

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 January 2025

DOCKET NUMBER: AR20240007942

APPLICANT REQUESTS: to restore his rank/grade to specialist four (SP4)/E-4.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 1315 (Reenlistment Data Card), 29 May 1961
- General Orders Number 21, 10 July 1961
- DA Form 2166 (Commanders Evaluation Report), 16 July 1962
- Special Orders Number 132, 20 July 1962
- DA Form 705 (Physical Combat Proficiency Test), 10 October 1962
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 18 March 1963

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 feels his demotion from SP4 to private first class (PFC) was in error as the incident that took place was him returning late past post curfew in Germany while assigned to the 175th Engineer Company. Had this not happened he would have been promoted to specialist five. He wants to clear his record and reflect no misconduct. He also requests to restore his rank to SP4. He recently discovered he could seek a correction.

3. A review of the applicant's service records show:

a. He enlisted in the Regular Army on 9 January 1958. He was honorably discharged for immediate reenlistment on 23 March 1960.

b. On 24 March 1960, he reenlisted in the Regular Army for 3 years.

c. On 14 July 1962, Headquarters, 39th Engineer Group Memorandum – Subject: Disciplinary Punishment shows:

(1) It had been reported that on 2 July 1962, the applicant was apprehended by the Military Police at 0130 hours, in the Lido Bar, Grafenwoehr, Germany, in violation of U.S. Army Europe Circular 630-5, as changed.

(2) The commander notified the applicant that he intended to impose punishment upon the applicant pursuant to Article 15, Uniform Code of Military Justice (UCMJ), as to the offense unless trial by court martial was demanded. The applicant would acknowledge receipt of this communication by indorsement through proper channels, and the applicant would state whether he demands trial in lieu of action under Article 15. The applicant was informed he may submit any matter in mitigation, extenuation, or defense.

d. On 17 July 1962, the applicant acknowledged receipt of the communication and did not demand trial by court-martial. He made the following statement on his behalf:

(1) He has two dependents (parents) who are receiving \$60.00 per month out of his pay toward a Class Q allotment.

(2) He has unpaid bills plus a \$40.00 Class E allotment going to a Credit Union which is under a 20-month contract. Some of this is going into a saving account which he will need when he gets out of the Army. He has never held any civilian employment because he joined the Army when he was 17 years old. He has a \$37.50 Class B allotment (Bond), but he has to cash it every month in order to pay his debts.

(3) If he should be reduced the health and welfare or his parents will be in jeopardy. He believes if given the chance any consideration given to the above will be appreciated and the disciplinary record of him will improve.

e. On 19 July 1962, the Headquarters, 39th Engineer Group commander stated, after careful consideration of the statements in the preceding indorsement, the applicant was reduced to the grade of private first class/E-3. The applicant was advised of his rights to appeal in accordance with paragraph 134, Manual for Courts-Martial 1951. The applicant was directed to reply further by indorsement and state the time and date of receipt of this indorsement and any appeal he may desire to make.

f. On 20 July 1962, the applicant acknowledged receipt of the correspondence and had no appeal to make from the disciplinary action.

g. DA Form 24 (Service Record), Section I (Appointments, Promotions, or Reductions) shows Special Order Number 132, published by Headquarters, 39th

Engineer Group, reduced the applicant to PFC/E-3, effective on with a Date of Rank (DOR) of 20 July 1962.

h. On 18 March 1963, the applicant was honorably released from active duty and was transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement). He completed 2 years, 11 months, and 25 days net active service. DD Form 214 shows in item 3a (Grade, Rate or Rank) PFC (E-3) (Permanent) and item 3b (DOR) 20 July 1962.

i. On 31 December 1963, the Office of the Adjutant General, U.S. Army Records Center published Letter Orders, which honorably discharged the applicant from the USAR Control Group (Standby), effective 31 December 1963.

4. In support of his request the applicant provides:

a. DA Form 1315 dated 29 May 1961, which shows his unit, personal, and personnel data.

b. General Orders Number 21 dated 10 July 1961, which shows he was awarded the Army Good Conduct Medal (First Award).

c. DA Form 2166 dated 16 July 1962, showing he received favorable ratings.

d. Special Orders Number 132 dated 20 July 1962, published by Headquarters, 39th Engineer Group, which shows under the provisions of paragraph 30b, Army Regulation 624-200 (Enlisted Personnel Management), Article 15, UCMJ and MCM 1951, Chapter XXVI, he was reduced for misconduct to the rank/grade of PFC/E-3 (Permanent), with an effective DOR of 20 July 1962.

e. DA Form 705 dated 10 October 1962, which shows his physical combat proficiency test scores.

#### 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. The evidence shows the applicant was reduced in grade from SP4 to PFC, effective 20 July 1962, under the provisions of Army Regulation 624-200, Article 15, Uniform Code of Military Justice. The Board determined there was no error or injustice in the reduction of the applicant and therefore denied relief.

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.

X//Signed//

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 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 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 (Personnel Separations) in effect at the time prescribes forms to be used in the separation of Army personnel and are applicable to all officer and enlisted personnel on active duty. The purpose of a separation form is to provide the individual with documentary evidence of his military service. The preparation instructions of the DD Form 214 state for:
  - Item 3a to enter grade in which serving at time of separation, indicating whether permanent or temporary; Pay grade will also be shown
  - Item 3b state to enter Date of Rank for grade shown in item 3a

//NOTHING FOLLOWS//