

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240011439

APPLICANT REQUESTS:

- To be promoted to the rank/grade of sergeant major (SGM)/E-9 as a result of his physical disability retirement
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Partial Fiscal Year 2016 (FY16) Regular Army (RA) U.S. Army Sergeants Major Academy (USASMA) Training and Selection List that lists the applicant by name
- Enlisted Record Brief dated 27 June 2017 that shows he was flagged on 24 April 2017 with code "FA (Removal from a selection list (Headquarters Department of the Army (HQDA) initiated))"
- DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) that shows the applicant as the offender and false official documents as the offense on 4 December 2011 (Item 10a (Commander's Remarks) shows no action taken due to a misunderstanding with the military police
- DD Form 214 (Certificate of Release or Discharge from Active Duty), effective 28 February 2018 that shows he held the rank of master sergeant (MSG)/E-8 and was medically retired

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 would like to be frocked to the rank/grade of sergeant major (SGM)/E-9

- he was removed from the selection list during his Physical Evaluation Board (PEB) and there was not a rule for MSG who were on the SGM promotion list in 2016
- he additionally states there is a DA Form 4833 in his file, but there was no action taken as the action explains it was a mistake
- he feels he was removed from the list by mistake and his retirement pay at MSG/E-8 can remain the same, he would like to be frocked to the rank of SGM/E-9

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

- He enlisted in the Regular Army on 26 February 1997
- On 15 August 2017, the U.S. Army Human Resources Command (AHRC) informed him via memorandum that HQDA convened a Standby Advisory Board (STAB) and he was recommended for and approved for removal from the FY16 Sergeant Major Training and Selection Board List
- On 10 October 2017, the PEB found him physically unfit and recommended permanent disability retirement
- Orders Number 332-0907 retired him from the Regular Army with an effective date of 28 February 2018 in the rank/grade of MSG/E-8
- Enlisted Record Brief dated 1 March 2018 shows the highest rank he held was MSG/First Sergeant/E-8; it also shows the highest Noncommissioned Officer Education System (NCOES) completed was the Senior Leader Course
- On 28 February 2018 he was honorably retired from the Regular Army for permanent disability; his DD Form 214 shows he held the rank of MSG/E-8

4. On 27 March 2025, in the processing of this case, the U.S. Army Human Resources Command (AHRC), Chief, Senior Enlisted Promotions, provided an advisory opinion pertaining to the applicant's request that states:

a. After a review of the applicant's request, the AHRC, Chief, Enlisted Promotions Branch has determined administrative relief is not warranted and unsubstantiated.

b. He was selected by the FY16 SGM Training and Selection Board for attendance to the SGM Academy. Specific guidance in the Memorandum of Instructions to the board (attached) specifically states: "These selection boards are convened under the authorities established within Army Regulation (AR) 600-8-19 (Enlisted Promotions and Demotions) and AR 614-200 (Enlisted Assignments and Utilization Management) to select candidates as required. Selection to attend to the United States Army Sergeants Major Course (USASMC) results in selection for promotion to SGM after the successful completion of the course." Furthermore, the FY16 SGM Training and Selection List Cover Memo (attached) released with this list specifically states in paragraph 5.b. "All Soldiers identified as selects on this list will be subject to additional administrative

review, and the list is not to be construed as a promotion, appointment, or permanent change of station order. Additionally, Soldiers listed herein should not assume that the structure of the list or the presence of a name on the list constitutes a firm forecast for promotion or appointment. Promotions will be announced by AHRC Enlisted Promotions Branch."

c. The FY16 SGM Training and Selection List (attached) does not assign a sequence number to any Soldier selected, it only identifies the Soldier as a resident for attendance to the USASMC. Promotions do not and cannot occur from this list as it has never been utilized for promotions. All Soldiers selected undergo a DA Suitability review where any derogatory information found from the time of enlistment to the current date (restricted section of the AMHRR, substantiated DA Inspector General reports, and reports filed with the U.S. Army Crime Records Center) would be grounds for a STAB and possible removal from the list. MSGs selected for the purpose of promotion to SGM will not acquire sequence numbers until they successfully graduate the USASMC, are then assigned a sequence number for promotion and those Soldiers and sequence numbers were published on the FY18 Active Component SGM Academy Sequence List (attached).

