

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE:

DOCKET NUMBER: AR20240003361

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate or Release or Discharge from Active Duty) to show his rank/pay grade as Sergeant (SGT)/E-5.

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Service Office's letter on behalf of the applicant
- In-service documents

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. Representative states, in pertinent part the applicant was promoted on 1 November 2021. His DD 214 (Certificate of Release or Discharge from Active Duty) states he was discharged as an E-4. The applicant has an in-service document that shows his rank as SGT and date of rank (DOR) as 1 November 2021.
3. On 5 June 2018, the applicant enlisted in the Regular Army for four years.
4. On 1 March 2020, the applicant was promoted to Specialist/E-4.
5. A DA Form 4187 (Personnel Actions) shows the applicant was laterally appointed to Corporal (CPL)/E-4 effective 29 September 2021.
6. The applicant received formal counseling on 13 October 2021 for refusing to accept the mandatory Coronavirus Disease (COVID-19) vaccination.
7. A Headquarters, Department of the Army (HQDA), SGT Promotion Selection By-Name List, as of 26 October 2021, contains the applicant's name. The list directs each selectee to contact their military personnel division to determine if they are fully

qualified for promotion on 1 November 2021. Additionally, a memorandum from the U.S. Army Human Resources Command (HRC), Fort Knox, KY, provides the HQDA promotion point cutoff scores and notes that all Soldiers must meet all eligibility criteria in accordance with Army Regulation 600-8-19 (Enlisted Promotions and Reductions).

8. The applicant was flagged effective 4 November 2021, A DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) shows his rank as SGT and his DOR as 11/01/2021.

9. On 22 November 2021, the applicant's commander formally recommended that the applicant receive a General Officer Memorandum of Reprimand (GOMOR) for refusing to accept the COVID-19 vaccination.

10. On 14 December 2021, the applicant received a GOMOR for disobeying a lawful order by refusing to become fully vaccinated against COVID-19.

11. The applicant's service record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.

12. Orders 089-0131, published by Headquarters, III Corps and Fort Hood, Fort Hood, TX, reassigned the applicant to the transition point pending separation processing. Review of these orders reflect the applicant's rank as CPL/E-4.

13. A DD Form 214 dated 30 March 2022, shows the applicant was discharged on 4 June 2022. He was credited with 4 years of net active service this period. His DD Form 214 contains the following entries in:

- item 4a (Grade, Rate, or Rank) – CPL
- item 4b (Pay Grade) – E-4
- item 24 (Character of Service) – Honorable
- item 25 (Separation Authority) – AR [Army Regulation] 380-67 (Personnel Security Program)
- item 26 (Separation Code) – JDK
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Military Personnel Security Program

14. A DD Form 215 dated 31 March 2022, shows the following corrections to:

- item 25 (Separation Authority) – AR [Army Regulation] 635-200 (Active Duty Enlisted Administrative Separations)
- item 26 (Separation Code) – JBK
- item 28 (Narrative Reason for Separation) – Completion of Require Active Service

15. On 23 October 2024, the Chief, Enlisted Promotions, HRC, provided an advisory opinion recommending denial of the applicant's request, noting in accordance with Army Regulation 600-8-19, dated 16 May 2019, paragraph 3-28 c.(1) outlines that adverse actions as outlined in the paragraph (indicated by a Flag). Soldiers are automatically removed from the recommended list when a Flag is initiated. Soldiers Flagged for adverse action will be reintegrated by the CDR onto the recommended list if the case is closed favorably (provided otherwise qualified) without re-appearance before a promotion board. There was no evidence showing that the applicant's flag was closed favorably. There is documentation showing that he received a GOMOR. Based on the adverse action not closed favorably the applicant would not be eligible to request an administrative records correction per Army Regulation 600-8-19, paragraph 3-35.

16. On 25 October 2024, the applicant was provided a copy of the advisory opinion and afforded 15 days to provide comments. On 19 November 2024, the applicant stated the advisory stated there was no proof of him being promoted. His common access card had his rank as E-5, and promotion orders were needed for that. His unit S-1 office messed up his paperwork. He was promoted before the flag was initiated.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the applicant's record showing he was promoted to the rank of SGT during the period of service covered on the DD Form 214, and the lack of any evidence reflecting he was reduced after receiving such promotion, the Board concluded there was sufficient evidence of an error warranting the correction to the applicant's DD Form 214.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 the applicant's DD Form 214 by changing:

- block 4a (Grade, Rate, or Rank) to reflect: "SGT"
- block 4b (Pay Grade) to reflect: "E05"

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 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support promotions and reductions. It provides the objectives of the Army's Enlisted Promotions System, which includes filling authorized enlisted spaces with the best qualified Soldiers. The version in effect at the time established that promotions to SGT through sergeant major were announced on orders.
3. Army Regulation 635-8 (Separation Processing and Documents) prescribed policy and procedural guidance relating to transition management. It consolidates the policies, principles of support, and standards of service regarding processing personnel for transition. The version in effect at the time established standardized policy for preparation of the DD Form 214 (Certificate or Release or Discharge from Active Duty). The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. It states the purpose of the separation

document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation. For block 4, verify that active duty grade or rank and pay grade are accurate at time of separation.

//NOTHING FOLLOWS//