

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2025

DOCKET NUMBER: AR20240010730

APPLICANT REQUESTS: correction to his service record to reflect the following:

- Retroactive promotion to the rank/grade of master sergeant (MSG)/E-8
- 20-year retirement with applicable back pay vice medical retirement
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 3 January 2023 to be addressed in the service record
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 27 May 2023 to be addressed in the service record
- DA Form 2823 (Sworn Statement), 16 November 2023, statement of J-B- wherein he provides support and confirms the applicant's statements of the investigation and wrongful charges
- Witness Statement, sergeant major (SGM) wherein he provides support and confirms the applicant's statements of the investigation and wrongful charges
- Memorandum, Subject: Final Report Opine Memorandum, 8 June 2023 wherein Group Judge Advocate, Major D-F-, states, in pertinent part, that probable cause does not exist for the applicant to have committed any of the offenses charged against him to include violation of the following:
 - Article 107, Uniform Code of Military Justice (UCMJ) False Official Statement
 - Article 134, UCMJ, Obstruction of Justice
 - Article 92, UCMJ, Failure to Obey a Lawful General Order or Regulation
 - Article 78, UCMJ, Accessory After the Fact (Aggravated Assault)
 - Article 134, UCMJ, Soliciting Another to Commit an Offense (Aggravated Assault)
 - Article 134, UCMJ, Misconduct of Serious Offense (Aggravated Assault)
 - Article 134, UCMJ, Misconduct of Serious Offense (Cruelty and Maltreatment)

- Fox News Report website excerpt covering the story of how the applicant was under investigation unjustly and how it affected his career and life
- Congressional Justice for Warriors Caucus Letter, 13 October 2023 wherein they highlight his honorable career, show the background check report of his investigated offenses, and request all actions be reversed allowing him to be retroactively promoted to the rank/grade of MSG/E-8 and receive a 20-year retirement pension
- Email correspondence with the witnesses who provided statements in support of the applicant's request
- Department of the Army Criminal Investigation Division (CID) Report of Investigation (Redacted) to be addressed below

FACTS:

1. The applicant states, in pertinent part:

- He was unjustly flagged by his command for over 3 years while he was investigated and then titled by CID for crimes he did not commit, to include the murder of sergeant (SGT) L-M-
- When threatened with a general court-martial by the serving Judge Advocate at his command he was coerced into a Medical Evaluation Board with less than two years before reaching his 20-year eligibility for retirement in order to avoid the court-martial
- The actions of his command subsequently prevented him from being promoted to the grade of E-8, receiving education benefits, and having the 20-year retirement pension
- He enlisted the help of the Warrior Defense Project, who in turn reached out to Congress for assistance and received national media attention in order to get CID to remove the title system from his record

2. A review of the applicant's available service record reflects the following:

- On 7 July 2004, he enlisted in the Regular Army and continued service through reenlistments
- His record is void of orders promoting him to the rank/grade of sergeant first class (SFC)/E-7, however, his Enlisted Record Brief shows his date of rank for SFC, effective 1 July 2011
- DA Form 1059 (Service School Academic Evaluation Report) shows he successfully completed the Special Forces Senior Leader Course from 7 -29 January 2013 in the rank of SFC
- On 3 January 2023, a PEB was conducted finding him physically unfit with a recommendation that he be permanent disability retired at 30 percent

- DD Form 214, ending 27 May 2023 reflects an honorable retirement for disability, combat related with service from 7 July 2004 to 27 May 2023 for a net active service of 18 years, 10 months, and 21 days; item 4a (Grade, Rate or Rank) shows SFC and item 12i (Effective Date of Pay Grade) shows 1 July 2011
- Order Number 0005027425.00, dated 13 June 2023 was issued for retroactive retirement award of the Meritorious Service Medal, effective 31 January 2023
- Order Number 0005652365.00, dated 10 August 2023 was issued retroactively placing him on the permanent disability retired list, effective 28 May 2023
- The applicant's records are void of any negative Noncommissioned Officer Evaluation Reports (NCOER); likewise, it is void a DA Form 1059 showing he completed the Master Leader Course

3. The U.S. Army CID provided a redacted Report of Investigation, dated 28 August 2024, showing he was investigated for the following offense(s) and that the report was generated to remove him for the title block for the below listed offenses:

- Article 134, UCMJ, Solicitation
- Article 134, UCMJ, Obstruction of Justice – Person Offenses
- Article 78, UCMJ, Accessory After the Fact - Aggravated Assault
- Article 134, UCMJ, Misprison of Serious Offense - Aggravated Assault
- Article 134, UCMJ, Misprison of Serious Offense - Cruelty and Maltreatment
- Article 107, UCMJ, False Official Statement

