

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20230003839

APPLICANT REQUESTS: amendment of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:

- item 12b (Separation Date this Period): 24 July 2017
- pay, allowances, and benefits restored due to change in separation date
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Narrative and Supporting Narrative
- Memorandum Conditional Release
- DD Form 368 (Request for Conditional Release)
- Application for Separation of Officer/Warrant Officer
- Self-Authored Email with Timeline
- Timeline
- DD Form 214
- Email communication regarding transfer
- Inspector General (IG) Action Request Form
- Letter from Office of the IG
- Email from Chief, Officer Management Branch

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:

a. He is requesting his service dates on his DD Form 214 be changed to read from 7 October 2005 to 24 July 2017 with pay, allowances, and benefits restored. There was

an administrative error which leadership could not correct despite discovering procedural errors in the discharge process.

b. He has been working through the process to correct the injustice. His initial request for assistance was returned because he did not have any documents to show U.S. Army Human Resources Command (AHRC) had provided an opinion. He now has documentation of the process he followed. First through National Guard Bureau (NGB) leadership, then NGB IG, AHRC, and AHRC IG. His inquiry was closed in March 2023. The NGB IG investigation verified that the state withdrew his federal recognition without the proper documents.

c. In late summer of 2016, he informed the Army National Guard (ARNG) G-2 of his intent to resign from the Title 10 Army Guard/Reserve (AGR) program and enter the U.S. Army Reserve (USAR). In August, he submitted the documents to initiate his resignation. His efforts were quickly stopped by the ARNG, Human Capital Management (HCM) office. On 24 January 2017, he received orders for a permanent change of station (PCS), which he declined. By ARNG policy he had 6 months to leave the AGR program from the date of receiving his PCS orders that were declined. His expiration term of service (ETS) was set at 24 July 2017.

d. On 1 May 2017, when he had not received separation orders, he inquired about the status of his orders at HCM because the leave he had accrued would take him close to the 24 July date. He was told they were having trouble finding him in their system but not to worry because they could get separation orders done in less than a week.

e. Concerned, he asked his USAR recruiter if he had any news about the applicant's status because the ARNG could not find him. He received an email from his recruiter stating the recruiter ran it by the G-1 at the Military Intelligence Reserve Command (MIRC) and he was not under their command and control. The recruiter said as far as the USAR knew he was still in the ARNG. He had no reason to doubt but he just knew his records were somehow jacked up.

f. On Friday 5 May 2017, he received a call from Lieutenant Colonel (LTC) S- of HCM who he had spoken to about separation orders. She called him to tell him that he was a liar and that they had found that he was in the USAR and accused him of committing fraud. The applicant told her he did not know what she was talking about and that if he was in the USAR, he would be in a unit and he was not. She again accused him of lying. From that point on, he was treated with extreme prejudice.

g. The call from LTC S- was the first indication that there was a serious paperwork issue with his status. He knew some paperwork got messed up but he did not realize how bad this really was. What the NGB IG found out, after several investigations, was that when the HCM Chief threatened to stop his separation and the applicant

subsequently stopped the separation the State of Ohio continued to process the separation based on a conditional release request. Without the supporting documentation, the conditional release should not have been acted upon. The conditional release expired on 28 December 2016 and the state failed to follow proper procedures. Whatever checks and balances are in place to ensure an AGR is not removed by the state while still on AGR orders had not worked.

h. That same day, at close of business, all his access badges were confiscated and he was assigned security escorts out of the building. He was asked to return and work the following week. No one found that he committed fraud. Unbeknownst to him the state improperly processed him out of the ARNG and withdrew his federal recognition without receiving the proper documents required. The HCM office knew this but continued to censure him rather than admit fault in their process.

i. In the first week of May 2017, as questions about his status arose, he was asked by his supervisor Colonel (COL) C-, to create a timeline of events. He provided the document on 4 May 2017.

