

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 December 2023

DOCKET NUMBER: AR20230001476

APPLICANT REQUESTS: reconsideration of his previous requests to:

- correct his records to show he was promoted to Specialist Four (SP4)/E-4
- back pay as a SP4
- a personal appearance before the Board

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

- Self-Authored Letter Request for Reconsideration
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- AR20190011427 Army Review Boards Agency (ARBA) Letter to the Applicant
- AR20210016712 ARBA Letter to the Applicant
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20210016712 Record of Proceedings (ROP)
- AR20210017181 ARBA Letter to the Applicant
- Letter from Secretary of Veterans Affairs
- ARBA Letter of Correction
- DD Form 215 (Correction to DD Form 214 Certificate of Release or Discharge from Active Duty)
- AR20210016712 Letter to the Applicant
- Self-Authored Letter to the Assistant Secretary of the Army Manpower and Reserve Affairs
- Postal Receipts
- Self-Authored Note
- Defense Finance and Accounting Service (DFAS) 31 United States Code (USC), section 3702 Authority to Settle Claims

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's cases by the ABCMR in Docket Numbers

- AR20190001784 on 24 May 2019
- AR20190011427 on 13 February 2020
- AR20210016712 on 14 March 2022.

2. The applicant states in effect and pertinent part:

a. He would not accept the Board's bogus decision. The ABCMR had not addressed his application. He was appealing the decision to the Secretary of the Army (SECARMY) for a hearing because the ABCMR had not completed a thorough investigation into his military records.

b. Page 4 of the Board's decision would be investigated for false charges of being Absent Without Leave (AWOL). Items 3 through f required a federal investigation and he wanted to see concrete proof of the charges including the name of the superior Noncommissioned Officer (NCO) he was disrespectful to and failed to obey a lawful order from. His punishment consisted of forfeiture of pay, extra duty, and restriction. He asks the Board and the SECARMY to present all the evidence as indicated on page 4 items 3 through f.

c. The ABCMR sent the applicant a DD Form 215, which should be a DD Form 149. If the ABCMR is telling him that DD Form 215 is the new form, after 6 years of lying and misinformation, he was going to file a charge of deception, false documents, fraud, and misleading information against the ABCMR.

d. Let us say the new form is DD Form 215, all the ABCMR has done is lied, harassed and misinformed him with fraudulent letters from the ABCMR to keep from correcting his military records and compensating him for the last six months he was in the Army and his promotion to SP4.

3. The applicant's complete service record was not available for the Board's consideration. ARBA contacted the National Archives and Record Administration (NARA) and was informed his records had been checked out by another government agency; however, there were enough service records in the applicant's previous ABCMR cases to allow the Board to make a decision in his case.

4. The applicant's request for correction of his records to show he was promoted to the rank of SP4 and for payment of his last 6 months in the service had been considered by the board in:

a. AR20190001784, on 24 May 2019. The Board carefully considered the applicant's request, his statement, supporting documents, and evidence in the record. The Board discussed the absence of evidence in the record showing his promotion to SP4 and the orders that separated him from active duty after 1 year, 6 months, and 2

days of active service. The Board considered his transfer to the U.S. Army Reserve Control Group after his period of active duty service and determined that the DD Form 214 correctly reflected his active duty service. The Board found relief was not warranted.

b. AR20190011427, on 13 February 2020. The applicant's application and supporting documents had been considered by the Board in accordance with procedures and requirements in the ABCMR's governing law, Title 10, USC, section 1552, Department of Defense Directive 1332.41, and Army Regulation (AR) 15-185 (ABCMR) ordered by the SECARMY. According to the requirements of this law and these regulations, the Board found no preponderance of evidence that there was an error or injustice in the applicant's discharge or rank and determined that relief was not warranted.

c. AR20210016712, on 14 March 2022. 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. Evidence of record shows the applicant was inducted into the Army of the United States to serve for 2 years. However, the separation authority reflected on his DD Form 214 shows he was released early by way of a draw-down program for Army Soldiers. Therefore, the Board agreed there was no error nor injustice not to show he completed 2 years of service on the DD Form 214. The Board also agreed his record is void of any evidence that shows he was promoted to E-4 and held that rank, when he was released from active duty. The Board determined there was insufficient evidence to amend the previous Board's decision.

d. AR20210017181 letter, dated 12 April 2022, shows the applicant's request had been returned without action due to his NARA record being unavailable for the Board's review.

