

IN THE CASE OF [REDACTED]

BOARD DATE: 8 February 2024

DOCKET NUMBER: AR20230007616

APPLICANT REQUESTS: in effect, promotion to the rank/grade of sergeant (SGT)/E-5.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant' statement
- Headquarters, 15th Supply and Service Battalion Memorandum - Subject: Recommended List for Promotion of Enlisted Personnel, 15 April 1970

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. All he had was basic training and no other training. He was sent to Porter, IN, for 5 months and still no training. They sent him to Vietnam with only basic training. When he got to Vietnam, they asked him what his qualifications were, and he had none. He was given 2 hours to learn how to operate the heavy equipment. They sent him out in the bush and told him his job was to haul fuel and ammo. He was also sent to Cambodia with three weeks left on his tour. He rescued a "grunt" in the bush and brought him to safety.

b. He was looking at his Army papers and found a memorandum from his unit. It is a list for promotion of personnel. This promotion list was issued when he was ready to be discharged. He remembers receiving a copy of this memorandum. He went to the E-5 board and passed it. He never received his promotion on his military record and was never issued his rank. He was 19 years old when he went to Vietnam and 20 when he came home. He is asking the Board to correct all his records with the SGT/E-5 promotion in accordance with his service in the Vietnam War. He earned this promotion.

3. This case contains administrative corrections adding decorations, medals, badges, and citations. The Board should only consider the applicant's contentions related to being promoted to SGT/E-5 and awarding him the Army Good Conduct Medal.

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

a. He was inducted into the Army of the United States on 20 August 1968.

b. DA Form 20 (Enlisted Qualification Record) shows in:

- item 31 (Foreign Service) – he served in Vietnam from 4 July 1969 to 3 July 1970
- item 33 (Appointments and Reductions) – he was appointed/promoted to specialist four (SP4)/E-4 Temporary (T) with a Date of Rank (DOR) of 25 September 1969
- item 38 (Record of Assignments) –
 - he attended basic training at Fort Leonard Wood, MO, from on or about 26 August to 12 November 1968
 - while serving in Vietnam he was assigned to Company A, 15th Supply and Service Battalion, 1st Cavalry Division (Airmobile)
 - he received excellent conduct and efficiency ratings
- item 41 (Awards and Decorations) – he was awarded or authorized the:
 - National Defense Service Medal
 - Sharpshooter Marksmanship Qualification Badge with Rifle Bar
 - Sharpshooter Marksmanship Qualification Badge with Grenade Bar
 - Vietnam Service Medal
 - Army Commendation Medal
 - Expert Qualification Badge with Rifle Bar (M-16)

c. On 17 October 1968, Headquarters, U.S. Army Training Center and Fort Leonard Wood published Special Orders Number 291, which awarded the applicant the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14) and Sharpshooter Marksmanship Qualification Badge with Grenade Bar.

d. On 23 May 1969, Headquarters, Fort Riley, KS, published Special Orders Number 110, which awarded the applicant the Expert Marksmanship Qualification Badge with Rifle Bar (M-16).

e. On 5 July 1970, Headquarters, U.S. Army Personnel Center, Oakland, CA, published Special Orders Number 186, which released the applicant from active duty

and transferred him to the U.S. Army Reserve (USAR) Control Group on the same date. The orders show his rank as SP4.

f. The applicant was honorably released from active duty and transferred to the USAR Control Group (Annual Training) on 5 July 1970. DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 1 year, 10 months, and 16 days net service. It also shows in:

- item 5a (Grade, Rate or Rank) – SP4
- item 6 (DOR) – 25 September 1969
- item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):
 - National Defense Service Medal
 - Vietnam Service Medal
 - Vietnam Campaign Medal
 - Army Commendation Medal

g. The applicant's records are void of orders that promoted him to SGT/E-5. His records are also void of derogatory information such as non-judicial punishment, court-martials, and a commander's disqualification memo for the Army Good Conduct Medal. His records did not contain orders awarding him the Army Good Conduct Medal.

