

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20240001140

APPLICANT REQUESTS: amendment of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show his rank/grade as sergeant (SGT)/E-5 or staff sergeant (SSG)/E-6 vice specialist four (SP4)/E-4.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214, for the period ending 27 January 1972

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:

a. This incident happened in his second tour with the same unit. He was a SGT/E-5 when the incident occurred. He would like at least his E-5 status reinstated or E-6 which he would have reached.

b. After reading the Article 15 (Non-Judicial Punishment (NJP)) under the provisions of the Uniform Code of Military Justice (UCMJ), he had rights. The Article 15 was rushed, and he was told to sign. He really did not know all of his rights at the time because he was too young and there were other issues in the war zone. After being demoted to the rank/grade of private first class (PFC)/E-3, he set up supply for a command inspection with success. He set up the 188th Military Police arms room as requested. He filled in escorting convoys through "Hai Van Pass." He was also told by the Military Police, and the Criminal Investigation Division stated it was a faulty weapon and the cartridge floated in the chamber. First shot in barrel did not go off but the second one did, and he missed clearing the barrel.

c. Old age and speaking to others made him follow up. He was a proud Soldier and feels betrayed. This was his only issue in two tours, plus he worked at the Record Center in St. Louis. He knows that this is hearsay but to regain his stripes would be an honor. He is asking to earn his rank back. He was only SGT for a week and was hoping for SSG. He hopes the Board understands.

3. A review of the applicant's service records show:

a. He enlisted in the Regular Army on 29 August 1969.

b. DA Form 20 (Enlisted Qualification Record), item 33 (Appointments and Reductions) shows the highest rank he held was SP4/E-4.

c. On 29 December 1970, Headquarters, 504th Military Police Battalion published Special Order Number 249, which appointed/promoted the applicant to SP4/E-4, effective 29 December 1970.

d. On 5 October 1971, the applicant accepted NJP under the provisions of Article 15, UCMJ, for carelessly discharging a 45-pistol in the arms room, in violation of Article 134, UCMJ. His punishment consisted of reduction to the rank/grade of PFC/E-3 and forfeiture of \$75.00 for a period of one month. DA Form 2627-1 (Record of Proceedings Under Article 15, UCMJ) shows the applicant's commander informed him of his rights to consult legal counsel, and the applicant acknowledged receipt of the Article 15 and elected not to be tried by court-martial and he did not submit matters in extenuation, mitigation, or defense. The applicant did not appeal.

e. On 11 October 1971, Headquarters, 504th Military Police Battalion published Special Orders Number 242, which reduced the applicant to the rank/grade of PFC/E-3, effective on with a Date of Rank (DOR) of 5 October 1971.

f. On 27 January 1972, the applicant was honorably released from active duty and was transferred to the U.S. Army Reserve Control Group (Reinforcement). DD Form 214 shows in item 5a (Grade, Rate or Rank) SP4 and item 6 (DOR) 6 January 1972.

4. The applicant's service records are void of orders promoting him to SGT/E-5, and he provided no evidence showing he was promoted to SGT.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, 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 review

based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined his record is absent evidence that shows he was promoted to sergeant (SGT)/E-5 or staff sergeant (SSG)/E-6 prior to his release from active duty on 27 January 1972. The evidence of record shows the applicant was promoted to the rank/grade of specialist (SPC)/E-4 on 6 January 1972, days prior to his release from active duty and return to the U.S. Army Reserve (USAR). The evidence also shows he was discharged from the USAR on 1 May 1975 in the rank/grade of SPC/E-4.

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, 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 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 635-5 (Personnel Separations - Separation Documents) prescribes the separation documents that will be furnished to each individual who is separated from the Army and establishes standardized procedures for the preparation and distribution of these documents. The specific instructions for item 5a state to enter grade in which serving at time of separation indicating whether permanent or temporary.

//NOTHING FOLLOWS//