5. The applicant's service record contains the following documents for the Board's consideration:

a. USAREC Form 180-R (Acknowledgement of Service Obligation (6-Year Acknowledgment)), dated 23 July 1970 states the applicant having been inducted into the Army of the United States on 23 July 1970 for 2 years active duty acknowledged he had been informed of his service obligation. The entire form is available for the Board's review.

b. DA Form 2496 (Disposition Form) dated 12 October 1970, Subject: Request for Deferment from the Republic of Vietnam (RVN) states the applicant's requested deferment from RVN was approved. Upon confirmation of the facts pertaining to the

deferment request, the Assignment Information Card, appropriately annotated, would be the only correspondence forwarded to Headquarters, Department of the Army.

c. DA Form 2627-1 (Record of Proceedings Under Article 15 Uniform Code of Military Justice (UCMJ)), dated 21 December 1970, shows the applicant accepted Nonjudicial Punishment (NJP) under the provisions of Article 15, UCMJ, for being AWOL from on or about 13 December 1970 through on or about 21 December 1970. His punishment included forfeiture of pay per month for two months. The applicant did not appeal his punishment.

d. DA Form 20 (Enlisted Qualification Record) shows in item:

(1) 11 (Enlisted, Inducted, Reenlisted, Extended,) Army of the United States, 23 July 1970, 2 years, expiration date 30 July 1972.

(2) 18 (Assignment Limitations) Deferment from RVN.

(3) 33 (Appointments and Reductions) Private, 23 July 1970; Private/E-2, 25 September 1970; and Private First Class (PFC), 23 February 1971.

(4) 44 (Time Lost) 13 December 1970 through 21 December 1970, 8 days, AWOL.

e. Special Orders Number 24, published by Headquarters, 1st Armored Division, dated 2 June 1971, promoted the applicant to PFC, effective 23 February 1971.

f. DA Form 2627-1, dated 16 June 1971, shows the applicant accepted NJP under the provisions of Article 15, UCMJ, for treating with contempt and was disrespectful in language toward Sergeant (SGT) D- V- his superior NCO and disobeying a lawful order from SGT D- V-. His punishment included forfeiture of pay suspended, extra duty, and restriction. The applicant did not appeal his punishment.

g. Special Orders Number 121, published by Headquarters, 1st Armored Division, dated 9 September 1971, reassigned the applicant, in the rank of PFC, to the U.S. Army Overseas Replacement Station, Fort Lewis, WA, with a reporting date of 29 November 1971.

h. Special Order Number 005, published by Headquarters, U.S. Army Personnel Center, dated 5 January 1972 reassigned the applicant to United States Army Transfer Station, Fort Lewis WA, with a reporting date of 6 January 1972. These orders were amended changing his assignment to the U.S. Army Transfer Point, Fort Bragg, NC.

i. Special Orders Number 21, published by Headquarters XVIII Airborne Corps and Fort Bragg, dated 31 January 1972 relieved the applicant, in the rank of PFC, from active duty and transferred him to USAR Control Group (Annual Training), effective 2 February 1972.

j. DD Form 214, for the period ending 1 February 1972, honorably transferred the applicant to the USAR Control Group (Annual Training). Item 5a (Grade, Rate or Rank) shows PFC. He completed 1 year, 6 months, and 2 days of net active service. Item 16 (Terminal Date of Reserve/UMT Obligation) shows 22 July 1976. Item 26a (Non-Pay Periods) shows time lost, 8 days from 13 December 1970 through 21 December 1970.

k. Letter Orders Number 06-1122203, published by the Reserve Components Personnel and Administration Center, dated 23 June 1976, honorably discharged the applicant, in the rank of PFC, from the USAR Control Group (Annual Training), effective 22 July 1976.

l. The applicant's service record is void of orders promoting him to SP4 and information showing he was recommended for promotion to SP4.

6. The applicant provides the following documents, not previously considered:

a. AR20190011427, ARBA letter to the applicant, dated 26 August 2019, stating ARBA acknowledged receipt of the applicant's Application for Correction of Military Records, dated 9 August 2019. His application had been assigned a case number. The entire letter is available for the Board's consideration.

b. AR020210016712, ARBA letter to the applicant, dated 16 November 2021, stating ARBA acknowledged receipt of the applicant's Application for Correction of Military Records, dated 17 May 2021. His application had been assigned a case number. The entire letter is available for the Board's consideration.

c. AR20210016712, ROP, dated 14 March 2022, wherein the applicant highlighted portions of page 4 and portions of the references to bring to the Board's consideration. The entire ROP is available for the Board's review.

d. AR20210017181 ARBA letter to the applicant, dated 12 April 2022, wherein ARBA informed the applicant regarding his application, dated 12 August 2021, his NARA Records were unavailable for the Board's review and the ABCMR could not make a fair, impartial, and equitable determination of the facts without the applicant's official record. The applicant wrote "red flag. The entire letter of BS." The entire letter is available for the Board's review.

