

IN THE CASE OF: ██████████

BOARD DATE: 13 March 2024

DOCKET NUMBER: AR20230008547

APPLICANT REQUESTS: reinstatement of his rank and grade 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)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 7 November 1963

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 without due process for no reason. He wishes to have his rank reinstated to PFC/E-3.

3. A review of the applicant's official military records show the following:

a. He enlisted in the Regular Army on 21 November 1960 for 3 years.

b. DA Form 24 (Service Record), Section I (Appointments, Promotions, or Reductions) shows he was appointed/promoted to PFC/E-3 with a Date of Rank (DOR) of 30 November 1962 and effective on or about 30 November 1962.

c. On 27 May 1963, the applicant accepted Nonjudicial Punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being drunk and disorderly in the billets on 26 May 1963. His punishment consisted of reduction to the rank/grade of private (PV2)/E-2. He did not appeal. DA Form 2627-1 (Record of Proceedings Under Article 15, UCMJ) shows he acknowledged receipt of the NJP communication and did not demand trial by court-martial and elected not to submit matters in extenuation, mitigation, or defense.

d. On 7 November 1963, he was honorably released from active duty and transferred to the U.S. Army Reserve Control Group (Reinforcement). DD Form 214, item 3a (Grade, Rate or Rank) shows the entry PVT/E-2(P), and item 3b (DOR) shows 27 May 1963.

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 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 and available military record, the Board determined there is insufficient evidence to support the applicant's contentions for reinstatement of his rank and grade to private first class (PFC)/E-3. Evidence shows the applicant accepted Nonjudicial Punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being drunk and disorderly in the billets and was reduced to the rank of PV2/E-2. The applicant's record is absent sufficient evidence showing he was promoted to PFC/E-3 prior to his discharge. The Board agreed the request for relief has no merit as the available evidence does not support the applicant was ever promoted to the rank of PFC/E-3 after his reduction. Therefore, the Board denied 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:

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.

3/19/2024

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) 15-185 (Army Board for Correction of Military Records) 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. It is not an investigative agency.
3. AR 635-5 (Separation Documents) prescribes the separation documents that will be furnished to each individual who is separation from the Army. Section III (Instructions for the preparation and distribution of the Armed Forces of the United States Report of Transfer or Discharge (DD Form 214)) provides item instructions for entries on the DD Form 214. The instructions for item 3a (Grade, Rate or Rank) state to enter grade in which serving at time of separation, indicating whether permanent (P) or temporary (T), and item 3b (DOR) to enter DOR for the grade show in item 3a.

//NOTHING FOLLOWS//