

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230012456

APPLICANT REQUESTS: in effect,

- correction of his National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) to reflect his advancement to the rank/grade of specialist (SPC)/E-4
- a personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- 1998 W2 (Wage and Tax Statement)
- request for discharge
- DD Form 368 (Request for Conditional Release)
- NGB Form 22 service ending 29 September 1998
- Defense Finance and Accounting Service (DFAS) help ticket
- Defense Joint Military Pay System – Reserve Component Master Military Pay Account (DJMS-RC MMPA) for 1998
- DA Form 5016 (Chronological Statement of Retirement Points)
- NGB Form 23B (Army National Guard (ARNG) Retirement Points History Statement)
- NGB Advisory Opinion from Army Board for Correction of Military Records (ABCMR) Docket Number AR20210011621
- U.S. Army Human Resources Command (HRC) Soldier's Records Portal screenshot
- Department of Defense Financial Management Regulation (FMR) 7000.14-R, Volume 7A, chapter 2, table 2-2 (Increases in Pay on Promotion or Restoration of Grade)

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 effect, he was paid at the pay grade of E-4 as of 19 June 1998, before he was discharged from the ARNG; however, his NGB Form 22 incorrectly reflects he was a private first class (PFC)/E-3 at the time of his discharge. The reason the document is incorrect is that he did not have the opportunity to review the document before it was published. When he contacted the ARNG regarding the incorrect information he was requested to return to his home state to address the issue, even though the ARNG could see there was an error on the NGB Form 22. The Board agreed to correcting his rank and pay grade but not provide him back pay which he is not requesting. The Board also instructed him to contact the Defense Finance and Accounting Service (DFAS) to obtain his Leave and Earnings Statements (LES) or any other documents for evidence his rank was SPC. He was correctly being paid at the E-4 rate as shown on his W2 which is another form of a LES. According to his W2 his pay was correct which entitles him to have his rank and pay grade corrected on his NGB Form 22 in accordance with the FMR 7000.14-R, volume 7A, chapter 2, rule 8. The W2 is proof of his pay grade and what he was being paid was reported for Federal taxes.

The inaccuracies began when he was released from active duty with the U.S. Navy in November 1996 where his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released with a re-entry code of 4. He was instructed to report to a U.S. Navy Reserve unit in Akron, OH, but when he attempted to do so he was denied entry because of the re-entry code. As a result, he enlisted in the ARNG. The ARNG conducted their own investigation and changed his re-entry code from 4 to 1. He served in the ARNG from April to September 1998 where he was advanced to SPC. At that time, he felt it was in his best interest to return to the U.S. Navy. During the enlistment process, he provided the LES which showed his pay grade as E-4.

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

a. The applicant's DD Form 214 shows the applicant enlisted in the U.S. Navy on 17 November 1992. He was honorably released from active duty on 16 November 1996 after completion of 4-years of active service and assigned to the U.S. Navy Reserve. It also shows in items:

- 4a (Grade, Rate or Rank): DKSN (Disbursing Clerk Seaman)
- 4b (Pay Grade): E3
- 12h (Effective Date of Pay Grade): 16 February 1996

b. DA Form 2-1 (Personnel Qualification Record) shows in item:

- 18 (Appointments and Reductions), his rank was PFC/E-3 in the Army National Guard of the United States (ARNGUS) effective 1 April 1998 with a date of rank of 1 October 1990
- 35 (Record of Assignments):
 - U.S. Navy on active duty in the grade of E-3 during the period of 17 November 1992 through 16 November 1996
 - U.S. Navy Reserve not on active duty in the grade of E-3 during the period of 17 November 1996 through 31 March 1998

c. On 1 April 1998, the applicant enlisted in the ARNGUS in the grade of E-3 for 6-years.

d. On 10 June 1998, the applicant requested and was approved for a conditional release to enlist in the U.S. Navy. DD Form 368 (Request for Conditional Release) shows the applicant's pay grade was E-3.

e. On 29 September 1998, the applicant enlisted in the U.S. Navy in the pay grade of E-3.

f. On 29 September 1998, the applicant was honorably discharged from the ARNGUS for enlistment in another component. NGB Form 22 shows the applicant completed 5-months and 29-days of service. It also shows in items:

- 5a (Rank): PFC
- 5b (Pay Grade): E3
- 6 (Date of Rank): 16 February 1996

g. On 27 November 1998, Orders Number 227-030, issued by the State of Ohio Adjutant General's Department, the applicant was honorably discharged from the Ohio ARNG, effective 29 September 1998.

h. On 5 January 1999, the applicant's NGB Form 23 (ARNG Current Annual Statement), shows he earned 19 inactive duty points, 7 membership points, and 15 active duty points for a total of 41 creditable points during the period of 1 April 1998 through 29 September 1998. The highest grade held was E-3.

i. On 22 July 2020, the applicant's NGB Form 23B shows the obtain 19 inactive duty points, 7 membership points, and 15 active-duty points for a total of 41 creditable points during the period of 1 April 1998 through 29 September 1998. The highest grade held was E-3.

