

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230008091

APPLICANT REQUESTS: restoration of his rank of specialist (SPC)/E-4.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Letter
- DD Form 4 (Enlistment/Reenlistment Document, Armed Forces of the United States), 16 September 1999
- DD Form 458 (Charge Sheet), 20 January 2001
- Memorandum, Subject: Request for Discharge in Lieu of Trial by Courts Martial, 18 April 2001
- Memorandum, Subject: Admission of Absent without Leave (AWOL) for Administrative Purposes, 18 April 2001
- DD Form 458, 18 April 2001
- Memorandum, Subject: Request for Discharge in Lieu of Trial by Courts Martial, 17 December 2001
- Memorandum, Subject: Request for Discharge in Lieu of Trial by Courts Martial, 15 January 2002
- Characterization of Service Checklist for Administrative Discharge Actions
- Personal Letter
- ADRB Docket Number AR20150005691, 16 March 2016
- DD Form 214, ending 30 January 2002 – Amended
- DD Form 214, ending 30 January 2002 – Original

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, he should have his rank restored to SPC in the interest of justice as he suffered from mental health issues from approximately

24 May 2016 to 12 January 2021 which caused a delay in his request for restoration of his rank. He supplied supporting evidence to show that he is still deserving of his rank of SPC and should have it corrected.

3. A review of the applicant's service records show:

a. On 29 September 1999, he enlisted in the Regular Army in the rank/grade of SPC/E-4.

b. DA Form 4187 (Personnel Action), dated 21 December 2000, reflects a change in his duty status from Present for Duty (PDY) to AWOL, effective 21 December 2000, in the rank of SPC.

c. DA Form 4187, dated 20 January 2001, reflects a change in his duty status from AWOL to Dropped from Rolls (DFR), effective 20 January 2001, in the rank of SPC.

d. DD Form 616 (Report of Return of Absentee), dated 28 January 2001, shows he was reported as a deserter on 21 December 2000 and he surrendered to military authorities at Fort Knox, KY, on 28 January 2001. Item 5 (Grade or Rate) shows E-4. He was transferred to the Personnel Control Facility, Fort Knox.

e. DA Form 4187, dated 9 February 2001, reflects a change in his duty status from PDY to AWOL to DFR in the rank of SPC, effective 29 January 2001.

f. DD Form 616, dated 22 March 2001, shows he was reported as a deserter on 29 January 2001 and was apprehended by civilian authorities and returned to military control on 22 March 2001. Item 5; shows E-4.

g. On 18 April 2001:

(1) DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 21 December 2000 to 28 January 2001; 29 January 2001 to 22 March 2001; and 5 April 2001 to 13 April 2001.

(2) The applicant completed a Memorandum, Subject: Admission of AWOL for Administrative Purposes. Wherein he declares he was advised by counsel and he knowingly, willingly, and voluntarily declare that he was AWOL during the periods listed above.

(3) The applicant submitted a Memorandum, Subject: Request for Discharge in Lieu of Trial by Courts-Martial. Wherein he requested discharge in lieu of trial by courts-martial under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted

Personnel), Chapter 10. He made the request of his own free will and was not subject to coercion, whatsoever by any person. He consulted with counsel and was advised of his rights.

h. On 1 October 2001, Headquarters, U.S. Army Center and Fort Knox Commanding General issued a Memorandum for Appointment as a Special Court-Martial Convening Authority and Delegation of Approval Authority for Chapter 10 Discharge Requests.

i. On 17 December 2001, Headquarters, U.S. Army Personnel Control Facility issued a Memorandum, Subject: Request for Discharge in Lieu of Trial by Courts-Martial wherein the applicant's immediate commander recommended discharge under other than honorable conditions.

j. On 15 January 2002, Headquarters, U.S. Army Garrison, Fort Knox issued a Memorandum, Subject: Request for Discharge in Lieu of Trial by Courts-Martial approving his request with a discharge character of under other than honorable conditions. Stating, in effect, if the Soldier is serving in a pay grade above E-1 at the time of this action, Soldier will be reduced to PVT/E-1 prior to execution of the discharge.

k. On 28 January 2002, Headquarters, U.S. Army Armor Center and Fort Knox issued Orders Number 028-0233 assigning him to the U.S. Army transition point for transition processing and discharge at the rank of PVT, effective 30 January 2002.

l. DD Form 214, for the period ending 30 January 2002, reflects a discharge from active duty with a characterization of service as under other than honorable conditions under the provisions of AR 635-200, Chapter 10. Item 28 (Narrative Reason for Separation) shows "In lieu of trial by Court-Martial."

(1) Item 4a (Grade, Rate, or Rank) reflects PV1.

(2) Item 12 (Record of Service) shows service from 29 September 1999 to 30 January 2002 for active service this period of 2 years and 25 days.

(3) Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) reflects the Army Service Ribbon.

(4) Item 18 (Remarks) shows Block 29 (Dates of Time Lost During this Period): under Title 10 United States Code (USC) 972: 21 December 2000-26 January 2001; 29 January 2001-21 March 2001; and 5 April 2001 to 12 April 2001.

m. ADRB Docket Number AR20150005691 decided on 16 March 2016, wherein he requested his discharge to be upgraded. The board determination approved his request, upgraded his discharge to reflect general under honorable conditions, and issued an amended DD Form 214.

4. The applicant provides the following:

a. DD Form 458, dated 20 January 2001 shows he was charged with being AWOL from his unit beginning on 21 December 2000 and remained absent.

b. Characterization of Service Checklist for Administrative Discharge Actions which at the time shows his ranks as SPC.

c. Personal Letter that states in pertinent part, for the preponderance of his service (29 September 1999 until 14 January 2002) he was a SPC. The reduction to PVT took place on 15 January 2002 and his date of discharge was 30 January 2002. There was no record of Uniform Code of Military Justice action or Article 15 that prompted a reduction in rank from SPC to PVT. He has included copies of his DD Forms 214 (voided and corrected) changing his characterization of service.

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. Upon review of the applicants petition and available military records, the Board determined that the applicant did not demonstrate by a preponderance of the evidence that procedural error occurred that was prejudicial to the applicant. Furthermore, the Board found the burden of proof rests with the applicant and he provided no evidence to support his reduction in rank was in error. The Board found the applicant's request for correction to his DD Form 214 to show his rank/grade as specialist/E-4 instead of private/E-1 is without merit.

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.

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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. AR 635-200 (Personnel Separations Enlisted Personnel) states in chapter 10, a Soldier who has committed an offense or offenses, the punishment for which under the Uniform Code of Military Justice and the manual for courts-martial (MCM) 1998 includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The discharge request may be submitted after court-martial charges are preferred against the Soldier or, where required, after referral, until final action by the court-martial convening authority. A discharge under other than honorable conditions is normally considered appropriate.
3. AR 600-8-19 (Enlisted Promotions and Reductions) states, when the separation authority determines that a Soldier is to be discharged from the Service under other than honorable conditions, they will be reduced to the lowest enlisted grade. The commander having separation authority will, when directing a discharge under other than honorable conditions, or when directed by higher authority, direct the Soldier to be reduced to PV1.
4. 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.

//NOTHING FOLLOWS//