d. Therefore, policy for promotion to SGM specifically applies to those Soldiers who are graduates of the Academy. There is no exception to policy that should promote a nonpromotable Soldier to SGM. As stated in the current regulation at the time, AR 600-8-19, paragraph 1-28.d. Noncommissioned Officer Education System requirement for promotion and conditional promotion states: "There are no military education waivers to attain eligibility for promotion consideration or pin-on."

e. The applicant cannot be frocked to SGM as that only occurs when a promotable MSG is assigned to a valid SGM position, or when the Sergeant Majors Management Division decides to frock the entire graduating class. Attendance and graduation are a firm requirement for promotion. Per AR 600-8-19, paragraph 1-20e. "Per the provisions of 10 USC 1372, Soldiers on a promotion list who are retired for physical disability (10 USC 1201 or 1204) or who are placed on the temporary disability retired list (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, sequence numbers, or position availability." As stated in paragraph 3 above, it has been established that a Soldier on the SGM Training and Selection List is not a promotable Soldier and is not on a promotion list. Therefore, there is no possibility of a promotion to SGM that would satisfy 10 USC 1372.

5. On 3 April 2025, the applicant was provided with a copy of the advisory opinion for comment or rebuttal. He did not provide a response.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.

3. The Board concurs with the advisory opinion. The applicant did not graduate from the United States Army Sergeants Major Course (USASMC), he was not in a promotable status, nor is there evidence he was serving in a valid SGM position.

a. The applicant was selected by the FY16 SGM Training and Selection Board for attendance to the SGM Academy; however, it has been established that a Soldier on the SGM Training and Selection List is not a promotable Soldier and this is not a promotion list.

b. Selection to attend to the course results in selection for promotion to SGM after the successful completion of the course. MSGs selected for the purpose of promotion to SGM will not acquire sequence numbers until they successfully graduate the USASMC. The policy for promotion to SGM specifically applies to those Soldiers who are graduates of the Academy. There is no exception to policy that should promote a nonpromotable Soldier to SGM. Furthermore, there are no military education waivers to attain eligibility for promotion consideration or pin-on.

c. Additionally, the applicant cannot be frocked to SGM as that only occurs when a promotable MSG is assigned to a valid SGM position, or when the Sergeant Majors Management Division decides to frock the entire graduating class. Attendance and graduation USASMC is a firm requirement for promotion.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                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.

5/6/2025

X

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, USC, 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 (AR) 600-8-19 (Enlisted Promotions and Reductions) in effect at the time, prescribes the enlisted promotions and reductions function of the military personnel system.

a. Soldiers who are pending referral to a MOS/medical retention board (MMRB) under AR 600-60 or referral to a medical evaluation board under AR 40-400 or physical evaluation board under AR 635-40 will not be denied promotion (if already promotable) on the basis of medical disqualification if they are otherwise qualified for promotion.

b. Soldiers who have been conditionally promoted but are unable to meet the condition of their promotion solely because of a medical condition that results in a finding of unfit by the Physical DES will not be subject to administrative reduction if otherwise qualified to retain promotable status.

c. Per the provisions of Title 10, USC, 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.

d. Conditional promotion to SGM. (1) Soldiers selected for promotion to SGM who are nongraduates of the Sergeants Major Course will be conditionally promoted. (2) Soldiers who fail to successfully complete, fail to remain eligible to be scheduled for or attend, who are denied enrollment in, or who do not attend their scheduled NCOES class (through fault of the Soldier) will be administratively reduced or removed from the promotion list. The effective date of administrative reduction is the date of the action that caused the Soldier to be ineligible to retain the promotion. The DOR will be the previous DOR held at the reduced grade.

3. 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 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:

- 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
- 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
- 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
- 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

4. AR 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 may, in its discretion, hold a hearing or request additional evidence or opinions.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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//