

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230005684

APPLICANT REQUESTS: promotion to the rank/grade of corporal (CPL)/E-4.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's statement, 17 March 2023

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 never got to go to the proper training facility. He wanted Fort Gordon, GA. He was sent to Fort Huachuca, AZ, for a pilot program. While there waiting on school he was given the job of painting the rocks around the facility with whitewash paint mixed with gas. He thinks the mixture of gas and whitewash paint had a negative effect on his thinking. After that he was not the same for a long time.

b. Now that he looks back at his time in the world's greatest Army, he believes he was given a disservice by being sent to Fort Huachuca for his advanced individual training. At that time, he wanted to be in the Military Police. The program there was not ready and while waiting the first sergeant and the company commander assigned him a lot of different chores, the worst one being painting the rocks with whitewash paint mixed with gasoline. After that was over, he got lucky and was sent to Europe for about 30 months. He was discharged and stayed home for a short time. Then he thought he would try again and do something better, so he reenlisted and was sent to Fort Belvoir, Virginia, as a message center clerk. To better himself he applied for aircraft pilot training. He does not remember why he was not chosen, and things went downhill from there. He wishes he could do it all again. However, he could not do the physical part at his age.

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

a. He enlisted in the Regular Army on 15 June 1959.

b. DA Form 24 (Service Record) shows:

- 22 June 1959, he was assigned to Fort Hood, TX
- 14 September 1959, he was assigned to Fort Huachuca
- 2 March 1960, he was assigned to Germany

c. A DA Form 26 (Record of Court Martial Conviction) shows, on 9 March 1961, the applicant was charged and found guilty of being drunk and disorderly and being disrespectful in language toward a noncommissioned officer. His sentence consisted of forfeiture of \$30.00; reduction to private (PVT)/E-1; and restriction for 30 days. The sentence was approved on the same date.

d. DA Form 24 shows he was promoted/advanced to PVT/E-2 on 9 April 1961 and private first class (PFC)/E-3 (Temporary) on 26 May 1961.

e. On 17 March 1962, the commander notified the applicant that:

(1) It has been reported to him that on or about 5 February 1962, the applicant was absent from this unit without proper authority. Also, it was reported that on or about 18 February 1962, the applicant escaped from the legal apprehension of a Military Policeman.

(2) The commander proposed to reduce the applicant to the grade of E-2 for the above offenses under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), unless trial by court martial was demanded.

(3) The applicant was directed to acknowledge receipt of this communication by endorsement and the applicant will state in his endorsement whether he demanded trial in lieu of reduction under Article 15, UCMJ. If the applicant did not demand trial, the applicant will state whether or not he desires to appeal this punishment. The applicant may submit any matter in extenuation, mitigation, or defense.

f. He acknowledged receipt of basic communication and did not demand trial by court martial nor did he desire to appeal the punishment on 17 March 1962.

g. The applicant was honorably released from active duty and transferred to the U.S. Army Reserve Control Group (Reinforcement) on 4 June 1962. He completed 2 years, 11 months, and 20 days net service this period. DD Form 214 (Armed Forces of

the United States Report of Transfer or Discharge), item 3a (Grade, Rate or Rank) shows PVT/E-2.

h. On 27 August 1962, the applicant enlisted in the Regular Army for a period of 6 years.

i. Unit Orders Number 56 published by Headquarters and Headquarters Company (HHC), Third Battalion, U.S. Army Engineer Center Regiment, Fort Belvoir, promoted the applicant to the rank/grade of PFC/E-3 on 16 October 1962.

j. On 9 April 1963, an endorsement shows the applicant's Army Rotary Wing Aptitude Battery Test answer sheets were scored and he did not attain a passing score on the tests.

k. On 23 May 1963, he accepted non-judicial punishment (NJP) under the provisions of Article 15, UCMJ, for failure to report for duty. He made no attempt to contact medical authorities, go on sick call, or call his duty section to explain his absence. His punishment consisted of oral reprimand and extra duty for 14 days. He did not appeal.

l. On 21 June 1963, he accepted NJP under the provisions of Article 15, UCMJ, for being absent without leave from on or about 18 to 21 June 1963. His punishment consisted of reduction to PVT/E-2 and 14 days of restriction and extra duty. He did not appeal.

m. Unit Orders Number 29 published by HHC, Third Battalion, U.S. Army Engineer Center Regiment, Fort Belvoir, reduced the applicant to PVT/E-2, effective on with a date of rank of 21 June 1963.

n. On 10 September 1963, a Report of Psychiatric Evaluation shows the applicant was diagnosed with "7930 Observation, psychiatric." No disease found. The Chief, Mental Hygiene Consultation Service stated:

(1) The applicant's superiors report that he has little regard for military authority, has lost all interest in pursuing a military career, and has been performing in an inferior manner. It is said that he considers the military to be unfair. This attitude became noticeable after he failed to be promoted. Developmentally, he shows himself to have poor goal formation, a low frustration tolerance, and minimal ability to see a job through. He did manage a successful 3-year enlistment in service for which he received an honorable discharge.

(2) The applicant was oriented. There was no evidence to suggest psychosis, significant neurosis, or mental retardation. There is no disqualifying mental disease or

defect sufficient to warrant discharge under the provisions of Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Separation, or Retirement for Physical Disability) A or B. It is my opinion that this man is not insane, possesses sufficient mental capacity to know the difference between right and wrong, is considered mentally responsible for his actions and can participate in his defense.

(3) If, in the opinion of Command, the applicant has received sufficient trial of duty to demonstrate himself unsuitable for retention in the service, it is suggested he be considered for separation under the provisions of AR 635-209 (Personnel Separations - Discharge - Unsuitability).

o. On 19 September 1963:

(1) The applicant was notified by his commander that he was being recommended for discharge under the provisions of AR 635-209. He was advised of his rights, the basis for the action, and his right to counsel. He declined counsel, a hearing by a Board of Officers, and to submit statements in his own behalf.

(2) The commander formally requested separation action be initiated for the applicant, under the provisions of AR 635-209.

p. On 16 October 1963, the separation authority approved the applicant's separation under the provisions of paragraph 3, AR 635-209, and directed he be given a General Discharge Certificate.

q. The applicant was discharged from the Army on 1 November 1963. His service was characterized as under honorable conditions and he completed 1 year, 2 months, and 3 days net service this period. DD Form 214, item 3a (Grade, Rate or Rank) shows PVT/E-2 (P) [Permanent].

4. The applicant's record is void of documentation that shows he was promoted to the rank/grade of CPL/E-4 prior to his date of discharge.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. Although the applicant was twice advanced to the rank/grade of PFC/E-3, he was also reduced in grade to PVT/E-2 on two occasions. The Board found that, due to his repeated misconduct, the applicant never became eligible for promotion to specialist four/E-4 or a later appointment to CPL/E-4. Based on a preponderance of the evidence,

the Board determined the rank/grade the applicant held at the time of his discharge is not in error or unjust.

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.

4/15/2024

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. 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.
3. AR 635-5 (Separation Documents), in effect at the time, prescribes the separation documents that will be furnished to each individual who is separated from the Army. In pertinent part, the instructions for item 3a (Grade, Rate or Rank) state to enter grade in which serving at time of separation, indicating whether permanent or temporary.

//NOTHING FOLLOWS//