

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230012842

APPLICANT REQUESTS: in effect, to change his rank/grade to private first class (PFC)/E-3 on his DD Form 214 (Report of Separation from Active Duty) for the period ending 16 August 1978.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 he was a PFC/E-3 when he separated from the service, not an E-2, as his records show. He asks the Board to correct it, because it is wrong on his records, and it makes a difference in his disability payments.
3. A review of the applicant's military records show the following:
 - a. He enlisted in the Regular Army in the pay grade of E-1 on 25 November 1977.
 - b. DA Form 2496 (Disposition Form) dated 6 February 1978 shows his trainee status was changed to holdover on 2 February 1978 based on him being hospitalized.
 - c. On 10 May 1978, Headquarters, U.S. Army Medical Department Activity Fort Dix, published Orders Number 63-2, which assigned the applicant to the Medical Holding Company, Walson Army Hospital, Fort Dix, NJ, with a report date of 15 May 1978. The orders show his rank as private/E-1.
 - d. SF 502 (Narrative Summary) dated 20 June 1978 states, in relevant part, the applicant sustained a stress fracture of both femora while marching on 9 January 1978 at Fort Dix. He was hospitalized at Walson Army Hospital and was treated with bed rest, crutches, and an intensive physical training program. The applicant was diagnosed with

"stress fracture, both femora", and referred to a Physical Evaluation Board (PEB) for evaluation and disposition.

e. A DA Form 199 (PEB Proceedings) shows on 20 July 1978, the board found the applicant physically unfit and recommended a combined rating of 50 percent for bilateral stress fracture of distal portion of femora and duodenal ulcer, and that he be placed on the Temporary Disability Retired List (TDRL) with reexamination during January 1980. His rank was listed as PV2/E-2.

f. On 9 August 1978, the U.S. Army Military Personnel Center, Alexandria, Virginia, published Orders Number D155-18, which retired the applicant, effective 16 August 1978, and placed him on the TDRL in the grade of PV2/E-2, effective 17 August 1978.

g. On 16 August 1978, the applicant was honorably retired from the Army, by reason of physical disability, temporary. His DD Form 214 shows he completed 8 months and 22 days net active service. Item 6a (Grade, Rate or Rank) shows PV2 and item 7 (Date of Rank (DOR)) shows 28 May 1978.

h. On 15 September 1980, the U.S. Army Military Personnel Center, Alexandria, Virginia, published Orders Number D180-6, which removed the applicant from the TDRL and discharged him from the service because of permanent physical disability, effective 30 September 1980. The orders show his rank as PV2.

i. The applicant's record did not contain evidence showing he was promoted to the rank/grade of PFC/E-3, and he provided no evidence.

4. On 28 February 2024, the Chief, Enlisted Promotions Branch, U.S. Army Human Resources Command (HRC), provided an advisory opinion for this case and determined the applicant's request should be denied. The advisory official stated:

a. The records available to the HRC Junior Enlisted Promotions Branch are not archived for 1977 or 1978. The applicant was separated from the Regular Army on 16 August 1978. The applicant provided a DD Form 214, which indicates he was a PV2 with a DOR of 28 May 1978. There is no indication, nor did he provide any documentation, that supports he was ever advanced to the rank of PFC/E-3.

b. In accordance with Army Regulation (AR) 600-200, Personnel - General, dated 1 May 1982, Section II, paragraph 7-12 a., there was a 12-month Time in Service (TIS) and 4-month Time in Grade (TIG) requirement for advancement to PFC. To qualify for an accelerated promotion in recognition of outstanding performance, six months TIS and two months TIG were required to qualify. According to his DD Form 214, the applicant served 8 months and 22 days. He would not have met the requirements to be advanced to PFC.

5. On 7 March 2024, the applicant was provided a copy of the HRC advisory opinion for comments or rebuttal. He did not respond.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board found no evidence in the available service records indicating the applicant was advanced to PFC/E-3 prior to his retirement and concurred with the conclusion of the advisory official that the applicant would not have met the regulatory requirements for advancement to PFC/E-3 prior to his retirement. Based on a preponderance of the evidence, the Board determined the rank/grade shown on the applicant's DD Form 214 are not an error.

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.

12/26/2024

X

CHAIRPERSON

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 15–185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that 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. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.

3. AR 600-200 (Enlisted Personnel Management System), dated 15 July 1978, prescribes policies, responsibilities, and procedures pertaining to career management of Army enlisted personnel. In pertinent part, Section II (Advancement to pay grade E-2 and Promotion to pay grades E-3 and E-4), paragraph 7-10 (Promotion to PFC, E-3) states:

a. Normal TIS criterion for promotion to E-3 is established as 12 months. Normal TIG criterion is 4 months. Up to one-half of TIS and TIG requirements may be waived by the promotion authority.

b. In recognition of outstanding performance, local commanders are authorized to promote to E-3 individuals with at least 6 months but less than 12 months TIS and at least 2 months TIG with the constraint that promotions will not be made which will cause more than 20 percent of the command's assigned and attached E-3 strength to have less than 12 months service.

c. Commanders may promote all eligible E-2's who have at least 12 months TIS. Promotion to E-3 is not mandatory. Unit or major command vacancies are not required. These provisions apply equally to personnel assigned to medical holding facilities or school detachments.

4. Title 10, USC, section 1372 states unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the TDRL under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

- The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired
- The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired
- The permanent regular or Reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of a physical examination
- The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination

5. AR 635-5 (Personnel Separations - Separation Documents), in effect at that time, prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service. In pertinent part, the specific instructions for item 6a and b (Grade or rank and pay grade) state to enter active duty grade and pay grade at time of separation.

//NOTHING FOLLOWS//