

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 February 2023

DOCKET NUMBER: AR20230004529

APPLICANT REQUESTS: in effect, correction of his military pay records to show his correct pay for the pay grades he held during his time served on active duty, and all backpay, as a result of the corrections.

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

- DD Form 149 (Application for Correction of Military Record)
- Congressional Privacy Act Waiver
- Applicant's statement to Senate representative
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 1 October 2015
- Enlisted Record Brief, 2 October 2015
- Email communication from the Army Review Boards Agency (ARBA) to Congressional Liaison, 23 June 2023
- Leave and Earnings Statements (LES), July 2011 to October 2015

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. He served between 2011 and 2015 and during that time he was only paid correctly for the first six months of his contract. This was the result of paperwork not being filed and then often being intentionally lost. He fought this injustice his entire enlistment. The progress he made gave him the correct rank on documentation, but his pay did not improve.

b. After leaving active duty with an honorable discharge, he continued to fight to fix this. This resulted in him being sent from the Fort Riley Military Pay Office to the Defense Finance and Accounting Service (DFAS) to the ABCMR and then back to

DFAS. He had to launch a congressional inquiry to get this solved but has encountered more hardships. He currently needs a DD Form 139 (Pay Adjustment Authorization) completed by the Fort Riley Finance Office, but they require copies of his DA Form 4187 (Personnel Action). He has learned that Fort Riley has no copies of these documents and without them the pay office will not help him any further regarding this matter. The documents he needs are DA Forms 4187 "PVT-PV2 DOR [Date of Rank] 5 January 2012, PV2-Private First Class (PFC)/E-3 DOR 5 July 2012, and PFC-Specialist (SPC)/E-4 DOR 5 July 2013."

c. His records show that he was a SPC/E-4 when he left the Army but was never paid as a SPC as a result of the above-mentioned issue. Without the mentioned documents this issue will continue to follow him around.

d. He spent over four years as an active-duty Soldier. During that time, he served honorably even through harassment, hazing, abuse, and mistreatment. He continued to serve and not make waves and fought to get this injustice fixed the right way only to have nothing to show for it. Lower enlisted are not paid much and to some, every cent counts. He served the majority of his contract being paid as a PVT/E-1 even though there was rank on paperwork and his chest. Not being paid correctly on top of everything else he was subjected to he believes is reason enough for this to be considered.

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

a. He enlisted in the Regular Army for a period of 4 years and 18 weeks on 5 July 2011. DD Form 4 (Enlistment/Reenlistment Document - Armed Forces of the United States) shows he enlisted in the pay grade of E-1.

b. On 12 April 2013 –

- DD Form 93 (Record of Emergency Data) shows his rank as PV1
- Servicemembers' Group Life Insurance Election and Certificate shows his rank as PV1

c. On 16 October 2013, Headquarters, 1st Infantry Division, Fort Riley, KS, published Orders Number RY-289-0393, which deployed the applicant in a temporary change of station status in support of Operation Enduring Freedom - Horn of Africa, Camp Lemonier, Djibouti, with a proceed date on or about 9 December 2013. The orders show his rank as PV1.

d. On 6 November 2013, DD Form 93 shows his rank as PV1.

e. An Army Achievement Medal certificate, Permanent Orders Number 100-008, dated 10 April 2014, which shows he was awarded the Army Achievement Medal for his superior service during Operation Enduring Freedom - Horn of Africa from 15 December 2013 to 1 June 2014. The certificate shows his rank as "private."

f. DA Form 4187 (Personnel Action) shows he was reassigned to a unit within his Brigade with a reporting date of 5 August 2014. The form shows his rank as PVT.

g. On 19 August 2014, DD Form 93 shows his rank as PV2.

h. On 27 July 2015, Headquarters, 1st Infantry Division and Fort Riley published Orders Number 208-0010, which assigned the applicant to the transition point for transition processing with a report date of 1 October 2015. The orders show his rank as SPC.

i. The applicant was honorably released from active duty and transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement) on 1 October 2015. DD Form 214 shows he completed 4 years, 2 months, and 27 days net active service. Item 4a (Grade, Rate or Rank) shows "SPC" and item 12i (Effective Date of Pay Grade) shows 5 July 2013.

j. Orders Number D-11-830875 published by the U.S. Army Human Resources Command honorably discharged the applicant from the USAR, effective 6 November 2018. The orders show his rank as SPC.

k. On 21 January 2020, the ABCMR responded to the applicant's petition for correction of his military pay records to reflect his correct pay for the four-year enlistment contract on active duty in Fort Riley, KS, and referred the applicant to DFAS for the requested action.

