

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240004489

APPLICANT REQUESTS: reinstatement of his rank/grade to specialist four (SPC)/E-4.

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), for the period ending 2 October 1973 (Voided)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 2 October 1973 (Upgraded)

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 he is requesting reinstatement of his rank/grade to SPC/E-4 as his characterization of service was upgraded to under honorable conditions (General) on 6 April 2021.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 21 March 1969. He was discharged on 10 March 1970, for immediate reenlistment. He completed 11 months and 20 days of active service. He reenlisted on 11 February 1970. He was discharged on 16 June 1970 for immediate reenlistment. He completed 4 months and 6 days of active service this period. He reenlisted again on 17 June 1970.

b. His DA Form 20 (Enlisted Qualification Record), shows in pertinent part:

(1) Item 2 (Grade): private (PVT)/E-1

(2) Item 3 (Date of Rank): 24 September 1973

(3) Item 33 (Appointments and Reductions):

- PVT (E-1) – 21 March 1969
- Private (PV2) (E-2) – 2 June 1969
- Private First Class (E-3) – 10 October 1969
- SP4 (E-4) – 15 November 1969
- PVT (E-1) – 13 February 1973
- PV2 (E-2) – 13 June 1973
- PVT (E-1) – 24 September 1973

(4) Item 44 (Time Lost under Section 972, Title 10, United States Code and Subsequent to Normal Date Expiration Term of Service):

- 31 July 1972 through 19 October 1972; 81 days; Absent Without Leave (AWOL)
- 7 April 1973 through 24 July 1973; 109 days; AWOL

c. He accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) on the following occasions:

- 12 March 1971, for violating a lawful general order by traveling 25 Miles Per Hour MPH) in a 15 MPH zone
- 24 February 1972, for failure to go at the prescribed time to his appointed place of duty
- 25 July 1972, for failure to go at the prescribed time to his appointed place of duty

d. Special Court-Martial Order Number 14, dated 13 February 1973, shows the applicant pled guilty and was found guilty of being absent without authority from on or about 31 July 1972 to on or about 20 October 1972. He was sentenced to confinement at hard labor for 22 days and reduction to PVT/E-1. The sentence was adjudged on 23 January 1973.

e. On 8 August 1973, court-martial charges were preferred on the applicant for being absent without authority from on or about 7 April 1973 to on or about 24 July 1973.

f. On 22 August 1973, the applicant consulted with legal counsel and voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, for the good of the service in lieu of trial by court-martial due to charges being preferred against him under the UCMJ which authorized the imposition of a bad conduct or dishonorable discharge.

g. He acknowledged in his request that he was making the request of his own free will. He also acknowledged he had been advised of the implications that were attached to it and that by submitting the request for discharge, he was admitting guilt of the charge(s) against him or of lesser included offenses which also authorized the imposition of a bad conduct or dishonorable discharge. He also acknowledged he understood he could be issued an undesirable discharge and that he could be ineligible for many or all benefits administered by the Veterans Affairs, that he could be deprived of many or all Army benefits, and that he could be ineligible for many or all benefits as a veteran under both Federal and State laws. He further acknowledged he could expect to encounter substantial prejudice in civilian life because of an undesirable discharge.

h. On 24 September 1973, the separation authority approved the applicant's request for discharge with a characterization of service of under other than honorable conditions.

i. The applicant's DD Form 214 shows he was discharged on 2 October 1973, under the provisions of AR 635-200, chapter 10, with his service characterized as under other than honorable conditions. He completed 2 years, 9 months, and 8 days of active service this period and 1 year, 2 months, and 26 days of other service. He had 190 days of lost time. It also shows in:

- item 5a (Grade, Rate, or Rank): private
- item 5b (Pay Grade): E-1
- item 5c (Date of Rank) 24 September 1973

j. On 3 July 1975, by letter, the applicant was informed by the Army Discharge Review Board that he was properly discharged.

k. On 6 April 2021, the ABCMR approved the applicant's request for an upgrade of his under other than honorable conditions discharge to an under honorable conditions (General) discharge. His previous DD Form 214 was voided and a new DD Form 214 was issued with his new characterization of service.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, 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 military records, the Board considered the facts and circumstances surrounding the applicant's conduct. The Board determined the applicant did not provide evidence that shows that there was an error or

injustice. The evidence of record shows he held the rank of SPC/E-4 from 15 November 1969; however, was subsequently reduced by Special Court Martial to PVT/E-1 on 24 September 1973. The record is void and the applicant did not provide evidence to support he held the rank above PVT/E-1 subsequent to his reduction.

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. 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 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 (Separation Documents) prescribes the separation documents that will be furnished to each individual who is separation from the Army. Section III (Instructions for the preparation and distribution of the Armed Forces of the United States Report of Transfer or Discharge (DD Form 214)) provides item instructions for entries on the DD Form 214. The instructions for item 5a (Grade, Rate or Rank) state to enter grade in which serving at time of separation, and item 5b (Date of Rank (DOR)) to enter DOR for the grade show in item 5a.

//NOTHING FOLLOWS//