

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20240001118

APPLICANT REQUESTS:

- correction of his rank from private first class/E-3 to specialist/E-4
- correction of item 12 (Last Duty Assignment and Major Command) of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show HHC (Headquarters and Headquarters Company), 1st Battalion, 16th Infantry
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, effective 16 October 1973
- Record of Proceedings Docket Number AR20100009761
- Department of Veterans Affairs (VA) Statement of the Case (Partial document)

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 is requesting correction of his existing grade from E3 to E4, and correction of his last duty assigned to reflect HHC, 1st Battalion, 16th Infantry. He will be at peace when the requested corrections are made, but until then, he has much depression and anxiety. The applicant marked other mental health on his DD Form 149 as issues/conditions related to his request.
3. The applicant provides:
  - a. A DD Form 214, effective 16 October 1973 shows his rank as private first class/E-3, and his last duty assignment as Headquarters Company, 1st Battalion, 26th Infantry, Vietnam.

b. A Record of Proceedings for Docket Number AR20100009761 shows the applicant requested correction of his military records to amend an entry on Standard Form (SF) 502 (Clinical Record – Narrative Summary), dated 6 June 1973 and correction of item 12 of his DD Form 214, effective 16 October 1973.

c. A Statement of the Case from the VA Newark Regional Office dated 20 October 2010, states the applicant's service treatment records were negative for any diagnosis or treatment for ulnar neuropathy of the left hand and that his condition was noted as existing prior to service.

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

a. The applicant enlisted in the Regular Army on 30 March 1971. His DA Form 20 (Enlisted Qualification Record) shows in:

(1) Item 33 (Appointments and Reductions):

- PVT - 30 March 1971
- PV2 - 30 December 1971
- PFC - 14 December 1971

(2) Item 38 (Record of Assignments):

- 30 March 1970; Replacement Station, Fort Jackson, SC
- 31 March 1971; Company A, 5th Battalion, 1st Basic Training Brigade, Fort Jackson, SC
- 10 September 1971; Overseas Replacement Station, Fort Jackson, SC
- 8 October 1971; Headquarters Company, 1st Battalion, 16th Infantry, APO, 09029
- 15 September 1972; U.S Post Office Panzer Kaserne
- 6 June 1973; Medical Hold Company, Walter Reed Army Medical Center, Washington, DC

c. Special Orders Number 357 issued by Headquarters, 1st Infantry Division Forward, dated 23 December 1971, promoted the applicant to private first class (PFC)/E-3, effective 13 December 1971.

d. In an affidavit taken at Walter Reed Army Medical Center on 14 September 1973, the applicant is listed as specialist, SP4.

e. Letter Orders Number D 10-11 issued by U.S. Army Military Personnel Center dated 2 October 1973, relieved the applicant from assignment and duty and placed him

on the Temporary Disability Retired List (TDRL), effective 6 October 1973, with a retired grade of private first class, E-3.

f. The applicant was retired from active duty on 16 October 1973. His DD Form 214 shows he completed 2 years, 6 months, and 17 days of active service.

- His rank is shown as PFC/E-3
- His last unit of assignment as Headquarters Company, 1st Battalion, 26th Infantry

g. Letter Orders Number D 7-377 issued by U.S. Army Military Personnel Center dated 30 July 1975, removed the applicant from the TDRL, effective 31 August 1975, and permanently retired him in his current grade of private first class, E-3.

h. On 21 September 2010, the ABCMR partially granted his request to amend his last duty assignment and major command. As a result, DD Form 215 (Correction to DD Form 214) dated 20 January 2011, amended item 12 (Last Duty Assignment and Major Command) to show HHC, 1st Battalion, 16th Infantry

5. The applicant's available service record is void of any documentation that shows he was promoted to the rank of specialist/E-4.

6. By regulation (AR 15-185), an applicant is not entitled to hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

7. By regulation (AR 635-5), 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. The Military Personnel Records Jacket, US Army (MPRJ), Official Military Personnel Files (OMPF), DA Forms 2 and 2-1 (Personnel Qualification Record) are the basic source documents.

