

IN THE CASE OF: ██████████

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230007063

APPLICANT REQUESTS: reinstatement of her rank/grade of specialist (SPC)/E-4 with applicable back pay and allowances from 11 April 2018 to present.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4187 (Personnel Action), 30 April 2019
- DA Form 4856 (Developmental Counseling Form), 10 June 2019
- DA Form 4187, 16 September 2020
- DA Form 4856, 14 November 2020
- Memorandum, Subject: Appointment of Investigating Officer, 15 May 2021
- Memorandum, Subject: Findings and Recommendations, Army Regulation (AR) 15-6 (Procedures for Administrative Investigations and Boards of Officers), 7 July 2021
- DA Form 1574-1 (Report of Proceedings by Investigating Officer), 21 July 2021
- Leave and Earnings Statements (LES)

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, she was promoted to the rank/grade of SPC/E-4 on or about 11 April 2018. She was inappropriately reduced to the rank/grade of private first class (PFC)/E-3 on or about 30 April 2019 and received pay at the incorrect grade. Sergeant (SGT) ██████ should be held accountable. In 2019, SGT ██████ harassed her and sought a quid-pro-quo relationship. When she refused, he caused her reduction from E-4 to E-3, on or about 30 April 2019. She was later counseled that her rank would be reinstated. However, SGT ██████ reprised against her for making complaints against him. He caused her reduction a second time from E-4 to E-3, on or about 14 November 2020. An AR 15-6 investigation in July 2021 concluded that she should not have been reduced and was

owed back pay. However, she has never seen her record corrected and has never received back pay.

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

a. On 16 May 2015, the applicant enlisted in the U.S. Army Reserve in the rank/grade of private (PVT)/E-1 in military occupational specialty 42a (Human Resources Specialist).

b. DA Form 4187 (Personnel Action), dated 25 August 2016, shows the applicant was advanced to the rank/grade of PFC, effective on 28 July 2016, under the provisions of AR 600-8-19 (Enlisted Promotions and Reductions).

c. On 25 March 2019, Orders Number RC-084-0015 issued by Headquarters, U.S. Army Garrison, Fort Bliss, TX, deployed the applicant in a temporary change of station status in support of Operation Enduring Freedom Guantanamo for a period of 288 days with assignment to the 357th Military Police Company.

d. On 10 November 2019, the applicant was honorably released from active duty and transferred to her USAR unit. DD Form 214 (Certificate of Release or Discharge from Active Duty), item 4a ((Grade, Rate or Rank) shows "PFC" and item 12i (Effective Date of Pay Grade) shows "30 April 2019."

e. DA Form 4187, dated 16 September 2020, retroactively promoted the applicant to the rank/grade of SPC/E-4, effective on 1 November 2019 with a date of rank of 6 June 2017.

f. On 20 June 2023, Orders Number D-06-317792 issued by the U.S. Army Human Resources Command, honorably discharged the applicant from the USAR in the rank/grade of PFC, effective 20 June 2023.

4. The applicant provides:

a. DA Form 4187 dated 30 April 2019 which shows the applicant was reduced in rank/grade to PFC/E-3, effective 30 April 2019, under the provisions of AR 600-8-19, paragraph 10-1.

b. DA Form 4856 dated 10 June 2019 which shows the applicant was counseled by her unit first sergeant (1SG) for being administratively reduced on 30 April 2019 for multiple events of failing to report on time in the right uniform and communication with the chain of command. The unit 1SG signed the form but the applicant did not.

c. DA Form 4856 dated 14 November 2020 which shows the applicant was counseled by Staff Sergeant [REDACTED] human resources noncommissioned officer in charge for

(1) AR 600-8-19, chapter 2, section IV, correcting erroneous promotions (E-4 and below) rules 2-7 and 2-8, section 1-17 erroneous promotions and De Facto Status. Reduced from E-4 to E-3. Effective date of rank corrected to 30 April 2019, effective 13 November 2020.

(2) Soldier's effective date of rank inputted 1 November 2019 to E-4 with a date of rank of 16 June 2017 was erroneously appointed due to Flag Code J showing most recent Army Physical Fitness Test Failure on 14 March 2020, but originally issued 19 September 2019 for the same reason code. In accordance with section 1-17 (4) above Soldier does not qualify for De Facto Status Reduction, keeping any earnings while in higher grade due to the flag or statutory bar existing at the time of promotion.

(3) There is no minimum timeframe in which Soldier can promote back to SPC, this reduction is solely based off the standing flag as previous corrective action has already been fulfilled.

d. Memorandum, Subject: Appointment of Investigating Officer (IO) wherein Major [REDACTED] was appointed as an IO to conduct an informal investigation into facts and circumstances surrounding allegations of harassment within the 357th Military Police Company.

e. Memorandum, Subject: Findings and Recommendations, AR 15-6 Investigation and improper rank reduction of the applicant, which states in pertinent part in recommendations:

(1) The applicant's rank be advanced to SPC and receive back pay from battle assemblies and orders attended from her demotion date which was processed in January of 2021 till her expiration term of service date.

