

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230014041

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show his rank/grade as corporal (CPL)/E-4.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Disabled American Veterans Contact Brief
- Letter to State Veterans Cemetery
- U.S. Representative Consent for Release of Personal Records by Executive Agencies
- U.S. Representative letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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 completed pathfinder training in 1970, and he served as a pathfinder in Vietnam between 1970 and 1971.

a. At the time, all of the pathfinders in his unit (to include the applicant) were CPLs; it came with the position. However, at his separation, the Army incorrectly listed his rank/grade as specialist (SP4)/E-4 instead of CPL.

b. The applicant is asking the Board to make this correction so that, when he dies, his headstone will accurately state his rank. The applicant does not provide the regulatory cite authorizing his lateral appointment to CPL; nor does he include orders confirming that appointment.

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

a. On 17 September 1969, the Army of the United States (AUS) inducted the applicant for a 2-year term of active duty. Following the completion of initial entry, airborne, and pathfinder training, the Army awarded him military occupational specialty (MOS) 11B1Y (Light Weapons Infantryman; skill level 1 (apprentice); special qualifications identifier (SQL) "Y" for pathfinder). Orders subsequently transferred him to Vietnam, and he arrived in country on 11 May 1970; effective on or about 29 May 1970, orders further assigned him to the 4th Aviation Battalion, 4th Infantry Division.

b. In or around August 1970, intratheater orders reassigned the applicant to Company K, 75th Rangers, 4th Infantry Division. On 12 September 1970, Headquarters, 4th Infantry Division General Orders (GO) awarded the applicant the Army Commendation Medal (1st Award) with "V" Device, for heroism, on 6 July 1970. On 8 November 1970, Headquarters, 4th Infantry Division GO awarded the applicant the Army Commendation Medal (2nd Award) for meritorious achievement.

c. On or about 2 December 1970, the applicant moved to Company G, 75th Rangers. On or about 17 January 1971, orders transferred the applicant to F Troop, 8th Cavalry Regiment, 23rd Infantry Division (Americal). On 1 March 1971, Headquarters, 23rd Infantry Division Special Orders promoted the applicant to SP4 with an effective date of 14 January 1971. His promotion orders concurrently announced the award of MOS 11B2Y (skill level 2 equated to journeyman status).

d. On 18 March 1971, Headquarters, 23rd Infantry Division GO awarded the applicant the Army Commendation Medal (3rd Award) with "V" Device. On 19 April 1971 the applicant completed his tour in Vietnam and orders reassigned him to Fort Lewis, WA for separation processing.

e. On 20 April 1971, the AUS honorably released the applicant from active duty, based on an early release policy, and transferred him to the U.S. Army Reserve. His DD Form 214 shows he completed 1 year, 7 months, and 4 days of his 2-year term of obligated service. The report additionally reflects the following:

(1) Items 5a (Grade, Rate, or Rank) and 5b (Pay Grade) – SP4/E-4.

(2) Item 6 (Date of Rank) – 11 February 1971 (sic).

(3) Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaigns Ribbons Awarded or Authorized):

- Army Commendation Medal (2nd Award)
- National Defense Service Medal

- Vietnam Service Medal
- Combat Infantryman Badge
- Parachutist Badge
- Two marksmanship qualification badges
- One overseas service bar

f. The applicant's available service record is void of any disciplinary actions and there are no lateral appointment orders announcing his rank/grade as CPL/E-4. Additionally, his DA Form 20 (Enlisted Qualification Record) reflects the following:

- Item 27 (Military Education) – the applicant completed pathfinder training at the U.S. Army Infantry School (USAIS) in 1970
- Item 33 (Appointments and Reductions) – the applicant's leadership progressively promoted him until he attained the rank/grade of SP4
- Item 38 (Record of Assignments – Conduct/Efficiency) – the applicant's chain of command rated him as "Excellent" throughout his term of active duty service

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 provisions of regulation directing that Soldiers be laterally appointed to the rank of CPL based on the training they had received. Further, the Board found no evidence in the available service records showing the applicant was laterally appointed to the rank of CPL. Based on a preponderance of the evidence, the Board determined the rank shown on the applicant's DD Form 214 is not in error.

3. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise 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.

ADMINISTRATIVE NOTE(S): The applicant's DD Form 214 contains errors and/or is missing required entries. Amend the DD Form 214 as follows:

- Item 6. Replace the entry with "14 Jan 71."
- b. Item 24. Delete the Army Commendation Medal (1st Oak Leaf Cluster) and Vietnam Service Medal and add the following:
 - Army Commendation Medal (3rd Award) with "V" Device
 - Vietnam Service Medal with two bronze service stars
 - Pathfinder Badge
 - Republic of Vietnam Campaign Medal with Device (1960)
 - Republic of Vietnam Gallantry Cross with Palm Unit Citation

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 600-200 (Enlisted Personnel Management), in effect at the time, outlined policies and procedures for the management of enlisted personnel; this included enlisted promotions. Paragraph 7-11 (Lateral Appointments) stated lateral appointments were required to be announced in orders. Lateral appointments from specialist to noncommissioned officer grade without utilization of a promotion quota were authorized under the following circumstances:
 - a. When the standards of grade authorization are changed to delete provision for specialists in that pay grade and MOS.

 - b. When the individual is released from a specialized program where the MOS held was in a specialist grade and when the PMOS (primary MOS) to which the Soldier is being reclassified does not contain a specialist grade within the standards of authorization.

 - c. When the individual is graduated from an NCO-producing school.

3. AR 635-5, in effect at the time, prescribed policies and procedures for the completion of the DD Form 214. In regard to items 5a (Grade, Rate, or Rank) and 5b (Pay Grade), DD Form 214 preparers were to enter the rank/grade in which the Soldier was serving at the time of separation.

4. AR 15-185 (ABCMR), currently in effect, states The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary). The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//