5. In support of his case, the applicant provides Headquarters, 15th Supply and Service Battalion, memorandum, subject: Recommended List for Promotion of Enlisted Personnel, dated 15 April 1970, which shows he was recommended for promotion to E-5.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted.

2. The Board found that, while the evidence confirms the applicant was recommended for promotion to SGT/E-5, promotion to that rank/grade required the publication of orders. Given the short period between the date of the memorandum recommending him for promotion and his release from active duty and the absence of promotion orders, the Board found a preponderance of the evidence indicates he was not promoted and the rank/grade shown on his DD Form 214 and discharge orders are not in error or unjust.

3. The Board found the applicant met the criteria for the Army Good Conduct Medal (1st Award). The Board determined he should be awarded this medal and it should be added to his DD Form 214.

4. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING


: : : DENY APPLICATION

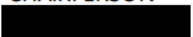
BOARD DETERMINATION/RECOMMENDATION:

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:

- Awarding him the Army Good Conduct Medal (1st Award) for the period 20 August 1968 through 5 July 1970
- Adding the Army Good Conduct Medal (1st Award) to his DD Form 214
- Making the corrections described in Administrative Note(s) below

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 promotion to SGT/E-5.

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.

ADMINISTRATIVE NOTE(S): The applicant's DD Form 214 is missing awards he is authorized. Correct the DD Form 214 by adding the following:

- four bronze service stars with the Vietnam Service Medal
- Valorous Unit Award
- Meritorious Unit Commendation (2nd Award)
- Republic of Vietnam Gallantry Cross with Palm Unit Citation (2nd Award)
- Republic of Vietnam Civil Actions Honor Medal First Class Unit Citation
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)
- Sharpshooter Marksmanship Qualification Badge with Grenade Bar

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) 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 600-200 (Enlisted Personnel Management System), in effect at the time, prescribes policy and procedures for promotions and reductions in grade.

a. Paragraph 7-5 (Orders) states, promotions to grades E-4 through E-9, and grade restorations will be announced in orders.

b. Paragraph 7-19c (Report of promotion board proceedings) states, the promotion authority will either — (1) Approve the report and authorize the names of recommended Soldiers to be integrated into the recommended list, or; (2) Disapprove the report and convene an entirely new promotion board, composed of new members.

c. Paragraph 7-21 (Recommended list) states, on completing all promotion actions during the month, a recommended list will be published. It will list all Soldiers of the organization who have been selected, "but not yet promoted." Names will be listed by

grade and in ascending military occupational specialty and descending promotion point score order. The list may be prepared by the promotion authority or may be a consolidation by a higher level authority.

4. AR 635-5 (Separation Documents) prescribes the separation documents that will be furnished to each individual who is separated from the Army and establishes standardized procedures for the preparation and distribution of these documents. The instructions for completing item 24 of the DD Form 214 state to enter from DA Form 20 all decorations, service medals, campaign credits, and badges awarded or authorized, omitting authorities cited therein. Item 5a: enter the grade in which serving at the time of separation.

5. AR 672-5-1 (Awards), in effect at the time, stated the Army Good Conduct Medal was awarded, for the first award only, upon termination of service on or after 27 June 1950 of less than 3 years but more than 1 year.

a. The enlisted person must have had all "excellent" conduct and efficiency ratings. Ratings of "unknown" for portions of the period under consideration were not disqualifying.

b. There must have been no convictions by a court-martial. However, there was no right or entitlement to the medal until the immediate commander made a positive recommendation for its award and until the awarding authority announced the award in general orders.

6. AR 600-8-22 (Military Awards), currently in effect, states the Army Good Conduct Medal is awarded to individuals who distinguish themselves by their conduct, efficiency, and fidelity. This period is 3 years except in those cases when the period for the first award ends with the termination of a period of active Federal military service. Although there is no automatic entitlement to the Army Good Conduct Medal, disqualification must be justified.

7. 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.

//NOTHING FOLLOWS//