

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230010438

APPLICANT REQUESTS: reinstatement of his rank/grade from private (PVT)/E-1 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 2648 (Pre-Separation Counseling Checklist), 16 March 1999
- DA Form 2-1 (Personnel Qualification Record)
- Orders Number 242-0011, 30 August 1999
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 18 November 1999

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 that he would like his rank of PFC restored.
3. A review of the applicant's available service records reflects the following:
  - a. On 19 November 1996, the applicant enlisted in the Regular Army for a period of three years at the rank/grade of private (PV2)/E-2 to serve as a 12B (Combat Engineer).
  - b. On or about 1 July 1997, the applicant was advanced to the rank/grade of PFC/E-3.
  - c. On or about 21 September 1998, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for driving under the influence on 7 September 1998. The imposing general officer directed that the GOMOR be placed in the applicant's Official Military Personnel File.

d. DD Form 214 shows the applicant's rank/grade for PVT/E-1 occurred on or about 16 October 1998.

e. On 30 August 1999, Headquarters, 24th Infantry Division (Mechanized) and Fort Riley issued Orders Number 242-0011 reassigning the applicant to the U.S. Army transition point at the rank/grade of PV1/E-1 pending transitioning processing under the provision of Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel).

f. On 18 November 1999, the applicant was honorably released from active duty and transferred into the U.S. Army Reserve (USAR) Control Group (Reinforcement) in accordance with AR 635-200, Chapter 4 (Completion of Required Active Service). He completed 3 years of bet service. His DD Form 214 shows in:

- Blocks 4a/5b (Grade, Rate or Rank/Pay Grade) reflects "PV1/E-1"
- Block 12h (Effective Date of Pay Grade) reflects "16 October 1998."

g. On 31 August 2004, the U.S. Army Human Resources Command issued Orders Number D-08-433695 honorably discharging the applicant from the USAR Control Group (Reinforcement) at the rank of PV1.

4. The applicant provides a DD Form 2648 dated 16 March 1999, reflective of the applicant's separation processing. Item 12 (Grade) shows "E-1."

#### 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 evidence of record shows the applicant was promoted to PFC in/around July 1997. On or about 21 September 1998, he received a GOMOR for driving under the influence on 7 September 1998. Although his service record does not contain an Article 15/NJP, he appears to have been reduced to PVT/E-1 around October 1998. His DD Form 214 reflects his rank/grade as PVT/E-1 and his effective date of pay grade as 16 October 1998. In the absence of evidence to the contrary, the Board presumed the grade reflected on his DD Form 214 is correct and he does not provide persuasive evidence for the Board to change it.

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.

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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. AR 27-10 (Military Justice) provides that Nonjudicial punishment is imposed to correct misconduct-in violation of the UCMJ. Such conduct may result from intentional disregard of or failure to comply with prescribed standards of military conduct. Nonpunitive measures usually deal with misconduct resulting from simple neglect,

forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity difficulty in adjusting to disciplined military life, and similar deficiencies. Included among nonpunitive measures are denial of pass or other privileges, counseling, administrative reduction in grade, administrative reprimands and admonitions, extra training, bar to reenlistment and military occupational specialty reclassification.

a. Section IV (Punishment) provides that the grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of Article 15 if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade.

b. Section VII (Records of Punishment, DA Form 2627) provides that all Article 15 actions, including notification, acknowledgement, imposition, filing determinations, appeal, action on appeal, or any other action taken prior to action being taken on an appeal, except summarized proceedings (sec III and fig 3-1), will be recorded on DA Form 2627. For Soldiers E-4 and below (prior to punishment) who have been in the Army less than three years as of the date punishment is imposed, the original will be filed locally in nonjudicial punishment files. Such locally filed originals will be destroyed at the end of two years from the date of imposition of punishment or on the Soldier's transfer from the unit, whichever occurs first.

c. When -a person is reduced in grade as a result of an unsuspended reduction, the date-of rank in the grade to which reduced is the date the punishment of reduction was imposed.

d. Paragraph 3-27 (Remission) provides that this is an action whereby any portion of the unexecuted punishment is canceled. Remission is appropriate under the same circumstances as mitigation. An unsuspended reduction is executed on imposition and thus cannot be remitted but may be mitigated. A reduction in grade may only be mitigated to a forfeiture of pay.

3. AR 600-200 (Enlisted Personnel Management System), Chapter 6 (Reductions in Grade) in effect at the time, provides that Company, Troop, Battery and separate detachment commanders may administratively reduce a Soldier in the grade of E-4 and below. Reduction, except for Article 15, UCMJ is announced in orders. When an Article 15 reduction is accomplished for misconduct and the Article 15 was directed to be filed on the restricted portion of the Official Military Personnel File, a DA Form 4187 will be prepared for permanent filing in the Military Personnel Record Jacket to substantiate the reduction. It will not contain the reason for the Article 15. The DA Form 4187 will be removed and destroyed when the member is advanced or promoted to the next higher grade.

4. AR 635-5 (Separation Documents) in effect at the time states, that the DD Form 214 will reflect the conditions and circumstances that existed at the time the records were created. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate and reflects the conditions as they existed at the time of separation. Personnel officers will prepare and authenticate DD Form 214 prior to forwarding records to the transfer facility. All available records will be used as a basis for the preparation of DD Form 214, including DA Form 2-1 (Personnel Qualification Record) and orders. DD Form 214, Item 4a./b. (Grade, Rate or Rank/ Pay Grade) will reflect the service members grade, rate or rank and pay grade at the time of separation. Item 12h. (Effective Date of Pay Grade) will reflect the coinciding date of rank associated with items 4 a./b.

5. 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 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//