e. Letter from the Secretary of Veterans Affairs (VA), dated 5 December 2022, states it is their great responsibility and privilege at the Department of VA to provide the best care and services to Veterans, their families, caregivers, and survivors. A key part of that effort is making sure that everyone who enters a VA facility is treated with the dignity and respect they deserve. The letter goes on to talk about sexual assault and harassment having no place at the VA or its facilities. The entire letter is available for the Board's review.

f. AR20210016712 ARBA letter, dated 12 January 2023, which states the applicant's records were corrected in accordance with the findings of the ABCMR and they enclosed a copy of his DD Form 215. The DD Form 215 corrected item 18 (Remarks) of the applicant's DD Form 214 for the period ending 1 February 1972 by adding "member has completed first full term of service."

g. AR20210016712 ARBA letter, dated 12 January 2023, which states the ABCMR reconsidered the applicant's case on 14 March 2022 and denied the applicant's requested relief.

h. Self-authored letter to the Assistant Secretary of the Army for Manpower and Reserve Affairs, which states in effect:

(1) The applicant attached two postal receipts of letters he mailed to the recipient concerning correction of military records. The recipient had not responded to the letters, which let the applicant know her aide or assistant had kept the two letters trying to cover for B- W- and A- S- as well as others at the ABCMR.

(2) This is a very serious matter and if the applicant did not hear directly from the recipient about the letters, he would be taking the postal receipts to the Postal Inspector General and he was going to file a complaint of mail theft, which is a federal crime and find out who signed for both of the letters and why they did not give them to the recipient.

The entire letter is available for the Board's review in the supporting documents.

i. Two postal receipts and the applicant wrote, "these postal receipts will be faxed to the U.S. Postal Service Inspector to verify the name of the person who signed for these two letters and once he gets their names, he will file a charge of mail theft, which is a federal crime. This person is trying to cover for B- W-, ABCMR; and A- S-, ABCMR.

j. A self-authored note dated 3 April 2023, which states, the applicant will also be contacting the Secretary of Veterans Affairs about this abuse and harassment from the SECARMY's office. The SECARMY's secretary or aides have intercepted the letters and he would file a charge of mail theft.

k. DFAS Title 31, USC, section 3702, which states the Secretary of Defense shall settle claims involving uniformed service members' pay, allowances, travel, transportation payments for unused accrued leave, retired pay, and survivor benefits; and claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at Government expense. The entire document is available for the Board's consideration.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. The Board determined 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.

2. 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. The evidence of record shows the applicant was promoted to PFC/E-3 on 23 February 1971 by authority of Special Orders Number 24, published by Headquarters, 1st Armored Division, on 2 June 1971. There is no evidence in the record and the applicant did not provide any evidence that shows he was recommended for or promoted to SP4/E-4 prior to his separation on 1 February 1972. The DD Form 214 reflects the active duty rank/grade held by the Soldier at the time of separation. The applicant held the rank/grade of PFC/E-3 at the time of separation. Therefore, the Board found no error or injustice.

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 to amend the decision of the ABCMR set forth in Dockets Number.

- AR20190001784 on 24 May 2019
- AR20190011427 on 13 February 2020
- AR20210016712 on 14 March 2022.

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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) 635-5 (Personnel Separation Documents), in effect at the time, established standardized policy for preparing and distributing the DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service. The DD Form 214 is a summary of a Soldier's most recent period of continuous active service. The instructions for completing the DD Form 214 specified that all available records will be used as a basis for preparation of DD Form 214 including DA Form 20 and orders.

a. Block 5a - enter grade in which serving at the time of separation indicating whether permanent or temporary.

b. Block 5b - enter pay grade at the time of separation.

c. Block 16 - If the individual (other than Army National Guard personnel on Active Duty for Training) incurred a service obligation under Title 10, USC, subsection 651a (formerly the Universal Military Training and Service Act) and is being returned to State control as a member of the Army National Guard or is being transferred or returned to the Army Reserve for the purpose of satisfying the obligation, enter the date (day, month, and year) such service obligation should terminate. Time lost on active duty does not extend the period of service obligation incurred.

2. AR 624-200 (Promotions, Demotions, and Reductions, Appointment and Reduction of Enlisted Personnel), in effect at the time, prescribed the policies and procedures governing appointment and reduction of all enlisted personnel on active duty, other than active duty for training.

a. It states for appointments to grades E-3 and E-4; Company, Troop, Battery, or separate Detachment Commanders have the appointment authority of personnel assigned to their commands.

b. In order to be eligible for temporary appointment in individual must complete time in pay grade for promotion to E-4 6 months in the grade of E-3 and be recommended by the unit commander.

3. Title 31, USC, section 3702, also known as the Barring Statute, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U.S. Code, is relieving the Government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

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.

a. It 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. The ABCMR will decide cases on the evidence of record. It is not an investigative body.

b. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//