4. The DFAS website shows the following for basic pay for the following years:

a. Basic pay effective 1 January 2012 – PVT/E-1 with two years or less = \$1,491.00.

b. Basic pay effective 1 January 2013 – PVT/E-1 with two years or less = \$1,516.20.

c. Basic pay effective 1 January 2014 – PVT/E-1 with two years or less = \$1,531.50.

d. Basic pay effective 1 January 2015 –

- PVT/E-2 with two years = \$1,734.0
- PFC/E-3 with two years or less = 1823.40
- SPC/E-4 over two years = 2122.80, over three years = \$2,238.00, and over four years = 2,351.40

5. On 8 February 2024, DFAS responded to an inquiry from the Finance Team, Team Chief, pertaining to the applicant's promotions and Master Military Pay Account (MMPA). The DFAS official stated the applicant's promotions are as follows:

- PVT/E-1; 5 July 2011 to 31 May 2014
- PVT/E-2; 1 June 2014 to 31 October 2014
- PFC/E-3; 1 November 2014 to 1 October 2015

The applicant's MMPA does not show promotion to the rank/grade of SPC/E-4 and his official records are void of any documentation that verifies his promotion to the rank/grade of SPC/E-4.

6. In support of his case, the applicant provides:

a. Congressional Privacy Act Waiver which authorized his Senator or his staff to request and be provided with copies of any information regarding this matter. The applicant requested assistance with correcting his military pay records and to receive backpay.

b. His statement to Senate representative reiterating his contentions stated above and detailing the history of his requests to correct his military pay records and to receive backpay.

c. His ERB dated 2 October 2015, which shows in pertinent part, the following Dates of Rank –

- PVT - 5 July 2011
- PV2/E-2 - 5 January 2012
- PFC/E-3 - 5 July 2012
- SPC/E-4 - 5 July 2013

d. Email communication between ARBA and Congressional Liaisons, dated 23 June 2023, discussing the applicant's LESs being provided to the Board.

e. LESs for the periods of July 2011 to October 2015, which shows the applicant's pay allowances for the pay grades he held during his active duty service. The LESs can be reviewed in their entirety within the supporting documents. In pertinent part, the LESs show he was paid in the pay grade –

- E-1 from July 2011 to May 2014
- E-2 from June 2014 to October 2014
- E-3 from November 2014 to October 2015

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the information reflected on the applicant's ERB related to rank and date of rank, as well as the rank reflected on the applicant's LESs during those periods not matching, the Board concluded there was sufficient evidence of an error warranting a correction to the applicant's pay record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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█	█	█	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 records of the individual concerned be corrected so that ranks reflected on the applicant's military pay records match the information reflected on the applicant's Enlisted Records Brief, and that all backpay, as a result of the corrections, be paid out to the applicant.

5/14/2024

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. Title 31, USC, section 3702, also known as the barring act, 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, USC, 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.
3. Army Regulation (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. In pertinent part, it states that 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 based on the evidence of record. The ABCMR is not an investigative agency.

4. AR 635-8 (Separation Processing and Documents) prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents. Paragraph 5-6 (Rules for completing the DD Form 214) provides detailed instructions for data required in each block of the DD Form 214. The instructions for –

a. Block 4 (Grade, Rate, or Rank) state to verify that active duty grade or rank and pay grade are accurate at time of separation.

b. Block 12i (Effective Date of Pay Grade) state, from the most recent promotion document (or reduction instrument), enter the effective date of promotion or reduction to the current pay grade. Do not confuse with date of rank.

//NOTHING FOLLOWS//