

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240002399

APPLICANT REQUESTS: correction of his record to show his rank as sergeant (SGT).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Digital images of Vietnam photographs and letters
- Letter of Commendation
- Military Pay Voucher

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 wore the SGT rank insignia and performed squad leader duties while he was deployed to the Republic of Vietnam.
3. The applicant enlisted in the Regular Army on 26 August 1968, for 3 years. Upon completion of training, he was awarded military occupational specialty 51B (Carpenter).
4. The applicant was promoted to specialist 5 (SP5) on 3 May 1969.
5. The applicant served in the Republic of Vietnam from 1 August 1969 to 30 July 1970.
6. On 18 March 1971, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 5, paragraph 5-21, to accept employment of a seasonal nature. In his request for discharge, he affirmed this employment would be his primary source of income and he intended to return to that type of work after his release from the service.

7. The applicant's commander recommended approval of the applicant's request for discharge and noted that both his conduct and efficiency were excellent.

8. The applicant's record is void of the separation authority's memorandum approving the applicant's discharge. However, a memorandum from the Assistant Adjutant General dated 1 April 1971, shows the applicant was approved for release on or after 21 May 1971.

9. The applicant was discharged on 25 May 1971 in rank SP5. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Separation Program Number 414 (Early Separation to Accept Seasonal Employment). He was assigned Reenlistment Code 2. His service was characterized as honorable. He completed 2 years and 9 months of active service. He was awarded or authorized the National Defense Service Medal, Vietnam Campaign Medal with 60 device, Vietnam Service Medal with 2 Bronze Service Stars, and Bronze Star Medal.

10. On 27 August 2024, the U.S. Human Resources Command, Chief, Enlisted Promotions, provided an advisory opinion recommending approval of the applicant's request, noting in accordance with Army Regulation 600-200 (Personnel Separations – Enlisted Personnel Management), Soldiers who were appointed from SP5 to SGT will retain the rank to which laterally appointed. Unit Commanders had the authority to convert the Soldier's rank from SGT to SP5 without the service member's consent for the following reasons: medical inability to perform their duties, disciplinary actions taken under the Uniform Code of Military Justice and loss of qualification.

12. On 29 August 2024, the applicant was provided a copy of the advisory opinion and afforded 15 days to provide comments. As of 21 October 2024, the applicant has not responded.

13. The applicant provides envelopes and a Letter of Commendation addressed as, "Sergeant" and photographs where he is wearing SGT rank, prior to his separation from active service.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was 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 contains a letter of commendation addressed to "Sgt [Applicant] dated 7 July 1970 indicating his promotion to sergeant (SGT)/E-5. The Board reviewed and concurred with the U.S. Army Human

Resources Command's advising official recommending approval finding the applicant's provided evidence suggests he was promoted from SP5 to sergeant and a Soldier who is appointed from specialist four or specialist five to corporal or sergeant will retain the rank to which laterally appointed. Based on a preponderance of the evidence, the Board granted relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending his DD Form 214, for the period ending 25 May 1971 to show in item 5a (Grade, Rate or Rank) as SGT.

■

■

■

■

■

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):

Reference the enclosed request for correction of military records from the subject individual to correct his DD Form 214 for the period ending 25 May 1971, by adding:

- two Bronze Service Stars to the Vietnam Service Medal (for a total of four)
- Republic of Vietnam Gallantry Cross with Palm

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 600-200 (Personnel Separations – Enlisted Personnel Management), prescribes policies and procedures for career management of Army enlisted personnel. Paragraph 2-44 provides that a Soldier who is appointed from specialist four or specialist five to corporal or sergeant will retain the rank to which laterally appointed.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 5-21 authorized commanders to order early separation, for the convenience of the Government, of personnel enlisted, inducted, or ordered to active duty who have less than three months remaining in their period of service who submit valid applications evidencing an opportunity to participate in employment of a seasonal nature.

//NOTHING FOLLOWS//