j. The following day, 5 May after returning from a meeting at Fort Belvoir, he was called to the NGB Chief of Staff office with COL C- and his deputy, Mr. S-. The ARNG G-2 confiscated his access badges and security police were ready to escort him out of the building. COL C- and the deputy intervened and walked him out themselves and told him they would get this straightened out. The first week, he was telecommuting, the following week he was back in the building working per the ARNG Chief of Staff guidance. It was the ARNG Chief of Staff who had directed his removal from the building the previous week. He continued to do ARNG work until 24 July 2017, the original discharge date. There was no out processing time provided.

k. He received PCS orders on 24 January 2017. At this point, he renewed his efforts to leave the AGR program. He continued to speak to his tour manager and in early March once again requested resignation papers. By ARNG policy, he had 6 months to leave the AGR program from the time he declined to PCS.

l. He initially had some problems with LTC S- because she refused to accept that she had miscalculated his release date from active duty date as 31 May 2017. This date was based on erroneous guidance from HCM and corresponds to the number of estimated leave days he had. From within her office, the Chief of Officer Management Branch, asked her to assist in providing the correct date of 24 July 2017. She insisted on not making the change and presented the incorrect document to Major General (MG) M-, Deputy Director. This action and the timeline of events can be found in an email provided to Mr. M-, NGB J-1.

m. On Monday morning, 1 May 2017, when he had not received separation orders, he inquired about the status of his orders at HCM because the leave he had accrued would take him close to the 24 July 2017 date. He could no longer sell back days, as he had reached his maximum. He was told they were having trouble finding him in their system, but not to worry because they could get separation orders done in less than a week.

n. After hearing this, he once again contacted the USAR recruiter and inquired about his status. Not knowing the status, he thought he would ask the USAR. They were the only other people that could be messing with his status and they might have answers. He received an email from his recruiter stating he ran it by the G-1 at the MIRC and he was not under their command and control. The recruiter said as far as the USAR knew, he was still in the ARNG. The applicant too believed he was in the ARNG. All this was communicated in an email, which was provided to the ARNG.

o. The OHARNG processed him out with none of the documents required to fulfill the DA Form 368. His federal recognition was withdrawn based on an unfulfilled conditional release request. A conditional release request is just that. It is an agreement that he will be released if he found another unit to accept him.

p. The following information was missing from his DA Form 368:

- Item 3b: Resignation is contingent up actual appointment in to the USAR
- Item 5a: Release is valid until 28 December 2016
- Item 7: There was no oath of office administered before 28 December 2018
- Item 8: The form was never certified

The state and ARNG should not have withdrawn his federal recognition without a supporting DA Form 71 (Oath of Office - Military Personnel).

q. Both the command and the IG investigated and no one could find he had committed fraud. This greatly upset the ARNG and they retaliated. The HCM Chief knew that the state and her office had created this situation but refused to make the correction. He suspects that she did not want to go back to the Deputy Director, MG M-, and tell him they got it all wrong.

r. He asked for a meeting with MG M- but he was never allowed to meet with him. One day when he had business in HCM, during this time period, he was spotted by the HCM chief and she called him into her office to explain her side of the story. He asked her why, given the evidence provided of his continued work in the building, the email from the ARNG Chief of Staff directing him to go back to work, and countless reports from the Joint Staff that he was at work she could not correct the orders? Her reply was that "the Chief of Staff should not have done that." Even though he was the one who

directed that the applicant be sent home. She said that because he was in the USAR she could not correct or adjust the orders that her office had produced. When he asked why he was not allowed to properly out-process by Army regulation, she said she could not answer that. She could not adjust orders that her office had directed to be published? She knew very well that she was wrong and did not want to admit it. He was not afforded the opportunity to exercise his entitlements, nor meet the requirement per Army Regulation (AR) 600-8-10 (Personnel-General Leaves and Passes), chapter 3, of an officer who had just served 12 years of continuous active duty. No household good transportation, no travel cost to return to home of record, no employment readiness program, health benefits briefs, physical, or any other transition assistance programs. It was seven months later before he received a DD Form 214. During that time, the NGB Ethics law office stated they recommended he did not accept employment outside the military because he did not have a DD Form 214. This caused a financial hardship for his family, as he did not want to create an unethical situation the ARNG could exploit.

s. He has reached out to AHRC and was directed back to NGB. AHRC says it was an ARNG matter. NGB says they do not have access to the system to make the correction and only the ABCMR can direct the systems to be open to correct the matter. AHRC IG directed the matter to NGB.