The full redacted report is available in the supporting documents.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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. The evidence of record establishes that the applicant enlisted in the Regular Army on 7 July 2004 and was promoted to the rank of SFC, effective 1 July 2011. The applicant successfully completed the Advanced Leader Course from 7–29 January 2013. On 3 January 2023, a PEB determined the applicant was physically unfit for continued service and recommended permanent disability retirement. The applicant's record is void of a DA Form 1059 (Service School Academic Evaluation Report) documenting completion of the Master Leader Course. Likewise, the record contains no official orders promoting the applicant to the rank of MSG. The absence of these documents indicates that the applicant did not meet the regulatory requirements for promotion to MSG, which include successful completion of the Master Leader Course and issuance of promotion orders. Under the governing regulations, promotion to MSG

requires both completion of prescribed professional military education and publication of promotion orders. The DA Form 1059 serves as the official record of course completion, and promotion orders are the authoritative instrument conferring rank.

2. The Board noted, in this case, while the applicant completed the Advanced Leader Course and attained the rank of SFC, the record does not substantiate completion of the Master Leader Course or issuance of promotion orders to MSG. The Board must rely on the presumption of regularity, which holds that official records are correct unless clear evidence demonstrates otherwise. The applicant has not provided documentation sufficient to overcome this presumption. Furthermore, the PEB's finding of physical unfitness and recommendation for permanent disability retirement does not substitute for the regulatory requirements governing promotion. Moreover, the applicant's DD Form 214 shows he completed 18 years, 10 months, and 21 days of service and he does not qualify for a length of service retirement in accordance with the applicable statute. Therefore, the Board denied relief.

3. 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

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. Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions) provides in Section IV (Promotion to Sergeant through Sergeant Major) that Soldiers undergoing medical evaluation processing will be considered for promotion board action or, if already promotable, will not be denied promotion based on medical disqualification if they are otherwise qualified for promotion.

a. Paragraph 1-21 (Promotion of Soldiers in the Disability Evaluation System) provides that Soldiers on a promotion list who are retired for physical disability (Title 10 USC, sections 1201 or 1204) or who are placed on the Temporary Disability Retired List (TDRL) (Title 10, USC, sections 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, sequence numbers, or position availability. In all cases, the Soldier must otherwise be fully eligible for promotion.

b. Paragraph 4-13 (Rules for processing request for Standby Advisory Board (STAB)) STABs are convened to consider records of those:

- Otherwise eligible Soldiers whose records were not reviewed by a centralized selection board
- Soldiers whose records were not properly constituted, due to material error, when reviewed by the regular board

- Recommended Soldiers on whom derogatory information has developed that may warrant removal from a recommended list

c. Soldiers selected by a STAB will be added to the appropriate recommended list and promoted along with their contemporaries when their sequence number is reached.

d. Reconsideration normally will be granted when one or more of the following conditions existed on the Soldier's Army Military Human Resources Record (AMHRR) and was reviewed by a selection board. Soldiers requesting reconsideration under paragraphs (2) through (6) normally will be granted reconsideration only for the most recent board held prior to the Soldier's request.

- An adverse NCOER reviewed by a board and was subsequently declared invalid in whole or in part and was determined by the Army review Boards Agency to constitute a material error
- Court-Martial orders were filed in the performance folder of the AMHRR when the findings were not guilty
- Absence of an award of a Meritorious Service Medal or higher (initial award only)

e. Table 7-4 shows for promotion to MSG a member must complete the Master Leader Course

f. Time in grade for promotion from SFC to MSG is 36 months as a SFC and time in service is 12 years

2. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) sets for the policies for the disposition of Soldiers found unfit because of physical disability reasonably to perform the duties of his/her office, grade, rank, or rating. The regulation states:

a. The disability evaluation system assessment process involves two distinct stages: the MEB and the PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly

military retirement payments and have access to all other benefits afforded to military retirees.

b. Paragraph 3-1 that the mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

c. Paragraph 3-2b (processing for separation or retirement from active duty) disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. The presumption of fitness may be overcome if the evidence establishes that—

(1) The Soldier was, in fact, physically unable to perform adequately the duties of his or her office, grade, rank or rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(2) An acute, grave illness or injury or other significant deterioration of the Soldier's physical condition occurred immediately prior to, or coincident with processing for separation or retirement for reasons other than physical disability and which rendered the Soldier unfit for further duty.

3. AR 635-200 (Active Duty Enlisted Administrative Separations), Section 12-7 (Eligibility) states Soldiers who have completed 20 but less than 30 years of active federal service and who have completed all required service obligations are eligible, but not entitled, to retire upon request. Except as indicated in chapter 16 of this regulation, unless restricted in this section, Soldiers who have completed 19 or more years of active federal service may apply for retirement. The request must be made within 12 months of the requested retirement date except as indicated in chapter 16. Soldiers must complete at least 20 years of active federal service and all service obligations (see paragraph 12 – 8) by the requested retirement date.

4. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. 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.

//NOTHING FOLLOWS//