

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2024

DOCKET NUMBER: AR20230008735

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 21 October 1970, to show his rank/grade as sergeant (SGT)/E-5 instead of specialist four (SP4)/E-4.

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

- DD Form 149 (Application for Correction of Military Record)
- Unit Orders 38, 560th Light Maintenance Company DS, 2 March 1970
- In processing Check List, undated
- DD Form 214

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 effect, the 560th Maintenance Company Vietnam temporarily promoted him to acting SGT/E-5, on 2 March 1970, and he later reported to the 249th Repair Parts Company, Fort Bragg, NC. On 28 May 1970, he was wrongfully demoted to SP4/E-4 long after 60 days. Temporary promotions must be rescinded within 60 days, or the promotion become permanent. He was told by a friend at the Veterans of Foreign Wars of the United States (VFW) that the first sergeant (1SG) at Fort Bragg had no right to demote him.
3. The available evidence shows the applicant enlisted in the Regular Army on 22 October 1968, for 3 years, in the rank/grade of private/E-1. He held military occupational specialty 76P (Stock Control and Accounting Specialist).
4. His DA Form 20 (Enlisted Qualification Record) shows he was promoted to:
 - Private/E-1, (Permanent (P), on 15 October 1968
 - Private/E-2 (P), on 15 February 1969

- Private First Class/E-3 (P), on 30 April 1969
- SP4/E-4 (Temporary (T)), on 22 September 1969

5. His DA Form 20 also shows he was assigned to/in:

- 560th Maintenance Company, Vietnam, from 1 May 1969 to 28 March 1970
- a casual status from 29 March 1970 to 4 May 1970
- the 249th Repair Parts Company, Fort Bragg, NC on 5 May 1970

6. The applicant provided Unit Orders 38, dated 2 March 1970, which reads:

a. "The following APPOINTMENT/PROMOTION OF APPOINTMENT AS ACTING NONCOMMISSIONED OFFICERS is directed."

- Action: Appointment
- Authority: Paragraph 7-10, Army Regulation (AR) 600-200
- Grade Appointed: SGT/E-5
- Appointed by: 560th Light Maintenance Company DS
- Effective Date: 2 March 1970
- Signed by, the company commander, a captain (CPT/O-3)

b. The name of another Soldier and of the applicant are recorded on the name line.

c. These orders were not resident in the applicants personnel record.

7. The applicant's service records contains orders showing his rank as SP4/E-4:

a. Special Orders 74, Headquarters US Army Support Command Qui Nhon, 15 March 1970, show he was assigned to the "USARV" Returnee Detachment, effective 20 April 1970 with a date estimated return from overseas (DEROS) of 24 April 1970 and a reporting date to the 249th Repair Parts Company, Fort Bragg, on 28 May 1970.

b. Special Orders 82, Headquarters US Army Support Command Qui Nhon, 23 March 1970, amended Special Orders 74, by showing his DEROS was changed to 31 Mar 1970 and his reporting date to the 249th Repair Parts Company, Fort Bragg, was changed to 5 May 1970.

c. General Orders 319, Headquarters US Army Support Command Qui Nhon, 23 March 1970, awarded him the Army Commendation Medal, for meritorious service in connection with military operations against hostile forces from May 1969 to March 1970.

8. The applicant provides an undated in-processing check list, from 12th Support Brigade, Fort Bragg, showing his grade as SP4. His unit of assignment is listed as the 249th Repair Parts Company, Fort Bragg. His job title is stock control and accounting specialist, his DMOS was 76P2G3, paragraph number 2, Line Number 99, and TOE: 29-119G. This document is initialed by the 1SG, Unit Supply SGT, Training SGT, Unit Mail Clerk, Assignment Section – Management Branch, In-processing Section, Housing, Reenlistment, and "Screening of the 201." [NOTE: The entry where his grade was listed as "SP/4" was circled and connected it to another circle wherein the handwritten note states, "Wrong!".]

