

IN THE CASE OF: ██████████

BOARD DATE: 24 April 2024

DOCKET NUMBER: AR20230009419

APPLICANT REQUESTS: reinstatement of his rank/grade to reflect specialist four (SP4)/E-4 with applicable backpay for his final 6 months of his active-duty service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 4 June 1981

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, his DD Form 214 needs to be corrected to reflect what he earned for doing his time in the service.

3. A review of the applicant's available service record reflects the following:

a. On 7 June 1978, he enlisted in the Regular Army for a period of 3 years at the rank/grade of private (PV2)/E-2.

b. DA Form 2-1 (Personnel Qualification Record) Item 18 (Appointments and Reductions) reflects the following:

- PV2/E-2, effective 7 June 1978
- Private First Class (PFC)/E-3, effective 7 June 1979
- SP4/E-4, effective 1 May 1980
- PFC/E-3, effective 19 June 1980
- PV2/E-2, effective 3 November 1980
- PFC/E-3, effective 3 March 1981

c. On 19 June 1980, the applicant accepted Non-Judicial Punishment (NJP), at the rank/grade of SP4/E-4, under the provisions of Article 15 Uniform Code of Military Justice (UCMJ) for violating Article 86 UCMJ (Absent Without Leave), for failure to be at his assigned place of duty. His punishment consisted of reduction in grade to the rank/grade of PFC/E-3 (Suspended for 120 days), extra duty, and forfeiture of pay. He appealed the punishment to the next higher authority.

d. On 23 June 1980, the immediate commander vacated the suspended punishment and his reduction in rank (SP4 to PFC), forfeiture of pay was effective on 19 June 1980.

e. On 7 August 1980, the next higher authority denied his appeal.

f. On 3 November 1980, the applicant accepted NJP under the provisions of Article 15 UCMJ, for violating Article 92 UCMJ (Failure to obey any lawful order or regulation), for allowing another Soldier to use his Personally Owned Vehicle (POV) license plates on his POV and for having a female in his barracks room. His punishment consisted of reduction in rank/grade to PV2/E-2 and forfeiture of pay for a period of one month. He did not appeal the Article 15.

g. On 2 January 1981, Headquarters, 2nd Armor Division (Forward), issued Orders Number 1-13 reassigning him to the U.S. Army separation transfer point for separation processing and discharge from active duty.

h. DD Form 214, ending 4 June 1981 reflects an honorable release from active duty and reassignment to the U.S. Army Reserve (USAR) Control Group (Reinforcement). Item 4a (Grade, Rate or Rank) shows PV2 and item 12 (Record of Service) reflects service from 7 June 1978 to 4 June 1981 for a net active service this period of 2 years, 11 months, and 28 days.

i. On 26 October 1983, the Office of the Adjutant General, U.S. Army Reserve Components Personnel and Administration Center issued Orders Number D-10-043081 honorably discharging him from the Ready Reserve, effective 17 November 1983, in the rank/grade of PV2/E-2.

#### BOARD DISCUSSION:

1. 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 records, the Board determined there is insufficient evidence to show an error on the applicant's

DD Form 214. Evidence shows the applicant accepted NJP under the provisions of Article 15 UCMJ and was reduced in rank/grade to PV2/E-2 and forfeiture of pay for a period of one month. The Board noted the record is absent any evidence the applicant was promoted to private first class or specialist prior to his separation.

2. The Board agreed, the applicant has not provided sufficient evidence that warrants reinstatement of his rank/grade to reflect specialist four (SP4)/E-4 with applicable backpay for his final 6 months of his active-duty service. Based on the preponderance of evidence, 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.

5/6/2024

X [REDACTED]

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CHAIRPERSON  
[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) paragraph 2-9 states, 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.

//NOTHING FOLLOWS//