

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230007992

APPLICANT REQUESTS: correction to his DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 17 April 1985 to show his rank/grade as specialist (SPC)/E-4.

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 pertinent part, when he was stationed at Fort Bragg, NC, he was placed on a temporary duty assignment to Fort Greely, AR. During that time, he was promoted to SPC/E-4. However, upon his discharge from active duty the rank reflected on his DD Form 214 shows private (PVT)/E-1.
3. A review of the applicant's available service record reflects the following:
  - a. On 2 November 1983, he enlisted in the Regular Army at the rank of private (PV2)/E-2. He completed training and was awarded military occupational specialty 12B, Combat Engineer.
  - b. The applicant's DA Form 2-1 (Personnel Qualification Record – Part II) item 18 (Appointments and Reductions) reflects his grade as follows: Private First Class (PFC)/E-3, effective 1 August 1984 and PVT, effective 14 March 1985
  - c. On 26 February 1985, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) reflects the Commander, Personnel Control Facility, Fort Knox, KY, preferred court-martial charges against him for one specification of being Absent Without Leave (AWOL), from 14 December 1984 to 15 February 1985.

d. The applicant voluntarily declared he was knowingly and willingly AWOL from 14 December 1984 to 15 February 1985. Additionally, on 27 February 1985, he met with counsel and was advised of his rights and voluntarily requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), chapter 10. He was not coerced and was advised of the implications of his request. He was afforded the opportunity to consult with counsel. He understood that his discharge would be "under other than honorable conditions." His chain of command concurred with the recommendation and the separation authority directed he be discharged under other than honorable conditions and reduced to the rank/grade of PVT/E-1.

e. On 15 April 1985, Headquarters, U.S. Army Armor Center and Fort Knox issued Orders Number 73-21 reassigning him to the U.S. Army separation and transfer point for separation processing and discharge, effective 17 April 1985, at the rank/grade of PVT/E-1.

f. The applicant was discharged on 17 April 1985. His DD Form 214 reflects a discharge under the provisions of chapter 10 (in lieu of trial by court-martial) of Army Regulation 635-200 (Personnel Separations) with a characterization of service as under other than honorable conditions. He completed 1 year, 3 months, and 15 days of active service with 63 days of lost time. His DD Form 214 shows in: Items 4a (Grade, Rate or Rank) "PVT" and 4b (Pay Grade) E-1 and 12h (Effective Date of Rank) 14 March 1985.

h. On 10 October 2019, the Board considered his request for an upgrade of his discharge. After reviewing the application and all supporting documents, the Board found that partial relief was warranted based upon guidance for consideration of discharge upgrades. As a result, the Board recommended that all Department of the Army records of the individual concerned be corrected by reissuing a DD Form 214 for the period ending 17 April 1985 showing his character of service as "under honorable conditions (General)."

i. The applicant's DD Form 214 was voided, and he was issued a new DD Form 214 that reflects his general, under honorable conditions discharge. The re-issued DD Form 214 shows in: Item 4a (Grade, Rate or Rank) "PVT" and 4b (Pay Grade) E-1 and Item 12h (Effective Date of Rank) 14 March 1985.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant was promoted to SPC/E-4 on 1 August 1984. He went AWOL from 14 December 1984 to 15 February 1985. After court-martial charges were

preferred, he requested discharge in lieu of court-martial. Such discharge takes an under other than honorable conditions discharge and automatic reduction to private/E-1. Despite his AWOL, and despite the absence of any in-service mitigating factors for the misconduct; a previous Board considered his letters of support for a clemency determination, and that Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to general, under honorable conditions. Since the only reason he was reduced was his receipt of an under other than honorable conditions discharge, and since that discharge has been upgraded to general, under honorable conditions, the Board determined restoration of his grade of SPC/E-4 is also appropriate in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his re-issued DD Form 214 to show in:

- Item 4a (Grade, Rate or Rank) and 4b (Pay Grade) SPC/E-4
- Item 12h (Effective Date of Pay Grade) 14 March 1985 (remains the same)

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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) 600-8-19 (Enlisted Promotions and Reductions), Chapter 2, Section II, 2-3 (Processing Enlisted Promotions to Private E-2, Private First Class, and Specialist) states:

a. The AAA – 117 for the Regular Army, the Enlisted Promotion Application for the USAR, and DA Form 4187 or promotion orders for the ARNG are the official instruments used by commanders to recommend Soldiers for promotion to SPC and below. When the commander denies promotion, he or she may promote the Soldier on the next automated enlisted advancement report, provided the Soldier is otherwise qualified in accordance with paragraph 1 – 11.

b. Promotions to PV2, PFC, and SPC will be made automatically by the electronic military personnel office system (eMILPO) (RA) and the Regional Level Application Software (RLAS) (USAR) or immediately with promotion orders (ARNG) for posting to the automated personnel file and/or the master military pay file. ARNG and USAR Soldiers on IADT will not be promoted to SPC unless concurrence is obtained from the Soldier's RC unit. DA Form 4187 or promotion orders will be used for all USAR Soldiers and all ARNGUS Soldiers awaiting initial military training (special promotions and split training option-phase II) and all promotions for Soldiers in a Title 10 status (including mobilization). DA Form 4187 will not be used for other automatic promotions. ARNG Soldiers are not required to be MOS qualified for promotion through SPC.

c. Eligibility criteria for automatic (RA and USAR) or immediate (ARNG) promotion to PV2, PFC, and SPC will be as follows:

(1) Promotion to PV2 is 6 months Time in Service (TIS).

(2) Promotion to PFC is 12 months TIS and 4 months Time in Grade (TIG).

(3) Promotion to SPC is 24 months TIS and 6 months TIG.

(4) Soldiers must meet eligibility criteria in paragraph 1 – 11. Any Soldier previously reduced (for misconduct, inefficiency, or cause) must be fully qualified (without a waiver) for promotion to the next higher rank

3. AR 635-5 (Separation Documents) in effect at the time prescribes the separation documents that must be prepared for Soldiers on retirement, discharge, release from active duty service, or control of the Active Army. The DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement, or discharge. Item 4a (Grade, Rate or Rank) list the Service Member's rank at the time of separation.

4. AR 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 1-14 of the regulation in effect at the time stated that when a member was to be discharged under other than honorable conditions, the convening authority would direct an immediate reduction to the lowest enlisted grade.

b. Paragraph 3-7a states that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. Paragraph 3-7b states that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

//NOTHING FOLLOWS//