

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240000837

APPLICANT REQUESTS: back pay for the time he was a Prisoner of War (POW) in Korea.

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, 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 not paid for the time he was held as a POW in Korea from 1 December 1950 to 8 August 1953. During his time in captivity, he was promoted to sergeant (SGT)/E-5. He is requesting back pay.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 18 December 1945.
 - b. A DA Form 20 (Enlisted Qualification Record) shows:
 - Item 22 (Military Occupational Specialties (MOS)):
 - Primary MOS: 11B (Light Weapons Infantry)
 - Secondary MOS: (64C – Truck Master)
 - Item 29 (Qualifications in Arms):
 - Expert Marksmanship Qualification Badge with Rifle Bar (M-14)
 - Marksman Marksmanship Qualification Badge with Machine Gun Bar (M-60)

- Item 31 (Foreign Service):
 - USAREUR, Germany – 31 May 1946 to 27 March 1949
 - USAREUR, Korea – 3 August 1950 to 23 August 1953
 - USAREUR, Germany - 27 August 1958 to 19 August 1961
 - USAREUR, Korea – 9 September 1964 to 23 September 1965

- Item 41 (Awards and Decorations):
 - Army of Occupation Medal (Germany)
 - National Defense Service Medal
 - United Nations Service Medal
 - Korean Service Medal
 - Army Good Conduct Medal with bronze clasp w/ 1 loop

c. A letter, dated 4 January 1951, informed the applicant's family member that he went missing in action (MIA) on 1 December 1950. Additionally, the family was notified in order to relieve financial worry on the part of the dependents of military personnel being carried in a missing in action status, Congress enacted legislation which continued pay, allowances, and allotments of such persons until their status is definitively established.

d. On 18 October 1951, a letter was sent to the Prisoner of War Information Bureau providing the applicant's status.

e. On 2 December 1951, by memorandum, subject: Review and Determination of Status Under the Missing Persons Act, the applicant was reported missing in action in Korea on 1 December 1950 by Casualty Message Number 4, dated 2 January 1951. A review of the enlisted records and casualty branch file shows that the applicant became missing in action in the vicinity of Sonindong, North Korea. Unofficial information indicates he may be in the hands of the opposing force.

f. On 11 June 1953, a promotion pursuant to Department of the Army General Order 39, dated 1 May 1953 promoted the applicant to SGT/E-5 with an effective date of 1 May 1953.

g. A DD Form 1300 (Battle Casualty Report) shows the applicant was returned to the U.S. Army control on 8 August 1953 and will be returned to the U.S. by surface transportation.

h. He retired from active duty on 31 October 1966. His DD Form 214 shows he completed 20 years, 10 months, and 13 days of total active service. It also shows he was awarded or authorized:

- National Defense Service Medal with oak leaf cluster
- Army Good Conduct Medal with bronze clasp w/1 loop

i. A DD Form 215 (Correction to DD Form 214), dated 30 October 1990, shows corrections to item 32 (Remarks) on the DD Form 214.

4. A review of the applicant's record confirms he is eligible for awards and campaign credits that are not recorded on his DD Form 214. The entries will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

5. On 11 October 2024, an advisory opinion was received in the processing of this case from the Compensation and Entitlements Division, Office of the Chief of Staff of the Army, G-1.

a. After careful consideration, their office recommended disapproval of the applicant's request for pay and allowances while in a duty status for missing in action during the period of 1 December 1950 through 7 August 1953.

b. In accordance with Public Law 77-490 (77th Congress) (Missing Persons Act), allowances and allotments for Soldiers reports missing in action until their duty status was established.

c. Upon return to military duty on 8 August 1953 until the applicant's retirement date of 31 October 1966, there is no documentation which reflects the applicant and/or dependents did not continue to receive all pay and allowances during the missing in action timeframe.

6. On 17 October 2024, the applicant was provided with a copy of the advisory opinion and given an opportunity to respond. He did not respond.

7. By regulation (AR 600-8-22) the POW Medal was authorized on 8 November 1985 and is awarded to individuals who in past armed conflicts were taken prisoner or held captive.

8. Army Regulation 635-5 (Separation Documents), currently in effect, establishes the standardized policy for preparing and distributing discharge documents. In pertinent part, it directs that, for a Soldier with prisoner of war documentation, the entry "PRISONER OF WAR, (unit of assignment/country) (date of capture and release date)" will be entered in the "Remarks" section of the discharge document.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/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 records, and the advisory opinion from the Compensation and Entitlements Division, Office of the Chief of Staff of the Army, G-1, the Board concurs with the recommendation for disapproval of the applicant's request for back pay and allowances while in a prisoner of war (POW) in Korea status from 1 December 1950 through 7 August 1953.

2. The Board determined in accordance with Public Law 77-490 (77th Congress), known as the Missing Persons Act, Soldiers reported as missing in action continued to receive allowances and allotments until their duty status was officially established. There is no evidence provided that indicates the applicant and/or dependents were denied pay and allowances during the period in question. Additionally, upon the applicant's return to military duty on 8 August 1953 through his retirement date of 31 October 1966, there is no documented record reflecting a lapse or loss of pay and entitlements during the missing in action timeframe. Based on the advisory opinion and the preponderance of evidence, the Board determined that the applicant's request is without merit and, therefore, denied relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTE(S):

1. The applicant is entitled to correction of item 32 (Remarks) of his DD Form 214 to show "Prisoner of War, Battery C, 503rd Field Artillery Battalion, Korea, 501201-530808".

2. A review of the applicant's service records show he is authorized additional awards and campaign credits not annotated on his DD Form 214. As a result, amend his DD Form 214 to show the following:

- Prisoner of War Medal
- Korean Service Medal with 5 silver stars
- Republic of Korea War Service Medal
- United Nations Service Medal
- Army of Occupation Medal (Germany)
- Army Good Conduct Medal with silver clasp with one knot
- Expert Marksmanship Qualification Badge with Rifle Bar
- M-60 - Machine gun
- Driver and Mechanic Badge with Driver-W

REFERENCES:

1. Title 10, U.S. Code, 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. Public Law 77-490 (77th Congress) (Missing Persons Act) enacted in 1942, established the framework for continued pay, allowances, and allotments while a member of the U.S. Armed Forces status was missing in action.
3. Army Regulation 600-8-22 (Military Awards), in effect at the time, prescribes Army policy, criteria, and administrative instructions concerning individual military awards.
4. Army Regulation 635-5 (Separation Documents), in effect at the time, states 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. The information entered thereon reflects the conditions as they existed at the time of separation.
 - a. Item 12f (Foreign Service) states from the Enlisted Record Brief/Officer Record Brief show the total amount of foreign service performed during the period covered by block 12c (Net Active Service This Period).
 - b. Item 18 (Remarks), states for active-duty Soldiers deployed with his or her unit during their continuous period of active service, enter "SERVICE IN (name of country deployed) FROM (inclusive dates for example, YYYYMMDD-YYYYMMDD)."

//NOTHING FOLLOWS//