

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 December 2023

DOCKET NUMBER: AR20230003606

APPLICANT REQUESTS: remission of indebtedness associated with previously received enlistment bonus.

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

- DD Form 149 (Application for Correction of Military Record)
- Official Transcript
- Department of Veterans Affairs letter, 10 December 2022

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 in pertinent part that prior to being discharged from military service, he was experiencing mental health issues that he is currently receiving 100 percent disability compensation from the Department of Veterans Affairs and considered totally and permanently disabled. He contributes his mental health condition as the reasoning for his actions which resulted in his court martial and discharge. He adds that his indebtedness is currently aggravating his mental health and causing additional hardship.

3. A review of the applicant's available service records reflects the following:

a. On 17 January 2002, the applicant enlisted in the Regular Army to serve as a 77F (Petroleum Supply Specialist). At the time of enlistment, the applicant was entitled to a cash bonus and a seasonal bonus totaling \$13,000.00.

b. On 10 June 2003, the applicant was convicted by general court-martial of:

- One specification of assault with a dangerous weapon
- One specification of being disrespectful towards a noncommissioned officer

- One specification of committing an assault against Private [Name] by pointing and waiving at him with a dangerous weapon
- One specification of committing an assault against Sergeant [Name] by pointing and waiving at him with a dangerous weapon
- One specification of breaking restriction
- One specification of failing to obey a lawful order
- One specification of willfully damaging by pulling the hinge off the front door to government quarters and ripping a wall mount
- Two specifications of being drunk and disorderly

The court sentenced him to reduction to the lowest enlisted grade of E-1, confinement for 42 months, and a bad conduct discharge. The convening authority approve the sentence on 8 December 2003.

c. On 8 December 2003, Headquarters, 1st Infantry Division issued Orders Number 104, reflective of the convening authority approving the sentence of reduction to E-1, confinement for 42-months and a bad conduct discharge.

d. On 27 September 2007, Headquarters, U.S. Army Field Artillery Center and Fort Sill issued General Court-Martial Order Number 274 affirming the applicant's court martial sentence.

e. On 17 April 2008, the U.S. Army Installation Management Command issued Orders Number 108-0674 reassigning the applicant to the U.S. Army transition point, effective 21 April 2008.

f. On 21 April 2008, the applicant was discharged from military service under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separation), Chapter 3 (Dishonorable and Bad Conduct Discharge). DD Form 214 (Certificate of Release or Discharge from Active Duty), item 24 (Character of Service) reflects "Bad Conduct"; item 26 (Separation Code) "JJD"; item 28 (Narrative Reason for Separation) reflects "Court Martial – Other." He completed 2 years, 10 months, and 14 days and he had lost time from 19 June 2003 to 31 October 2006.

4. The applicant provides the following a:

a. Official Transcript reflective of the applicant's civilian education completed between 21 May 2019 – 25 January 2022, culminated with being awarded a Bachelor of Science in Information Technology, a Master's – Information Technology on 1 November 2022.

b. Department of Veterans Affairs letter dated 10 December 2022, reflective of the applicant being rated totally and permanently disabled due to his service-connected disabilities; combined service-connected disability rating of 100 percent.

5. On 22 June 2023, the U.S. Army Human Resources Command, Chief, Incentives and Compensation Branch, provided an advisory opinion noting that the applicant is not eligible for debt remission. In accordance with Army Regulation 600-4 (Remission or Cancellation of Indebtedness), paragraph 9.c., Soldiers that are in debt to the Army may not have that debt remitted or cancelled if they receive a less than honorable discharge at the time of separation.

6. On 23 June 2023, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provided comments. As of 20 November 2023, the applicant has not responded.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant was convicted by a general court-martial that sentenced him to a bad conduct discharge. By regulation, Soldiers that are in debt to the Army may not have that debt remitted or cancelled if they receive a less than honorable discharge at the time of separation. The Board reviewed and agreed with the HRC advisory official's finding that the applicant received a bad conduct discharge at the time of separation and on 4 November 2009. He is not eligible for a debt remission.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Paragraph 9 (Indebtedness to the Army that May not be Remitted or Cancelled Under 10 USC 7837) provides that indebtedness to the Army will not be remitted or canceled under the following conditions:
  - a. When a Soldier's pay is not reduced promptly in connection with forfeiture of pay imposed by a court-martial sentence or under Uniform Code of Military Justice (UCMJ), Article 15 (UCMJ, Art.15), non-judicial punishment.
  - b. When debt is incurred while not on active duty or in an active status.
  - c. If a Soldier will receive less than an honorable discharge at time of separation.
  - d. When a Soldier is held liable for loss, damage, or destruction of property to another branch of Service.
  - e. When debts are due to loss of public funds obtained or converted to own use through fraud, larceny, embezzlement, or other unlawful means.
  - f. When debts are due to fines imposed by a court-martial sentence.
  - g. The amount is \$150.00 or less and based on hardship only.

//NOTHING FOLLOWS//