

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240004376

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

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 his correct rank/grade should be SGT/E-5. He was promoted while injured in Berlin, Germany.
3. A review of the applicant's service record shows:
 - a. He was inducted into the Army of the United States on 2 August 1965.
 - b. On 25 July 1967, DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was honorably released from active duty and was transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training). He completed 1 year, 11 months, and 26 days of active service. Item 5a (Grade, Rate or Rank) shows private first class (PFC) (Permanent) (P).
 - c. On 28 July 1971, the Office of the Adjutant General, USAR Components Personnel and Administration Center published Letter Orders Number 07-1142584, which discharged the applicant from the Standby Reserve, effective 1 August 1971. His rank was listed as PFC.
 - d. On 27 November 1974, the applicant entered active duty.

e. On 1 July 1980, DD Form 214 shows the applicant was honorably discharged by reason of physical disability-severance pay. He completed 5 years, 7 months, and 5 days of active service. It also shows in:

- Item 4a (Grade, Rate or Rank) – Specialist Four (SP4)
- Item 4b (Pay Grade) – E-4
- Item 12h (Effective Date of Pay Grade) – 1 October 1974

f. The applicant's record is void of orders promoting him to the rank/pay grade of SGT/E-5. His records did not contain enlistment, promotion, nor medical/physical evaluation board documents for the period of 27 November 1974 through 1 July 1980.

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 prior to his release from active duty on 1 July 1980.

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 (AR) 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (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 600-200 (Enlisted Personnel Management System) prescribe policies, responsibilities, and procedures pertaining to career management of Army enlisted personnel. Paragraph 7-4 (Orders) states, promotion of enlisted personnel to grade E-3 through E-9, appointments, grade reductions, and grade restorations will be announced in routine orders.

4. AR 635-5 (Separation Documents) prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. Table 2-1, DD Form 214 preparation instructions state for items 4a and b, enter active duty grade of rank and pay grade at time of separation.

5. Title 10 USC, section 1372 (Grade on Retirement for physical disability: members of armed forces) states unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:
 - The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired
 - The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired
 - The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of a physical examination

- The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination

6. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Physical Disability Evaluation System in accordance with the provisions of Chapter 61, Title 10, USC and Department of Defense Directive 1332.18, Subject: Uniform Interpretation of Laws Relating to Separation from the Military Service by Reason of Physical Disability. Paragraph 4-19e(3) states, based upon review in Headquarters, Department of the Army of the findings and recommendations of the Physical Evaluation Board, Commanding General, U.S. Army Military Personnel Center, will take final action by direction of the Secretary of the Army, and direct separation for physical disability with severance pay under section 1203 or 1206, Title 10, USC.

//NOTHING FOLLOWS//