

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230011068

APPLICANT REQUESTS: correction of his record to show his rank/grade was restored to specialist (SPC)/E-4 with applicable pay and allowances based on the decision rendered by the Army Discharge Review Board (ADRB).

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), for the period ending 1 June 2018

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 on 13 December 2022 he received his revised DD Form 214. Now that this is done, he is requesting his rank and pay be reestablished. According to the Article 15 this is why he lost his rank and pay and being that he has fought this action and has had his DD Form 214 revised accordingly, he should get his rank and pay back. He should have never received the Article 15 because he was in a medical facility being seen by counselors. Also, if you look at his time in service, he was just short of 4 months of completing his term of service. He did not deserve the treatment he went through and according to the Army Review Boards Agency, they felt that he should not be punished for what they accused him of. The proceeding of the Article 15 was done after he took a 2-week leave to the states but after being in a facility for 2 months. What command sends their Soldier back to the mainland for the holidays knowing they have a problem? It seems like he was bullied by the chain of command because he was in the Army Substance Abuse Program.

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

- a. On 9 September 2014, he enlisted in the Regular Army.

b. The applicant's Enlisted Record Brief shows the following:

- Service in the Republic of Korea from 3 March 2015 to 3 March 2016
- Promoted to the rank/grade of SPC/E-4 on 1 July 2016
- Flag Code "BA" effective 12 October 2017
- Reduced to the rank/grade of private (PVT)/E-1 on 19 January 2018

c. The applicant's records are void of the nonjudicial punishment which directed his reduction in rank/grade to PVT/E-1.

d. On 1 June 2018, the applicant was discharged from active duty under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c for misconduct (Drug Abuse). He completed 3 years, 8 months, and 23 days of active service. DD Form 214 shows in item:

- 4a (Grade, Rate or Rank) PV1
- 12i (Effective Date of Pay Grade) 19 January 2018
- 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
 - Army Achievement Medal (2nd Award)
 - Army Good Conduct Medal
 - National Defense Service Medal
 - Global War on Terrorism Service Medal
 - Korea Defense Service Medal
 - Army Service Ribbon
 - Overseas Service Ribbon
- 24 (Character of Service) Under Honorable Conditions (General)
- 26 (Separation Code) JKK
- 27 (Reentry Code) 4

e. On 4 May 2022, the ADRB granted the applicant's request and directed the issuance of a new DD Form 214 with no change to his characterization of service, changing the RE Code to 3, changing the reason to misconduct (minor infractions), and SPD Code to JKN.

f. On 9 June 2022, the applicant was issued a revised/corrected DD Form 214 which shows the following in items:

- 4a: PV1
- 12i: 19 January 2018

- 24: (Character of Service) Honorable
- 26: JKN
- 27: 3
- 28: (Narrative Reason for Separation) Misconduct (Minor Infractions)

4. On 26 June 2024, in the processing of this case the U.S. Army Human Resources Command, Chief, Enlisted Promotions, Promotions Branch, provided an advisory opinion recommending disapproval and stating:

a. AR 600-8-19 (Enlisted Promotions and Reductions), dated 14 September 2016, was the regulation in effect at the time of the applicant's separation. Paragraph 2-3 c. (5) outlines that any Soldier previously reduced (for misconduct, inefficiency, or cause) must be fully qualified (without a waiver) for promotion to the next higher rank.

b. Paragraph 2-3 c. (4) further states that in order for a Soldier to qualify for the automatic promotion, the Soldier must not be flagged or barred from reenlistment. A review of the applicant's Army Military Human Resources Record (AMHRR) reveals that he was flagged as of 12 October 2017 due to pending elimination from the Army. The applicant is not eligible for promotion to the rank/grade of SPC/E-4.

5. On 1 July 2024, the applicant was provided with a copy of the advisory opinion for comment or rebuttal. He did not respond.

BOARD DISCUSSION:

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 available military records, the evidence shows the applicant was discharged for misconduct and reduced to the lowest enlisted grade in accordance with regulatory guidance. The Board noted the applicant's characterization of service upgrade adjudicated by the Army Discharge Review Board; however, the Board was not convinced the reduction to the rank/grade of private (PVT)/E-1 was in error or unjust. The Board also concurred with the U.S. Army Human Resources Command advisory opinion finding the applicant must have been fully qualified (without a waiver) for promotion to the next higher rank and therefore he is not eligible for promotion to specialist (SPC)/E-4 as requested.

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.

■

■ ■

■

■

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 600-8-19 (Enlisted Promotions and Reductions) in effect at the time states:
 - a. Paragraph 1-10 (Nonpromotable status) Soldiers (SPC through master sergeant) are nonpromotable to a higher rank when pending or has an approved administrative separation, punishment under the Uniform Code of Military Justice, denial of favorable personnel actions under the provisions of AR 600-8-2, and command referral to the Army Substance Abuse Program.
 - b. Paragraph 2-3 c. (5) states any Soldier previously reduced (for misconduct, inefficiency, or cause) must be fully qualified (without a waiver) for promotion to the next higher rank.
3. AR 635-200 (Active Duty Enlisted Administrative Separations) in effect at the time states in:
 - a. Paragraph 14-3 (Characterization of service or description of separation) states a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.
 - b. Paragraph 14-12 (Conditions that subject Soldiers to discharge) minor disciplinary infractions, a pattern of misconduct, commission of a serious offense (Abuse of illegal drugs is serious misconduct).
 - c. Paragraph 14-4 (Authority for discharge or retention) states, upon determination that a Soldier is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.
4. AR 635-8 (Separation Processing and Documents) in effect at the time prescribes the transition processing function of the military personnel system. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. Source documents consist of the Servicemember's record brief, separation approval documents, separation order,

and any other document authorized for filing in the AMHRR. Block 4; verify that active duty grade or rank and pay grade are accurate at the time of separation.

//NOTHING FOLLOWS//