(2) The unit should review all flags quarterly to ensue service members are property flagged and proper documentation is available.

(3) The unit should develop a policy that reviews investigations to ensure an investigation is timely lifted after the completion of the investigation. Service members are not indefinitely flagged for an investigation.

f. DA Form 1574-1 which shows an investigation was conducted between 6 July 2021 and 21 July 2021 and the recommendations were provided in the memorandum identified in paragraph 4e above.

g. LES showing the applicant was paid in the rank/grade of PFC/E-3.

5. On 8 August 2023, the U.S. Army Criminal Investigation Division (CID) responded to the Army Review Boards Agency (ARBA) request for a Law Enforcement Report pertaining to the applicant. The report showed the subject was a SGT with the 525th Military Police Battalion and the victim was the applicant. The investigation was for abusive sexual contact. The investigation determined with legal review that no probable cause existed that the SGT committed a sexual assault or lesser included offense. No additional investigative efforts were required.

6. On 16 August 2023, the applicant was provided with a copy of the CID Law Enforcement Report to provide comments and or rebuttal.

7. On 25 August 2023, by email, the applicant responded to the CID Law Enforcement Report and stated:

a. She was never questioned regarding SGT [REDACTED] probable cause. The moment she rejected his invitations he became extremely contrive and made her life a nightmare. Multiple inappropriate text messages were sent prior to her even arriving to Guantanamo Bay. One of the many stated he had a bottle of alcohol waiting for her in the fridge. He was her noncommissioned officer at the time. She believed they had a normal peer relationship, given they met while they were both the same rank. His behavior started changing once she did not submit to his requests or suggestions. She believes he was on a mission to get her alone (peers from the 357th Military Police Company confirmed his plan) and once he realized that was not going to happen, he totally changed with her.

b. She was told to refrain from males, put on curfew, always have a battle buddy even to go to the grocery store, put on extra duty and much more. She even received a negative counseling for not having a battle buddy from her company while hanging out with a roommate and friends (Initially she was housed with a different company). No one had any sort of restrictions or stipulations like she did. He was out to get her. She received three negative counseling's following a demotion within the first month 30 April 2019.

c. Additionally, she was threatened by SGT [REDACTED] that more was expected of her because she was a female and was threatened that if she got three negative counseling's she would be demoted. Immediately, she felt the target on her back being the new girl on the island.

d. She was new and late to the deployment because she was sent to replace someone. SGT [REDACTED] had already established a relationship with the chain of command team (S-1/S-3). The command team had a very tight knit relationship, given there was a

married couple and they had all been together on previous deployments. SGT [REDACTED] turned everyone against her and she lost trust in her whole chain of command. She did not trust anyone, so she sought outside help, Staff Judge Advocate Major [REDACTED]. Her chain of command was never aware that he had been harassing her, She believes they only saw her in a negative light based on what he would tell them.

e. The correct people never got the full story because she was coerced into reporting as sexual assault instead of sexual harassment. She was told to pick one or the other. She insisted she had much more to back up the harassment and retaliation, however by the time she attempted to report the harassment and retaliation she was given the runaround or told it was too late. Her chain of command moved her to another company and shortly after she was expedited off the island. Her primary concern is getting her rank reinstated and back pay as soon as possible.

f. She could not care less about the incident at the gym. Yes, it happened, but that is the tip of the iceberg; and she wonders if there were cameras in the gym, because that would simplify a lot. Additionally, First Sergeant H- had no real reason to persecute her the way he did. SGT [REDACTED] turned him and most of the command team against her. Her goal is to be assured they be held accountable for the damage they have done to her life; SGT [REDACTED] for sexual harassment as well as sexual assault and First Sergeant [REDACTED] for the way that he continued to retaliate, humiliate and harass her even after the deployment (demoting her twice).

8. On 30 August 2023, the U.S. Army Inspector General Agency responded to the ARBA request for a Department of the Army Inspector General (DAIG) for unredacted copies of all IG records pertaining to the applicant. The report shows the applicant reported issues with her chain of command during their deployment. The applicant was provided with the telephone number of the Southwest Region IG office that handled Reserve Soldiers and the case was closed by DAIG.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the U.S. Army Criminal Investigation Division (CID), the Board determined based on the preponderance of evidence there was an injustice and reinstatement of the applicant's rank/grade of specialist (SPC)/E-4 with applicable back pay and allowances from

January 2021 to her expiration term of service date is warranted. Therefore, the Board granted partial relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reinstatement of the applicant's rank/grade of specialist (SPC)/E-4 with applicable back pay and allowances from January 2021 until her expiration term of service date
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to reinstatement of her rank/grade of specialist (SPC)/E-4 with applicable back pay and allowances from 11 April 2018 to present.

2/18/2024

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. Army Regulation (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. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clearcut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. Block 4a; verify that active duty grade or rank and pay grade are accurate at the time of separation.
3. AR 15-185 (ABCMR) states in paragraph 2-9, 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.

//NOTHING FOLLOWS//