3. The applicant provides:

a. Self-authored email to NGB, 1 May 2017, with a timeline and emails that trace his request to resign from Title 10 AGR status and determination/request for ETS. The timeline is as follows:

(1) First Attempt:

- August 5: He requests documents to resign from AGR
- September 7: He submitted a DA Form 4187 (Personnel Action) requesting resignation 30 September
- September 8: He asked who he needed to talk to in order to shorten the 45 days; that is a lot of time
- September 8: COL N- stated the regulation required a minimum of 6 months; he could accept their attempt to shorten it to 45 days or they would non-concur
- September 9: the applicant stated okay, he guessed he was beat down enough to stay at least another year

(2) Second attempt:

- January 24: Slating memorandum issued assignment to Arizona
- March 2: he requests document to initiate resignation

- March 2: Major (MAJ) R- states LTC S- identified 31 May 2017 as his date on both the memorandum and the DA Form 4187 because it would be separation in lieu of PCS
- March 17: the applicant requested clarification on the determination of the 31 May departure date from LTC S- he believed it to be 24 July
- March 17: he requested a 60 day extension based on request from vice J-2
- March 17: MAJ W- to LTC S- the applicant was correct, 24 July 2017 was the appropriate date as he must be released no later than 6 months from the date of notification (24 January 2017); any help with LTC S-'s team for a 24 July separation date would be greatly appreciated

(3) On the day the resignation request was to go to MG M-, LTC S-, the applicant, and MAJ W- had a face-to-face conversation in LTC S-'s office to discuss the validity of the 31 May end date. The applicant reiterated that the 31 May date was incorrectly determined and the DA Form 4187 be withdrawn in order to be corrected. LTC S- determined that it would still be presented to MG M- and they would bring up the date change. The applicant requested a 31 August end date to his current orders. This would allow him to use all leave accrued, time to out-process including all medical requirements, and time to transition with his replacement who was due to report on 1 June.

b. Emails regarding Employment Limitations, 7 June 2017, states the applicant did not have separation orders nor a DD Form 214 in hand, in response to the Ethics division email, which states they had no visibility on the current state of his orders. Until he had separation orders and a DD Form 214, he was advised against working for a Government contractor.

c. Timeline regarding his request to resign from the Title 10 AGR program, which is the same that was previously summarized with the following additions:

(1) First attempt:

- September 9: Commander M- C-, stated the applicant was vetted and selected by J-5 for a Strategic Planner T2C2 position; he was at NGB and in the ARNG; he was scheduled to transfer to the USAR 30 September
- September 14: the applicant stated he would like to be withdrawn from further consideration for the Strategic Planner position; he had received a more realistic separation date from HCM, which was forecasted to be as late as 2017
- September 25: he was separated from the Ohio ARNG (OHARNG) - he did not see the order at the time; he was still under the impression that HCM stopped all efforts to release him

- Sometime in the winter, CO"L B- and he went to COL J-'s office and spoke about his status; he inquired about his status and was told COL J- did not know

(2) Second attempt:

- Sometime in March he received a phone call from someone at HCM state they were having problems with his transition orders, but they would work it out and get the orders cut; he does not remember who he talked to but they never got back to him
- April 19: he was still looking for a unit to transfer to the USAR, 335th Signal offered a deployment
- Late April: he called the USAR recruiter to inquire about his records and processing into a unit; the recruiter could not help him as they believed he was assigned to the ARNG
- April 25: he was offered two positions in the USAR; his leadership knew he was still trying to find a USAR unit
- April 26: USAR recruiter states he could see the applicant still assigned to an ARNG unit in Texas
- May 1: he inquired to HCM about separation order; they could get separation orders by the end of the week
- May 1: USAR recruiter stated no one could see the applicant under their command and control
- May 5: He was escorted out of the building
- May 9: he received USAR orders assignment him to a USAR unit; this was the first confirmation he was in the USAR
- May 11: Mr. S- requested his return to work for two week to hand over duties; ARNG Chief of Staff agreed
- June 5: he returned his iPhone and continued to do work on his laptop
- June 7: ethics division advised him against working for Government contractor
- June 8: He provided analysis on Department of Defense Instruction (DoDI)to J-2 leaders
- June 12: Further coordination with DoDI 5240.10 and division chiefs
- July 6: Further coordination with DoDI 5240.20 and Section Division Chief; updated deputy on lines of effort
- July 8 and 10: Request office call with Deputy Director ARNG through HCM Division chief; 17 July no contact with Deputy Director ARNG office
- July 18: Met with J251 Branch Chief
- July 24: way ahead meeting with J2LNO

(3) The timeline also includes his major work efforts from 8 May to 24 July, which are available for the Board's review.

d. Email chain regarding his transfer to 3200th Signal, 5 May 2017, which states in effect he was not under command and control of the USAR. The entire email chain is available for the Board's review.

e. Email chain regarding his ability to get back to work, 8 June 2017, states the email authorized him to get back to work. The entire email chain is available for the Board's review.

f. IG Action Request Form shows the case was open on 23 June 2017 and closed on 1 March 2018. It states in pertinent part:

(1) The problem area was adjusted ETS date for DD Form 214 and out-processing.

(2) The form goes through the timeline of events regarding the applicant's transfer to the USAR.

(3) The preliminary analysis of issues found were:

- Why was he released from the OHARNG without HCM knowing
- Why did the OHARNG release him and withdraw his federal recognition
- Is he in the ARNG systems to even create a DD Form 214 and out-process him

(4) The form includes a synopsis of the duties the applicant performed after he was escorted from the building in May 2017.

(5) The applicant stated he really thought the only way to get all the installation services turned off or completed was to have a DD Form 214. He knows HCM was insisting he take the 5 May end date and challenge the 24 July date through the ABCMR process. Fine, Jude Advocate Ethics had made it clear that without a DD Form 214 he should not accept employment. He did not want to get caught in another bad situation, so he would accept the 5 May end date on his DD Form 214 and submit a request for correction through the ABCMR process so that he could accept employment. He could no longer be out of work. This had been an enormous distraction to his mission.

(6) The applicant acknowledged he received of his DD Form 214. NGB IG would close the case and take no further action with his issues.

g. Email from Chief, Officer Management Branch, 31 December 2018, states per regulation the applicant was correct, 24 July 2017, was the appropriate date as he must be released no later than 6 months from the date of notification, which was 24 January 2017. The entire email chain is available for the Board's review.

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

a. Memorandum appointment as a Reserve Commissioned Officer of the Army, 23 March 1995 appointed him as a Reserve commissioned officer in the aviation branch.

b. An Application for Federal Recognition in the ARNG, 1 July 2005 shows he was requesting federal recognition in the Texas ARNG in the Aviation branch.

c. Order 187-13, published by NGB, 6 July 2005 ordered him to active duty in the AGR program with a reporting date of 4 September 2005 for a period of three years with an ending date of 3 September 2008. On 2 September 2005, the orders were amended to change his reporting date to 7 October 2005 for a period of three years with a ending date of 6 October 2008. He remained in and AGR status through amendments/new orders; however, they were unavailable in his service record.

d. An Oath of Office shows he took the oath of office in the Texas ARNG on 7 October 2005.

e. Orders 226-8, published by NGB, 14 August 2015, ordered him, in the AGR program, to PCS to Arlington, Virginia with a reporting date of 15 October 2015 and he would be assigned there until 14 October 2018. On 8 June 2017, these orders were amended to change his ending date to 5 May 2017.

