

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230008785

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect the rank/grade of private first class (PFC)/E-3 vice private (PV2)/E-2
- a personal appearance before the Board

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, his rank at the time of discharge reflects PV2. However, he held the rank/grade of PFC/E-3 and was preparing to be promoted to the rank/grade of specialist (SPC)/E-4 before he was discharged and wants his record to reflect the correct rank.

3. A review of the applicant's service record shows:

a. On 25 March 1980, he enlisted in the Regular Army in the rank/grade of private (PVT)/E-1.

b. DA Form 2-1 (Personnel Qualification Record – Part I), Item 18 (Appointment and Reductions) reflects the following:

- PVT/E-1, effective 25 March 1980
- PV2/E-2, effective 25 September 1980
- PFC/E-3, effective 1 January 1981
- PV2/E-2, effective 10 August 1981

- PVT/E-1, effective 31 August 1981

c. On 10 August 1981, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ). DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) reflects the following:

(1) On or about 5 August 1981, he violated Article 92 (Failure to Obey Order or Regulation) for failure to secure his wall locker while not in the room.

(2) The punishment imposed was reduction to PV2/E-2 (suspended for 90 days), forfeiture of pay, extra duty and restriction of 10 days.

(3) The applicant appealed the Article 15 and on 31 August 1981, the intermediate commander denied his appeal.

d. On 29 February 1982, the applicant accepted NJP under the provisions of Article 15, UCMJ. DA Form 2627 reflects the following:

(1) on or about 22 January 1982, he violated Article 91 (Insubordinate Conduct towards warrant officer, non-commissioned officer, or petty officer) for failure to follow a lawful order to report to company mandatory formation.

(2) The punishment imposed was Correctional Custody for a period of 30 days at Fort Eustis, Virginia, and forfeiture of pay.

(3) The applicant appealed the Article 15 and on 4 March 1982, the senior commander denied his appeal.

e. On 26 May 1982:

(1) The 16th Field Service Company Commander notified the applicant of his intent to initiate action to discharge him from the U.S. Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 13, paragraph 13-4c, due to his inability to adapt to standards of conduct and military bearing, lack of respect and contempt for authority as reflected in statements from his supervisors and from the personnel at the Fort Eustis Correctional Custody Facility. Additionally, the receipt of NJP. He was advised of his right to consult with counsel and to provide statements on his behalf. He acknowledged the notification of separation action.

(2) The applicant provided a statement in defense of his initiation for discharge requesting to remain on active duty after consulting with counsel.

f. On 15 June 1982, his immediate commander initiated action to separate him from the service under the provisions of AR 635-200, Chapter 13, paragraph 13-4c due to his duty performance being substandard and his being counseled by his chain of command concerning his repeated. failure to comply with orders from his superiors and lack of respect for authority.

g. On 24 June 1982, the 240th Quartermaster Battalion Commander recommended approval of the initiated action for separation from the Army under the provisions of Chapter 13, AR 635-200.

h. On 7 July 1982, the Headquarters, United States Army Quartermaster Brigade Commander approved the Separation for Unsuitability UP Chapter 13, AR 635-200 and directed he be issued a general discharge.

i. On 12 July 1982 Headquarters, U.S. Army Quartermaster Center and Fort Lee issued:

(1) Orders Number 133-2 assigning him to the U.S. Army Separation transfer point for separation processing and discharge effective 14 July 1982 at the rank of PVT/E-1.

(2) Memorandum, Subject: Amendment of Orders amending Orders Number 133-2 changing the rank to reflect PV2/E-2 vice PVT/E-1.

j. DD Form 214, ending 14 July 1982 reflects a discharge under honorable conditions (General) for unsuitability-inaptitude.

(1) Item 4a (Grade, Rate, or Rank) reflects PV2.

(2) Item 12 (Record of Service) reflects service from 25 March 1980 to 14 July 1982 for a net active service this period of 2 years, 3 months, and 20 days.

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

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, 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. The Board determined that the applicant did not demonstrate by a preponderance of evidence that procedural error occurred that was prejudicial to the applicant and by a preponderance of evidence that

the applicant's rank should be amended from PV2 to PFC. Furthermore, the Board found the burden of proof rest 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 PFC instead of PV2 is without merit.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance is not necessary to serve the interest of equity and justice 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 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, 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) 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.
3. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//