

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 June 2024

DOCKET NUMBER: AR20230009721

APPLICANT REQUESTS: restoration of her rank to specialist (SPC)/E-4

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

- DD Form 149 (Application for Correction of Military Record)
- Leave and Earnings Statement (LES)
- Enlisted Record Brief (ERB)
- DA Form 3349 (Physical Profile)
- DA Form 7652 (Physical Disability Evaluation System (PEDS) Commander's Performance and Functional Statement)
- Department of Veterans Affairs (VA)/Department of Defense (DoD) Joint Disability Evaluation Board Claim
- Examination Note
- Hearing Conservation Data
- DA Form 3947 (Medical Evaluation Board (MEB) Proceedings)
- Integrated Disability Evaluation System (IDES) Narrative Summary (NARSUM)
- Medication History
- Application for the Review of Discharge from the Armed Forces
- Character Statement
- VA Administrative Decision
- VA Reason for Decision

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 she requested her rank be restored to SPC/E-4, which they took from her. They also took her security clearance and her Servicemembers Group Life Insurance. She was going through the medical board process when they put her out of the Army. She believes her request should be granted because she has post-traumatic stress disorder (PTSD) and had a family emergency.

3. The applicant provides:

a. Her March 2015 LES, which shows she was paid in the rank of SPC/E-4.

b. DA Form 7652 (PEDS Commander's Performance and Functional Statement), 20 April 2015 shows she was charged or under investigation for an offense chargeable under the Uniform Code of Military Justice (UCMJ), which could result in dismissal or punitive discharge. She was pending voluntary or involuntary administrative separation. Her highest rank held was SPC/E-4. The commander stated her performance remained static. She was capable of performing her military occupational specialty duties and did so on a regular basis. The commander did not recommend retaining her. She was capable of performing her duties and was being chaptered for multiple periods of absent without leave (AWOL) and being dropped from rolls (DFR).

c. VA/DoD Joint Disability Evaluation Board Claim, 29 April 2015, shows the medical conditions to be considered as the basis of fitness for duty determination were scoliosis of the thoracolumbar spine, and left shoulder sprain. She had additional conditions which included sinusitis, chronic cough, foot bilateral, and chronic allergies.

d. An examination note, which shows she was diagnosed with scoliosis of the thoracolumbar spine. The entire document is available for the Board's consideration.

e. DA Form 3947 (MEB Proceedings), 21 May 2015, shows her diagnosis as:

(1) Scoliosis of the Thoracolumbar spine, medically unacceptable, existed prior to service, and was permanently aggravated by service.

(2) Left shoulder sprain, medically unacceptable, incurred while entitled to base pay, and did not exist prior to service.

(3) She was referred to a Physical Evaluation Board (PEB). The findings and recommendation of the board were approved. The IDES NARSUM is available for the Board's review.

f. Document entitled Application for the Review of Discharge from the Armed Forces of the United States and a character statement, which were submitted for her Army Discharge Review Board (ADRB) case. Both documents are available for the Board's review.

g. VA Rating Decision, states the discharge for the period of service from 22 February 2014 to 17 July 2015 is considered to have been under dishonorable conditions for VA purposes and is a bar to VA benefits. The discharges for the periods of service from 19 January to 19 June 2009 (Active Duty for Training) and

7 October 2010 to 21 February 2014 are considered to have been under honorable conditions for VA purposes.

h. VA document entitled Reasons for Decision, shows they assigned 50 percent evaluation for her PTSD.

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

a. She enlisted in the Regular Army on 7 October 2010.

b. DA Form 4187 (Personnel Action) show her duty status was changed on:

- 8 March 2014 from present for duty (PDY) to AWOL
- 13 March 2014 from AWOL to PDY
- 9 July 2014 from PDY to AWOL
- 8 August 2014 from AWOL to DFR
- 17 October 2014 from DFR to PDY

c. DA Forms 4856 (Developmental Counseling Form) show she was counseled on:

(1) 13 March 2014 for submitting a letter to the American Red Cross for financial aid assistance stating she needed funds for a second time to drive from [REDACTED] to Fort Story as well as to get her car fixed. The letter she submitted stated that Sergeant First Class (SFC) [REDACTED] was verifying she were to receive the emergency funds and his signature was affixed to the bottom of the letter. SFC [REDACTED] stated he did not sign the letter and had not spoken with her or anyone from the American Red Cross. She disagreed with the counseling stating she did not forge SFC [REDACTED] signature. She signed the form.

(2) 25 November 2014 regarding managing off-duty risk to meeting the goal of No Loss of Life. She agreed with the counseling and signed the form.

(3) 31 December 2014, notifying her she was unable to attend the Warrior Leaders Course due to being flagged. She agreed with the counseling and signed the form.

d. DD Form 616 (Report of Return of Absentee), 10 October 2014, shows she was apprehended by civilian authorities and returned to military control.

e. DD Form 458 (Charge Sheet), 6 January 2015, shows she was charged, in the rank of SPC, with being AWOL from on or about 8 March 2014 through 13 March 2014 and from on or about 9 July 2014 through on or about 10 October 2014.

f. Document entitled Agreement to Dismiss Charges, 5 February 2015, wherein she states she had examined the charge and specifications against her. After consulting with her defense counsel, and being fully advised that she had the legal and moral right to plead not guilty and to place the burden of proving her guilt beyond a reasonable doubt upon the prosecution, she freely and voluntarily agreed to do the following:

(1) To unconditionally waive her right to an administrative separation board upon the government initiation separation against her, and

(2) To plead guilty at a Field Grade Article 15 hearing to the charges against her.