4. The applicant provides:

a. 1998 W2 which shows the applicant earned \$1,394.34 in wages from DFAS for the tax year of 1998.

b. Document to show the applicant's reserve pay for the ARNG in 1998:

- April 1998 the base pay for the pay grade of E-3 was \$1,230.30 (base pay over 4-years of service), he was paid for 1 unit training assembly \$41.01 and for 4 unit training assemblies \$164.04
- May 1998 the base pay for the pay grade of E-3 was \$1,230.30 (base pay over 4-years of service), he was paid for 1 unit training assembly \$41.01 and for 4 unit training assemblies \$164.04
- June 1998 the base pay for the pay grade of E-3 was \$1,230.30 (base pay over 4-years of service), he was paid for 1 unit training assembly \$41.01 and for 4 unit training assemblies \$164.04
- July 1998 the base pay for the pay grade of E-4 was \$1,379.10 (base pay over 4-years of service), he was paid for 1 unit training assembly \$45.97 and for 4 unit annual training \$643.58
- August 1998 the base pay for the pay grade of E-4 was \$1,379.10 (base pay over 4-years of service), he was paid for 1 unit training assembly \$45.97 and for 4 unit training assemblies \$183.88
- September 1998, the applicant was paid \$74.76 for travel pay to turn in equipment

c. Request for discharge of the applicant in the rank of PFC/E-3 dated 3 November 1998 for enlistment in the U.S. Navy.

d. Screenshot of the DFAS help ticket which shows the applicant requested his LES for the period of April through September 1998 while he was in the ARNG. It also shows on 9 May 2022, the applicant submitted a duplicate help ticket with DFAS.

e. DJMS-RC MMPA shows for calendar year 1998 the applicant was paid in the pay grade of E-3 with the pay date of 17 November 1992.

f. DA Form 5016 dated 19 June 2020 which was blank.

g. HRC Soldier's Records Portal screenshot shows the data is blank.

h. DODFMR 7000.14-R, Volume 7A, chapter 2, table 2-2 (Increases in Pay on Promotion or Restoration of Grade), highlighted is rule number 8 which shows if an enlisted member of the Army or Air Force is appointed or promoted to a higher grade, he or she gets an increase in pay based on the date cited on the orders or date of orders whichever is later or the date of an oral appointment or promotion if later

confirmed in writing. It also shows an enlisted member whose rank is restored to a former grade when the reduction was due to non-judicial punishment the pay would be increased and may be retroactive to the date of the reduction or for inefficiency the pay would be increased based on the date of the restoration order.

5. On 11 April 2022, the ABCMR notified the applicant his application was being returned without action or prejudice as it was premature for the Board to consider his application. Army Regulation 15-185 (ABCMR) provides the policy and procedures under which the Board operates. Paragraph 2-5 states the Board will not consider any application until the applicant has exhausted all administrative remedies to correct the alleged error or injustice. Requests for correction of NGB documents must be directed to the issuing State National Guard Headquarters first. There is no evidence that he applied to either the State Adjutant General of the Army National Guard or the NGB to correct his rank.

6. On 14 April 2022, in the processing of ABCMR Docket Number AR20210011621, the NGB provided an advisory opinion regarding the applicant's request for the correction of his rank from PFC to SPC with monetary compensation for not being given the opportunity to attend Officer Candidate School (OCS). The advisory official recommended disapproval of the applicant's request. The advisory official stated the applicant claimed he enlisted in the OHARNG on 1 April 1998 and was advanced to SPC in July 1998. The applicant's service record and his claim lacked sufficient evidence to support his request. The OHARNG reviewed their historical records and could not find Leave and Earnings Statements or Orders which advanced him to SPC. However, documents were found where the applicant requested discharge as a PFC. Additionally, there is no administrative or legal reason to provide him monetary compensation for his claim he was not given the opportunity to pursue OCS.

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, available military record and National Guard Bureau-Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for disapproval finding the applicant's contentions lack the sufficient evidence to support correction of his National Guard Bureau (NGB) Form 22 to reflect his advancement to the rank/grade of specialist (SPC)/E-4.

2. The Board agreed there is insufficient evidence in the applicant's record to support his contentions for correction of his NGB Form 22 to show he was promoted to

specialist. The applicant's record is absent any supporting leave earning statements (LES) or orders promoting him to the grade of specialist. Based on the lack of evidence and the advising official recommendation, the Board denied relief.

3. 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 hearing is not necessary to serve the interest of equity and justice in this case.

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.



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) 15-185 (Army Board for Correction of Military Records (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 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.

3. 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.

a. Paragraph 2-5 (Rules for advancing enlisted Soldiers (PFC and SPC), eligibility for advancement to SPC, there is a 26-month time in service (12-months, time in service may be waived) and a 6-month time in grade (3-months, time in grade may be waived) requirement. Prepare DA Form 4187 for all advancements to SPC, and submit a Grade Change (GRCH) transaction.

b. Paragraph 6-14 (Restoration to former grade), grade restoration may result from:

(1) Subparagraph a, 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.

(2) Subparagraph b, action under Article 58a(b) or 75 of the UCMJ. All rights, privileges, and property deprived a Soldier who fulfilled a court-martial sentence will be restored when the reduction sentence, or other sentence resulting in reduction under Article 58a(a), UCMJ, is set aside or disapproved. A commander authorized to promote to a higher grade may:

- Restore grade under Article 58a(b) or 75a of the UCMJ
- Direct the Soldier to be promoted one grade higher than the one held before his or her reduction, if he or she would have attained the higher grade had he or she not been tried and convicted by a court-martial. These orders will be issued under AR 310-10

c. Paragraph 7-1 (Promotion or reduction transactions), a. Grade change. The GRCH is used to report advancements, promotions, and reductions. Source documents are as follows:

- DA Form 2-1
- DA Form 2627 and DA Form 2627-2
- DA Form 4187
- Orders
- AAC-CO1

b. (JUMPS Army corrector transaction), this transaction is used to report to USAFAC the correct information pertaining to a Soldier's pay grade. It is only used to change the USAFAC MMPF when the SPF already reflects accurate grade data. Source documents used are as follows:

- DA Form 2A
- DA Form 4187
- Orders

The unit or PAC is responsible for submitting JACT transactions on soldiers PV2 through CPL or SPC.

//NOTHING FOLLOWS//