

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2024

DOCKET NUMBER: AR20230006584

APPLICANT REQUESTS: in effect, requests correction of his pay records to show his pay in the grade of private first class (PFC)/E-3 the last six to eight months of his service.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record).

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 in effect, from November 1982 through 15 March 1983 he received private (PVT)/E-1 pay; however, he was wearing PFC rank. He believes he should receive the pay for the rank which he was wearing at the time. He addressed this issue with his commander, but nothing was done to correct it.

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

a. The applicant enlisted in the U.S. Army Reserve (USAR) Delay Entry Program (DEP) on 29 May 1980 in the rank of PVT/E-1. On 11 July 1980, the applicant was discharged from the USAR DEP and enlisted in the Regular Army (RA).

b. The applicant's DA Form 2-1 (Personnel Qualification Record) shows in:

- Item 18 (Appointments and Reductions):
 - PVT/E-1 – Date of Rank (DOR) 11 July 1980
 - Private Two (PV2)/E-2 – DOR 1 December 1980
 - PVT/E-1 – DOR 9 January 1981
 - PV2/E-2 – DOR 1 June 1981 (lined through)
 - PFC/E-3 – DOR not legible (lined through)

- PV2/E-2 – DOR 1 June 1981 (lined through)
 - PFC/E-3 – DOR 1 October 1981 (lined through)
 - PV2/E-2 – DOR 20 November 1981 (lined through)
 - PV2/E-2 – DOR 21 November 1981 (lined through)
 - PFC/E-3 – DOR 1 September 1982 (lined through)
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- Item 21 (Time Lost) – Absent without leave (AWOL) on 16 February 1982
 - Item 35 (Record of Assignments) on 16 February 1982 AWOL

c. DA Form 2-2 (Insert Sheet to DA Form 2-1 Record of Court-Martial Conviction) shows on Headquarters, 3rd Brigade, 101st Airborne Division (Air Assault) Summary Court-Martial Order 41, the applicant was charged with one specification of failure to obey a lawful order. On 13 November 1981, he was sentenced to reduction to the rank of PV2/E-2 and forfeiture of \$200.00 which was adjudged on 13 November 1981 and approved on 20 November 1981.

d. On 9 January 1981, the applicant accepted Non-Judicial Punishment (NJP) for one specification of possession of marijuana. His punishment included reduction to the rank of PVT/E-1, forfeiture of \$250.00, and 30-days Correctional Custody Facility.

e. On 26 May 1981, the applicant in the rank/grade of PVT/E-1 accepted NJP for one specification of failure to report to his appointed place of duty. His punishment included forfeiture of \$116.00 and 14-days of extra duty and restriction.

f. On 24 July 1981, the applicant in the rank/grade of PV2/E-2 accepted NJP for one specification of failure to report to his appointed place of duty. His punishment included 7-days extra duty and restriction.

g. On 17 December 1982, the applicant plead guilty for the offense of simple possession of marijuana in Montgomery County, State of TN. The court document was void of his sentence.

h. On 20 December 1982, he received a mental health evaluation for consideration of separation for misconduct. He was cleared for any administrative action appropriate.

i. On 4 February 1983, the applicant's commander recommended that he be separated from active duty due to his civil court conviction. The recommendation shows the applicant's rank/grade to be PFC/E-3.

j. On 8 February 1983, after consultation with counsel, the applicant:

- waived consideration of his case by a board of officers; waived personal appearance before board of officers, and waived representation by counsel

- acknowledged he may expect to encounter substantial prejudice in civilian life and may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- if his discharge was less than honorable, he may apply for upgrade with the Army Discharge Review Board or the Army Board for Corrections of Military Records
- consideration by either board did not imply approval of an upgrade and he did not intend to appeal his case

The document signed by the applicant shows his rank/grade as PVT/E-1.

k. On 14 February 1983, the intermediate commander recommended he be discharged due to civil conviction. The endorsement shows the applicant's rank/grade as PVT/E-1.

l. The applicant's brigade commander recommended he be discharged due to civil conviction for possession of marijuana. The endorsement shows the applicant's rank/grade as PVT/E-1.

m. On 10 March 1983, the separation authority directed the applicant be discharged from active duty and receive an under other than honorable conditions discharge. The directive shows the applicant's rank/grade as PVT/E-1.

n. The applicant was discharged from active duty on 15 March 1983 for a civil conviction with an under other than honorable conditions characterization of service. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 2-years, 8-months, and 4-days of active service. It also shows in items:

- 4a (Grade, Rate or Rank) and 4b (Pay Grade); E1/PVT
- 12h (Effective Date of Pay Grade): 9 January 1981
- 29 (Days of Time Lost During This Period): 16 February 1982

o. The applicant does not provide contemporaneous Leave and Earnings Statements to show the pay grade at the time. Likewise, he does not provide any pay inquiries that he addressed the pay discrepancy during his military service or correspondence with the Defense Finance and Accounting Service (with supporting evidence) addressing his pay issue.

BOARD DISCUSSION:

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 served on active duty from 11 July 1980 to 15 March 1983. He was convicted by a court-martial on 13 November 1981 that reduced him to PV2/E-2. He received three NJPs on 9 January 1981, 26 May 1981, and 24 July 1981, and in each case, he was reduced to PVT/E-1. He was ultimately separated from active duty on 15 March 1983 following his civil court conviction. His separation packet listed his grade as PVT/E-1. His DD Form 214 shows his rank/grade as PVT/E-1 and his effective date of pay grade as 16 February 1982. The Board noted that the applicant does not provide contemporaneous Leave and Earnings Statements to show the pay grade at the time. Likewise, he does not provide any pay inquiries that he addressed the pay discrepancy during his military service or correspondence with the Defense Finance and Accounting Service (with supporting evidence) addressing his pay issue. As a result, the Board determined relief is not warranted.

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.

[REDACTED]

[REDACTED]

[REDACTED]

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. Department of Defense Financial Management Regulation 7000.14-R, Volume 7a (Military Pay Policy – Active Duty and Reserve Pay), prescribes the criteria for determining creditable service for military members; provides examples for computing valid creditable service; states periods of service that are not creditable for pay purposes; cites conditions for the payment of military pay entitlements; explains the computation of leave and conditions for leave accrual; and provides for situations where enlistments are not valid. Paragraph 3.1 (Basic Pay Entitlements) states members are entitled to receive pay according to their pay grade and years of service.

//NOTHING FOLLOWS//