As consideration for the preceding, the Government agreed to dismiss the charges preferred against her without prejudice to ripen into prejudice upon discharge from the Army.

g. DA Form 3822 (Report of Mental Status Evaluation), 6 February 2015, shows she was cleared for administrative separation, she was fit for duty including deployment, and she had been screened for PTSD and traumatic brain injury which were not present or did not meet the criteria for a MEB.

h. Report of Medical Examination and Report of Medical History, 19 February 2015, does not indicate she had any mental health issues to include PTSD. She was cleared for administrative separation.

i. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 23 February 2015 shows she accepted nonjudicial punishment for being AWOL from on or about 9 July 2014 to on or about 10 October 2014. Her punishment included reduction to the rank of private (PVT)/E-1.

j. On 19 March 2015, her immediate commander initiated separation under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, Commission of a Serious Offense for being AWOL from 9 July 2014 until she was apprehended on 10 October 2014.

k. On 29 February 2015, the separation authority approved the applicant's discharge under the provisions of Army Regulation 635-200, Chapter 14-12c. The applicant's service would be characterized as under other than honorable conditions.

l. DD Form 214 (Certificate of Release or Discharge from Active Duty), 17 July 2015 shows she was discharged in the rank of PVT/E-1. She was discharged for misconduct (serious offense) and received an under other than honorable conditions (UOTHC) characterization of service. Her DD Form 214 shows she completed 4 years, 5 months, and 26 days of active service.

5. The Army Discharge Review Board (ADRB) responded to the applicant's petitions for an upgrade of her discharge on the following dates:

a. On 5 August 2016, the ADRB determined she was properly and equitably discharged. Accordingly, her request for a change in the character of and/or reason for her discharge was denied.

b. On 1 February 2022, the ADRB reviewed her case again and voted to grant relief. Her discharge was upgraded to honorable, her narrative reason for separation was amended to misconduct (minor infractions), and she received a corresponding separation code of JKN. They did not restore her rank to SPC.

c. In another reconsideration request to the ADRB, on 23 May 2023, the applicant requested the Board to change her narrative reason for separation (misconduct – minor infractions), to upgrade her discharge to honorable (which was previously granted in a prior request), to amend her separation and reentry code to something more favorable than what the ADRB previously amended it to, and to restore her rank to SPC/E4. On 23 May 2023, the ADRB denied her request. The Board determined that her narrative reason for separation (misconduct – minor infractions), separation and reentry code were both proper and equitable and were consistent with the procedural and substantive requirements of the regulation. They did not restore her rank to SPC.

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 review based on law, policy, and regulation. Upon review of the applicant's petition and military records, 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 contents of the nonjudicial punishment are substantially incorrect and support removal. Furthermore, the Board found the burden of proof rests with the applicant, and she provided no evidence to support her nonjudicial punishment was in error. The Board noted the Army Discharge Review Board granted relief to upgrade the applicant's characterization of service to honorable; however, determined the nonjudicial punishment was a separate and proper action. The Board concluded the applicant's nonjudicial punishment was imposed and the punishment included reduction to private (PVT)/E-1 from specialist (SPC)/E-4. The Board denied relief based on the applicant's reduction to PVT from SPC on 4 March 2015.

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.

7/1/2024

X [REDACTED]

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, 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. Army Regulation (AR) 600-8-19 (Enlisted Promotions and Reductions) in effect at the time, prescribes the enlisted promotions and reductions function of the military personnel system. Paragraph 6-14 (Restoration to former grade), grade restoration may result from setting aside, mitigation, or suspension of nonjudicial punishment. Procedure and means of restoring grades and announcing these actions are set forth in AR 27-10.
3. AR 27-10 (Military Justice) prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial (MCM), United States, 2024, and the rules for courts-martial (RCMs) contained in the MCM. In pertinent part:
 - a. Section IV (Punishment), paragraph 3-19a states, whether to impose punishment and the nature of the punishment are the sole decisions of the imposing commander. Among the kinds of punishment authorized under Article 15 of the UCMJ is reduction in grade. The grade from which the Soldier is reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. When a Soldier is reduced in grade as a result of an unsuspended reduction, the DOR in the grade to which reduced is the date the punishment of reduction was imposed. The Soldier will also be removed from standing promotion lists in accordance with AR 600-8-19.
 - b. Paragraph 3-37 (Distribution and filing of DA Form 2627 and allied documents) states, the original DA Form 2627 will include as allied documents all written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal (see paragraph 3-37g). The servicing legal office will transmit copies of the DA Form 2627 to the Soldier's military personnel division or the unit personnel office and to the servicing Defense Military Pay Office. The DA Form 268 will be submitted per AR 600-8-2 (Suspension of Favorable Personnel Actions (Flag)). Standard instructions for distributing and filing forms for commissioned officers and enlisted Soldiers serving on active duty are below.
 - c. Paragraph 3-37b(1)(a) states, the original of the DA Form 2627 will be sent to the appropriate custodian listed in paragraph 3-37b(2) for filing in the Army Military Human Resource Record (AMHRR). The imposing commander will decide to file the original DA Form 2627 in the performance portion or the restricted portion in the AMHRR when

punishment is imposed. The filing decision of the imposing commander is subject to review by any superior authority. However, the superior authority cannot direct that a UCMJ, Article 15 report be filed in the performance portion that the imposing commander directed to be filed in the restricted portion. The imposing commander's filing decision will be indicated in item 4b of DA Form 2627. A change in the filing decision should be recorded in block 8 of DA Form 2627.

//NOTHING FOLLOWS//