9. A Request for Suspension of Enlistment Commitment, dated 8 October 1970, shows an investigation conducted by Headquarters, Department of the Army, Washington, DC, revealed that for a period of time erroneous information pertaining to promotion to SP4 upon completion of MOS 76P20 training was being passed to potential enlistees.

a. Based on the findings of the investigation and information available regarding the applicant's specific case, his request was approved for separation upon completion of 24 month of active duty, under the provisions of paragraph 5-32b(1), AR 635-200.

b. Request necessary action be taken to annotate the applicant's record to this effect. This correspondence was directed to be filed as a permanent document in the applicant's Military Personnel Records Jacket.

10. Special Orders Number 237, dated 21 October 1970, published by the Headquarters, XVIII, Airborne Corps, Fort Bragg, show he was released from active duty (REFRAD), on this date, and was assigned to the US Army Reserve (USAR) Control Group, (Annual Training), effective 22 October 1970.

10. Accordingly on 21 October 1970, he was honorably released from active duty under the provisions of AR 635-200, due to erroneous enlistment, and he was transferred to the USAR (Annual Training). His DD Form 214 shows he completed 2 years of net active service this period and he had 7 days of prior active service. He was transferred to the US Army Reserve (USAR) Control Group (Annual Training). His DD Form 214 shows the following in Item 5a (Grade, Rate or Rank) SP4 and Item 5b (Pay Grade) E-4 and Item 6 (Date of Rank) 22 September 1969.

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. The

applicant was temporarily promoted to acting sergeant (SGT)/E-5 while assigned to the 560th Maintenance Company in Vietnam on 2 March 1970. Unlike an appointment or promotion to temporary or permanent SGT/E-5, an acting SGT holds the rank/grade temporarily due to either the absence of a qualified SGT, due to a unit's need for an acting NCO, or due to other reasons. Either way, such appointment to an acting grade is temporary. He was an acting SGT only for the period of time he was assigned to the unit that appointed him to that acting grade. He was not entitled to pay and allowances of that grade. The applicant's temporary appointment to acting SGT terminated upon his exit from the unit that appointed him to the acting grade. That is why his reassignment orders, DA Form 20, separation orders, and DD Form 214 listed his rank as SP4. The Board determined relief is not warranted.

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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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, U.S. Code, 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 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. It 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.

3. Army Regulation 600-200 (Enlisted Personnel Management System), chapter 7 (Promotion and Reduction), in effect at the time, contained the Army-wide promotion policy in effect at the time. Section VII. (Appointment of Acting Noncommissioned Officers) of this chapter provided:

a. Paragraph 7-52 (Appointment) provided -

(1) Units. Company, troop, battery, and separate detachment commanders may appoint qualified individuals as acting corporals, E-4, and acting sergeants, E-5, to serve in position vacancies existing in their units at their present or higher grade, including those resulting from temporary absences of assigned noncommissioned officers. For appointments to acting corporals, E-4, and acting sergeant, E-5, the individual being appointed may not be more than one grade lower than the grade to which he/she is being appointed.

(2) Casual groups. Commanders issuing movement orders for casual groups may appoint individuals as acting noncommissioned officers in grades of corporal, E-4, sergeant, E-5, and staff sergeant, E-6, to exercise supervision and control during movements.

b. Paragraph 7-53 (Orders) provided appointment of acting NCO will be announced in orders. An acting noncommissioned officer's status will be terminated—

(1) At the discretion of the unit commander who made the appointment.

(2) Upon assignment of a regularly promoted noncommissioned officer to the position.

(3) When casual groups reach their destination.

(4) Upon reassignment to another unit.

c. Termination for reasons (1) through (3) above will be accomplished by orders.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, established standardized policy for preparing and distributing the DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service. The DD Form 214 is a summary of a Soldier's most recent period of continuous active service. The instructions for completing the DD Form 214 specified:

- items 5a and 5b show the active-duty rank/grade held at the time of separation
- item 6 shows the effective date of rank (of the rank a Soldier held at the time of separation)

5. AR 635-8 (Separation Processing and Documents), currently in effect, prescribe the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It states the separation document is a synopsis of the Soldier's most recent period of continuous active duty and provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. For Item 5: Grade, Rate, or Rank, verify that active-duty grade or rank and pay grade are accurate at time of separation.

//NOTHING FOLLOWS//