 allowed for him to be retired at the grade to which he would have been promoted had it not been for the physical disability that prevented him from continuing his military service and therefore would like to be medically retired at the rank of MSG.

c. Pursuant to Army Regulation 635-40 Disability Evaluation for Retention, Retirement, or Separation para 4-30, which states the "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 Reserve Component officers, upon USAPDA confirming that the officer meets the requirements below, as applicable, the officer's orders will list the higher grade at the order's lead line for retired grade. Promotion orders are not issued.

d. Pursuant to Army Regulation 15-80, Army Grade Determination Review Board and Grade Determination, para 3-3. "A Soldier separated for physical disability will have retired or severance pay calculated based upon the higher of current grade, highest grade satisfactorily served, 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)".

e. He claims that he was eligible to be promoted to the rank of MSG and therefore should be retired in the rank of MSG because he was in a promotable status and the fact that he went thru the Integrated Disability Evaluation System (IDES) which eventually found him not fit for military service and medically retired him with a 70 percent medical disability on 29 November 2017 makes him eligible to be retired at the next higher grade per AR 635-40, and AR 15-80.

f. This office recommends that the applicant be promoted to the next higher grade of MSG be approved. A review his records showed that the District of Columbia National Guard put out a minute's memorandum of the enlisted promotion system selection board held on 6 February 2013. The memorandum shows a list of all Soldier's selected for promotion to the rank of Master Sergeant. He was on the list. Regulatory guidance states that a Soldier in a promotable status and going thru the IDES process should be retired at the highest grade for which the Soldier would have been promoted if not for his or her physical disability that prevented continuation of service due to being found unfit.

g. The opinion of this office was coordinated with the District of Columbia National Guard.

h. The following documents were sent as supporting evidence to the recommendation:

- DA Form 199, unspecified date
- Physical Disability Agency Letter
- Order Number D 011-29, dated 11 January 2018
- NGB Form 23B (Army National Guard Retirement Points History Statement)
- ABCMR Docket Number AR2015000040, dated 26 May 2016
- DA Form 199, dated 29 November 2017

5. On 11 April 2025, the applicant was provided a copy of the advisory opinion and provided an opportunity to respond. He did not respond.

BOARD DISCUSSION:

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. The Board reviewed and concurred with the NGB advisory noting the applicant had an ABCMR determination that granted him relief by allowing him to medically retire by the USAPDA with a 70 percent veteran's disability due to injuries incurred in the line of duty. A review his records showed that the District of Columbia National Guard put out a minute's memorandum of the enlisted promotion system selection board held on 6 February 2013. The memorandum shows a list of all Soldier's selected for promotion to the rank of MSG. He was on the list. Regulatory guidance states that a Soldier in a promotable status and going thru the IDES process should be retired at the highest grade for which the Soldier would have been promoted if not for his or her physical disability that prevented continuation of service due to being found unfit. Therefore, the Board determined relief was warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	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 Army and Army National Guard records of the individual concerned be corrected by amending:

- NGB Form 22 to show his retired rank as MSG effective 11 January 2014
- Order Number D 011-29, dated 11 January 2018, to show placement on the PDRL in the rank of MSG, effective 11 January 2014

The correction should not result in backpay of pay and allowances.

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 635-40 (Physical Evaluation for Retention, Retirement, or Separation), 4-30(c) states the 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. 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.

3. Title 10 United States Code (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//