#### 8. MEDICAL REVIEW:

a. Background: The applicant is requesting correction of his rank from private first class/E-3 to specialist/E-4 and correction of item 12 (Last Duty Assignment and Major Command) of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show HHC, 1st Battalion, 16th Infantry.

b. This opine will narrowly provide a review of available medical documentation and defer the applicant's requests to the Board.

c. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted in the Regular Army on 30 March 1971.
- Special Orders Number 357 issued by Headquarters, 1st Infantry Division Forward, dated 23 December 1971, directed promotion of the applicant to the rank of private first class, effective 13 December 1971.
- In an affidavit taken at Walter Reed Army Medical Center on 14 September 1973, the applicant is listed as specialist, SP4.
- Letter Orders Number D 10-11 issued by U.S. Army Military Personnel Center dated 2 October 1973, relieved the applicant from assignment and duty and placed him on the Temporary Disability Retired List (TDRL), effective 6 October 1973, with a retired grade of private first class, E-3.
- Letter Orders Number D 7-377 issued by U.S. Army Military Personnel Center dated 30 July 1975, removed the applicant from the TDRL, effective 31 August 1975, and permanently retired him in the grade of private first class, E-3.
- The applicant was retired from active duty on 16 October 1973. His DD Form 214 shows he completed 2 years, 6 months, and 17 days of active service. His rank is shown as PFC/E-3, and last unit of assignment as HQ Co, 1st BN, 26th Inf, APO, NY 09046.
- On 21 September 2010, the ABCMR partially granted his request to amend his last duty assignment and major command. As a result, DD Form 215 (Correction to DD Form 214) dated 20 January 2011, amended item 12 (Last Duty Assignment and Major Command) to show HHC, 1st BN, 16th Inf, APO, NY 09046.

d. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he is requesting correction of his existing grade from E3 to E4, and correction of his last duty assigned to reflect HHC, 1st Battalion, 16th Infantry. He will be at peace when the requested corrections are made, but until then, he has much depression and anxiety. The applicant marked other mental health on his DD Form 149 as issues/conditions related to his request.

e. Due to the period of service, no active-duty electronic medical records were available for review. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for Psychosis. The VA electronic medical record indicates the applicant has a significant mental health history and a diagnosis of Schizophrenia. The VA electronic medical record shows a behavioral health note, dated 26 October 1999, indicating the applicant was being treated with antipsychotic medication and supportive therapy, he was stable at that time. The VA electronic record shows the applicant has been treated consistently by the VA for his diagnosis of Chronic Schizophrenia via medication management and supportive therapy.

f. Based on the available information, this Agency Behavioral Health Advisor is unable to opine regarding the applicant's rank or last duty assignment. However, given his extensive severe psychiatric history and service connection for psychosis, it is likely the applicant was experiencing prodromal or early symptoms of his disorder while in military service. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

#### BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Grade: Deny. The evidence shows Special Orders issued by Headquarters, 1st Infantry Division promoted the applicant to private first class (PFC)/E-3, effective 13 December 1971. Additionally, Letter Orders issued by U.S. Army Military Personnel Center placed him on the TDRL effective 6 October 1973, with a retired grade of PFC/E-3. There is no evidence in the record and the applicant provides none to show he was recommended for or promoted to SP4/E-4 prior to his medical retirement.

b. Last Unit of Assignment: No action. On 21 September 2010, the ABCMR partially granted his request to amend his last duty assignment and major command. As a result, DD Form 215 (Correction to DD Form 214) dated 20 January 2011, amended item 12 (Last Duty Assignment and Major Command) to show HHC, 1st Battalion, 16th Infantry.

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.

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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, 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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. Army Regulation 600-200 (Enlisted Personnel Management System), in effect at the time, states that permanent promotions to pay grade E-4 and above made under paragraph 7-22 occur automatically, without issuance of orders or entry on morning reports. Appropriate entry in individual's personnel records will be made under the provisions of paragraph 9-46. Criteria set forth in paragraph 7-22 will apply in determining an individual's permanent grade after 1 July 1962, except for changes made under other provisions involving issuance of orders.

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. In The Military Personnel Records Jacket, US Army (MPRJ), Official Military Personnel Files (OMPF), DA Forms 2 and 2-1 (Personnel Qualification Record) are the basic source documents.

//NOTHING FOLLOWS//