

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 December 2024

DOCKET NUMBER: AR20240004340

APPLICANT REQUESTS: on behalf of the deceased former service member (SM), his father, correction of the DD Form 214 (Certificate of Release or Discharge from Active Duty) and service record as follows:

- Block 12a (Date Entered Active Duty (AD) This Period) to 6 November 1964
- Block 12c (Net Active Service This Period) to 20 years, 11 months, and 27 days
- Block 12d (Total Prior Active Service) to 21 years, 1 month, and 13 days
- removal of Article 15 received in 1966
- a video/telephonic appearance before the Board

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- DD Form 47 (Record of Induction)
- DD Form 4 (Enlistment Record Armed Forces of the United States)
- Page 02 RUEAH0F8659
- Birth Certificate
- Retirement Identification Card (2)
- Death Certificate
- DA Form 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- DA Form 20 (Enlisted Qualification Record)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States Code (USC), section 1552 (b); however, the Army Board for Correction of Military Records 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 at the time of his retirement, the SM's DD Form 214 included inaccurate information in Block 12 (Record of Service), specifically the date of initial enlistment. The SM's date of enlistment should show 6 November 1964 vice 12 August

1975. He also believes there are inaccuracies in his net active service (Block 12c) which should show 20 years, 11 months, and 27 days, leading to a change in Block 12d (Total Net Active Service) which he believes should show 21 years, 1 month, and 13 days. The supporting documentation he provided clearly shows the discrepancies. Additionally, he is requesting removal of the Article 15 the SM received in 1966 while deployed. He believes given the military environment and the era, racial discrimination, prejudice, and bias were highly likely since he was an African American serving during the Civil Rights Movement for equality. The SM was deployed during one of the most violent and hostile conflicts in U.S. history. He was demoted to from specialist (SPC) to private first class (PFC) and required to forfeit pay for not assisting in moving the chow hall flooring, which was not his primary duty. The SM was a vehicle mechanic and truck driver. The applicant feels the punishment was overly excessive and requests the blemish be permanently removed from the SM's record.

3. The applicant provides:

a. The below listed documents serve to verify identity and serve as proof of relationship.

- Certificate of Live Birth
- Uniformed Service Retirement Identification Card, expires 31 January 2041
- Uniformed Service Identification Card, date of issue 6 May 2008
- Death Certification, dated [REDACTED]

b. The remaining listed documents, to be referenced in the service record:

- DD Form 214
- DD Form 47
- DD Form 4
- DA Form 2627-1
- DA Form 20

c. Page 02 of RUEAH0F8659 references Order Number D218-16 dated 20 November 1985 directing the permanent disability retirement of the SM. He was determined to have completed 20 years, 11 months, and 27 days of active Federal service with 21 years, 1 month, and 13 days of service for basic pay on 18 December 1985.

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

a. He was inducted into the Army of the United States on 6 November 1964.

b. His DA Form 2-1 (Personnel Qualification Record) shows:

(1) Block 5 (Overseas Service) the following locations:

- Republic of Vietnam – 4 October 1965 to 3 October 1966
- Alaska – 28 April 1968 to 30 March 1971
- Thailand – 7 January 1973 to 28 November 1973
- Germany – 16 July 1976 to 15 July 1979

(2) Block 18 (Appointments and Reductions):

- Private – 6 November 1964
- Private, E-2 – 6 March 1965
- Private First Class – 16 July 1965
- Specialist – 1 March 1966
- Specialist 5 (Sergeant) – 26 September 1967
- Staff Sergeant – 24 January 1969
- Sergeant First Class – 29 November 1976
- Master Sergeant – 6 June 1983
- First Sergeant – 6 June 1983

c. On 10 April 1966, the SM accepted nonjudicial punishment for one specification of failure to obey a lawful order to help assist in moving the mess hall floor on or about 9 April 1966. His punishment included reduction to PFC, suspended for three months.

d. The available service record is void of the SM's DD Form 214 for his first active service period.

e. A DA Form 3173 (Data for Retired Pay) shows the SM was credited with 20 years, 11 months, and 27 days of service for retired pay. Additionally, under Title 37 U.S. Code 205, his basic pay was listed as 21 years, 1 month, and 13 days.

f. On 18 December 1985, the applicant was retired from active duty. His DD Form 214 outlines his service as follows:

- Block 12a (Date Entered AD This Period) – 12 August 1975
- Block 12b (Separation Date This Period) – 18 December 1985
- Block 12c (Net Active Service This Period) – 10 years, 4 months, and 7 days
- Block 12d (Total Prior Active Service) – 10 years, 7 months, and 20 days
- Block 12e (Total Prior Inactive Service) – 1 month and 16 days

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

6. By regulation (AR 27-10), removal of records of nonjudicial punishment from military personnel files must demonstrate error or injustice to a degree justifying removal.

7. By regulation (AR 600-37) unfavorable information is any credible, derogatory information that may reflect on a Soldier's character, integrity, trustworthiness, or reliability and includes letters of reprimand and Article 15s.

8. 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.

### BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that partial 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.

a. Date Entered Active Duty This Period. Deny. The Board determined the applicant's second DD Form 214, for the period ending 18 December 1985 accurately reflects his 10 years of total prior active service and therefore his date of entry should not be amended.

b. Net Active Service This Period. Deny. The Board determined the applicant's second DD Form 214, for the period ending 18 December 1985 accurately reflects his 10 years of total prior active service and therefore his date of entry should not be amended.

c. Total Prior Active Service. Deny. The Board determined the applicant's second DD Form 214, for the period ending 18 December 1985 accurately reflects his 10 years of total prior active service and therefore his date of entry should not be amended.

d. Removal of Nonjudicial Punishment. Deny. The Board determined the applicant did not demonstrate by a preponderance of evidence that procedural error occurred that was prejudicial to the applicant and by a preponderance of evidence that the contents of the nonjudicial punishment are substantially incorrect and support removal. Furthermore, the Board found the burden of proof rests with the applicant, and he provided no evidence to support his nonjudicial punishment was in error. The Board concluded based on the preponderance of evidence found in the military record the applicant's claim for removal of the Article 15, imposed on 9 April 1966 is not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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:

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.

3/25/2025

X

CHAIRPERSON

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 three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-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 27-10 (Military Justice,) paragraph 3-43, Table 3-2, rule 3, states the removal of records of non-judicial punishment from military personnel files must demonstrate error or injustice to a degree justifying removal.

4. Army Regulation AR 600-37 (Unfavorable Information) describes the policies and procedures concerning information considered for filing in one's OMPF. Unfavorable information is any credible, derogatory information that may reflect on a Soldier's character, integrity, trustworthiness, or reliability and includes letters of reprimand and Article 15s. Chapter 7 of the regulation outlines the procedures to remove unfavorable information from your OMPF or move unfavorable information into the restricted section of the OMPF.

5. Army Regulation 635-5 (Separation Documents) 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.

//NOTHING FOLLOWS//