

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE:

DOCKET NUMBER: AR20240004744

APPLICANT REQUESTS:

- restoration of his rank to specialist (SPC)/E-4
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Timeline
- Medical Record
- DA Form 4187 (Personnel Action), dated 10 January 1990

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 is requesting restoration of his rank to E-4 and nothing more. He was falsely accused of being intoxicated on duty and was demoted. He was told by Master Sergeant (MSG) B- "I'm going to get you before you leave" and shortly before he was set for his expiration term of service (ETS), he was falsely accused of being intoxicated on duty and was therefore demoted to the rank of PFC/E-3. The timeline for the accusation and reduction in rank is as follows:

a. During quarter 4, 1989, MSG B threatened the applicant by saying, "I'm going to get you before you get out." On 26 December 1989, he went out for a holiday dinner and drinks with friends and returned to the billets between 2300 - 0000.

b. On 27 December 1989, he was assigned to Battalion Duty Driver that day with a reporting time of 0900. Between 0430 and 0500 MSG B- claims to have entered his room, shook him violently, and he did not wake so he left the room (he had no legitimate reason to be in his room or to try and wake him which was very suspicious).

One of his roommates (Soldier G-) observed this and said that MSG B- quietly slipped into the room, wiggled his big toe and left. His roommate said that he did not want to get involved because he was preparing to ETS soon and did not want to risk having to stay in Germany any longer. He honored his request and did not involve him.

c. Approximately 3 hours before he was to report to duty as a driver, between 0500 -0600, he was awakened by MSG B-, Staff Sergeant T- (his Section Chief) and others and taken to the Military Police (MP) station for a breath alcohol test. The result was negligible, so close to the very low 0.05 threshold that they decide to take him to the medical clinic for a more accurate blood alcohol test. At 0630 they arrived at the clinic, and by 0655 he was seen, and the blood draw and DA Form 558 were completed indicating that the blood alcohol test was performed. However, the test results were not included. All other sections of the form show the results were subjective/negligible and that he responded appropriately and passed all tests (showing he was not under the influence at that time).

d. At 0730 they left the clinic, and he was subsequently issued an Article 15 with reduction in rank to PFC/E-3. By 0845 he was excused from company physical training and all other unit activity prior to reporting for duty as the driver at Battalion Headquarters. At that time, it was approximately 3 hours after his negligible breath alcohol test at the MP Station. Any alcohol in his system would have metabolized out by then.

e. In conclusion, MSG B- made good on his promise to "get him" before he got out, using any and all means necessary. The blood alcohol test results were suppressed because they did not support his "mission" to catch him. There was no legitimate or valid reason for him to be singled out and come to his room so early. MSG B- used his influence, authority and rank to involve others in the cover-up and the conclusive blood alcohol test results that would have resulted non-action. He served honorably and this is a blemish on his record that hurts him to this day. It is embarrassing to say that he was only a PFC when he got out. He is requesting rightful restoration of rank to SPC/E-4 and nothing more. This has troubled him for over 30 years, and he is hoping that the military will do what is believed to be the right and just thing and restore his rank and dignity.

3. The applicant provides a Standard Form (SF) 558 (Emergency Care and Treatment) dated 27 December 1989 which shows the applicant was command referred for a breathalyzer and sobriety test.

4. A review of the applicant's available service record reflects the following:

a. On 25 March 1987, he enlisted in the Regular Army in the rank of private (PVT)/E-2.

b. DA Form 2-1 (Personnel Qualification Record – Part II) shows in Block 18 (Appointments and Reductions):

- private (PV2), E-2 – 25 March 1987
- private first class (PFC), E-3 – 1 June 1988
- specialist (SPC), E-4 – 1 May 1989
- PFC – 5 January 1990

c. DA Form 4187 (Personnel Action), dated 1 June 1988 reflects advancement for promotion to the rank of PFC/E-3.

