

IN THE CASE OF: ██████████

BOARD DATE: 11 January 2024

DOCKET NUMBER: AR20230006854

APPLICANT REQUESTS: restoration of rank to private first class (PFC)/E-3.

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

- DD Form 149 (Application for Correction of Military Record)
- Magazine Articles
- Self-authored letter
- Department of Veterans Affairs (DVA) Rating Decision

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 he was reduced in rank from PFC to private (PV2)/E-2 a result of nonjudicial punishment accepted under Article 15 of the Uniform Code of Military Justice (UCMJ). He notes that prior to the action resulting in his reduction in rank, he was suffering from an injury prompting him to drink, become depressed, and make bad choices. He argues that he was supposed to be discharged due to a back injury. Since separating from the military, he has turned his life around. He created an organization called "Boots on the Ground" which helps homeless Veterans obtain housing. His service-connected injuries have now resulted in him being rated as 100 percent disabled by the DVA. As a matter of pride, he would like his former rank of PFC restored.

3. A review of the applicant's available service records reflects the following:

a. On 1 October 1986, the applicant enlisted in the Regular Army for 3 years at the rank of PV2.

b. On 19 February 1987, the applicant was advanced to PFC, effective 1 March 1987.

c. On 1 June 1988, a Physical Evaluation Board (PEB) convened finding the applicant physically unfit for continued military service with a recommendation that he be separated from military service with entitlement to severance pay if otherwise qualified.

d. On 18 July 1988, Headquarters Tripler Army Medical Center issued Orders Number 145-7 reassigning the applicant to the U.S. Army transition point pending separation processing.

e. On 5 August 1988, the applicant was medically discharged from military service. DD Form 214 (Certificate of Release or Discharge from Active Duty), item 4a./b. (Grade, Rate or Rank/ Pay Grade) reflects "PV2/E-2; item 12h. (Effective Date of Pay Grade) reflects "18 March 1988."

4. The applicant provides:

a. Magazine Article, reflective of a report pertaining to the applicant's business "Boot's on the Ground." A copy of this article is provided in its entirety for the Board's review within the supporting documents.

b. Self-authored letter reflective of the applicant's statement in support of the injuries that he sustained while on active duty which prompted his drinking and poor decision making resulting in his reduction in rank. This letter is further provided in its entirety for the Board's review within the supporting documents.

c. DVA – Rating Decision reflective of 3 of 8 pages of the applicant's overall DVA rated conditions. Upon review you will note that several of the applicant's disabling condition ratings were increased.

5. The applicant did not provide nor does his available service records contain orders, a DA Form 4187 (Personnel Action), or a DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) showing the basis for his rank reduction occurring on or about 18 March 1988.

#### 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. The Board found insufficient evidence to determine if the applicant's reduction in rank was unjust. In the absence of additional evidence showing the reason for his reduction in grade, the Board found it must be presumed that the reduction was properly

executed in accordance with the governing regulations. The Board determined the evidence does not support restoring his rank to PFC.

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.

4/1/2024

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CHAIRPERSON

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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. 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) 27-10 (Military Justice) provides that Nonjudicial punishment is imposed to correct misconduct-in violation of the UCMJ. Such conduct may result from intentional disregard of or failure to comply with prescribed standards of military conduct. Nonpunitive measures usually deal with misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity difficulty in adjusting to disciplined military life, and similar deficiencies. Included among nonpunitive measures are denial of pass or other privileges, counseling, administrative reduction in grade, administrative reprimands and admonitions, extra training, bar to reenlistment and military occupational specialty reclassification.

a. Section VII (Records of Punishment, DA Form 2627) provides that all Article 15 actions, including notification, acknowledgement, imposition, filing determinations, appeal, action on appeal, or any other action taken prior to action being taken on an appeal, except summarized proceedings (sec III and fig 3-1), will be recorded on DA Form 2627. For Soldiers E-4 and below (prior to punishment) who have been in the Army less than three years as of the date punishment is imposed, the original will be filed locally in nonjudicial punishment files. Such locally filed originals will be destroyed at the end of two years from the date of imposition of punishment or on the Soldier's transfer from the unit, whichever occurs first.

b. Section IV (Punishment) provides that the grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of Article 15 if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade.

c. When -a person is reduced in grade as a result of an unsuspended reduction, the date-of rank in the grade to which reduced is the date the punishment of reduction was imposed.

d. Paragraph 3-27 (Remission) provides that this is an action whereby any portion of the unexecuted punishment is canceled. Remission is appropriate under the same circumstances as mitigation. An unsuspended reduction is executed on imposition and thus cannot be remitted but may be mitigated. A reduction in grade may only be mitigated to a forfeiture of pay.

3. AR 600-200 (Enlisted Personnel Management System), Chapter 6 (Reductions in Grade) in effect at the time, provides that Company, Troop, Battery and separate detachment commanders may administratively reduce a Soldier in the grade of E-4 and below. Reduction, except for Article 15, UCMJ is announced in orders. When an Article 15 reduction is accomplished for misconduct and the Article 15 was directed to be filed on the restricted portion of the Official Military Personnel File, a DA Form 4187 will be

prepared for permanent filing in the Military Personnel Record Jacket to substantiate the reduction. It will not contain the reason for the Article 15. The DA Form 4187 will be removed and destroyed when the member is advanced or promoted to the next higher grade.

4. AR 635-5 (Separation Documents) in effect at the time states, that the DD Form 214 will reflect the conditions and circumstances that existed at the time the records were created. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate and reflects the conditions as they existed at the time of separation. Personnel officers will prepare and authenticate DD Form 214 prior to forwarding records to the transfer facility. All available records will be used as a basis for the preparation of DD Form 214, including DA Form 2-1 (Personnel Qualification Record) and orders. DD Form 214, Item 4a./b. (Grade, Rate or Rank/ Pay Grade) will reflect the service members grade, rate or rank and pay grade at the time of separation. Item 12h. (Effective Date of Pay Grade) will reflect the coinciding date of rank associated with items 4 a./b.

//NOTHING FOLLOWS//