d. DA Form 4187, dated 17 April 1989 shows advancement for promotion to the rank of SPC/E-4, effective 1 May 1989.

e. DA Form 4187 dated 10 January 1990 shows reduction to the rank of PFC/E-3 with a retroactive effective date of 5 January 1990, in accordance with Army Regulation 600-200 (XXXX), chapter 6, paragraph 6-1a.

f. On 1 February 1990, Permanent Orders Number 11-2, awarded the applicant the Army Good Conduct Medal (1st Award).

g. The available service record is void of nonjudicial punishment.

h. He was honorably released from active duty on 24 March 1990. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years of active service with no lost time. He was assigned separation code LBK with the narrative reason for separation listed as “Expiration Term of Service,” with reentry code 1. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Good Conduct Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

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 600-8-19) prescribes enlisted promotion and demotion (previously known as reduction) functions. It is linked to the AR 600–8 series and provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required to support promotions and demotions.

7. By regulation (AR 600-200), commanders for company, troop, battery, and separate detachment commanders may administratively reduce the grade of assigned soldiers for grades E-2, E-3, and E-4.

8. By regulation (AR 635-5), the DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement, or discharge. Item 4a (Grade, Rate or Rank) states list the Service Member's rank at the time of separation.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the SF 558 in the applicant's records showing supporting evidence of the reduction by the appropriate promotion authority, who reduced the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting change to the applicant's rank.

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.



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 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 600-8-19 (Enlisted Promotions and Reductions), Chapter 2, Section II, 2-3 (Processing Enlisted Promotions to Private E-2, Private First Class, and Specialist) states:

a. The AAA – 117 for the RA, the Enlisted Promotion Application for the USAR, and DA Form 4187 or promotion orders for the ARNG are the official instruments used by CDRs to recommend Soldiers for promotion to SPC and below. When the CDR denies promotion, he or she may promote the Soldier on the next automated enlisted advancement report, provided the Soldier is otherwise qualified in accordance with paragraph 1 – 11.

b. Promotions to PV2, PFC, and SPC will be made automatically by the electronic military personnel office system (eMILPO) (RA) and the Regional Level Application Software (RLAS) (USAR) or immediately with promotion orders (ARNG) for posting to the automated personnel file and/or the master military pay file. ARNG and USAR Soldiers on IADT will not be promoted to SPC unless concurrence is obtained from the Soldier's RC unit. DA Form 4187 or promotion orders will be used for all USAR Soldiers and all ARNGUS Soldiers awaiting initial military training (special promotions and split training option-phase II) and all promotions for Soldiers in a Title 10 status (including mobilization). DA Form 4187 will not be used for other automatic promotions. ARNG Soldiers are not required to be MOS qualified for promotion through SPC.

c. Eligibility criteria for automatic (RA and USAR) or immediate (ARNG) promotion to PV2, PFC, and SPC will be as follows:

(1) Promotion to PV2 is 6 months TIS.

(2) Promotion to PFC is 12 months TIS and 4 months TIG.

(3) Promotion to SPC is 24 months TIS and 6 months TIG.

(4) Soldiers must meet eligibility criteria in paragraph 1 – 11. Any Soldier previously reduced (for misconduct, inefficiency, or cause) must be fully qualified (without a waiver) for promotion to the next higher rank

4. Army Regulation 600-200 (Enlisted Personnel Management System), in effect at the time, prescribes policies and procedures for promotions and reductions in grade, among other guidance. Paragraph 6-1a states the commanders for company, troop, battery, and separate detachment commanders may administratively reduce the grade of assigned soldiers for grades E-2, E-3, and E-4.

5. Army Regulation 635-5 (Separation Documents) in effect at the time prescribes the separation documents that must be prepared for soldiers on retirement, discharge, release from active duty service, or control of the Active Army. The DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement,

or discharge. Item 4a (Grade, Rate or Rank) list the Service Member's rank at the time of separation.

//NOTHING FOLLOWS//