f. An Oath of Office shows he took the oath of office in the OHARNG on 10 March 2016.

g. Self-authored memorandum, 4 August 2016, states the applicant was requesting to be released from the OHARNG in order to fill a position in the USAR.

h. A Request for Conditional Release, 8 August 2016, stated the applicant rendered his resignation from the OHARNG contingent upon his actual appointment or enlistment in the USAR and it would be effective the day preceding the date of his acceptance of appointment or enlistment. The request was approved and valid until 28 December 2016. Section III (Notification of Enlistment/Appointment Action) was not completed.

i. National Guard Report of Separation and Record of Service shows he was honorably assigned to USAR Control Group (Individual Ready Reserve (IRR)) from the OHARNG effective 25 September 2016. In item 20 (Signature of Person Being Separated) it states "Soldier not available for signature."

j. Orders 280-901, published by State of Ohio, Adjutant General's Department, 6 October 2016 honorably transferred him from the ARNG to USAR Control Group (IRR) effective 25 September 2016.

k. DD Form 214 shows he was ordered to active duty, as a member of the ARNG, on 7 October 2005 and was honorably released on 5 May 2017.

5. On 20 June 2024, the Chief, Special Actions Branch, NGB, provided an advisory opinion, which states:

a. The applicant requests end date correction to his DD Form 214 to 24 July 2017 vice 5 May 2017 and to receive applicable pay and allowances. NGB recommended approval of his request.

b. He was in a Title 10 AGR program and administratively tracked by the OHARNG. He requested a conditional release to be able to transfer to the USAR on a DD form 368 as well as a memorandum to the OHARNG. He stated he requested a release from the Title 10 AGR program that was stopped by HCM. He received orders to PCS on 27 January 2017, which he declined. He again submitted a packet for separation from the AGR program to HCM on 13 March 2017 and receipt was confirmed via email. Correspondence vial email with HCM resulted in an agreed upon separation date of 24 July 2017.

c. On 5 May 107, he was escorted out of NGB and access badges were confiscated and an IG investigation into fraud was started because it was believed he was in the USAR and ARNG simultaneously. The first request for reseparation from HCM had been on hold by the applicant at NGB but the OHARNG continued to process the separation and an IG investigation found the OHARNG erroneously withdrew his federal recognition. The OHARNG published a separation order with the separation date of 25 September 2016 transferring him to the USAR. His NGB Form 23A (ARNG Annual Retirement Point Statement) and NGB Form 22 match a separation date of 25 September 2016.

d. The applicant continued to work at NGB until 24 July 2017, confirmed by email from direct supervisor included in the IG investigation with permission from the NGB Chief of Staff. He continued to be paid and later incurred a debt for this time. His AGR orders were amended to an end date of 5 May 2017. He filed an IG complaint at NGB as the separation was erroneous and his DD Form 214 had an end date of 5 May 2017

because of the mishap of paperwork and administrative system errors. HCM states in the IG investigation they would be willing to change his DD Form 214 but do not have the ability now that he is in the USAR without an ABCMR decision.

e. Is the recommendation of NGB that his request be approved. Per the IF investigation findings, the OHARNG erroneously revoked his federal recognition. His AGR orders were amended and DD Form 214 shows an end date of 5 May 2017 despite the previously agreed upon date of 24 July 2017. His current ARNG separation is 25 September 2016. His end date on his DD Form 214 should be corrected to 24 July 2017 and his AGR order amended to match an end date of 24 July 2017. His separation should be amended to be effective 24 July 2017 and all corresponding records. Pay and allowances should be adjusted accordingly.

6. On 20 June 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He responded stating:

a. He appreciated the consideration of his case. He is also appreciative of the NGB IG's thorough inquiry into his request.

b. On 5 May 2017, he was escorted out of the NGB building. The orders changing his end of service to 5 May 2017 were published on 8 June 2017. He was not notified of this action until days after. From 5 May 2017 onward, he received no support. He had no clearing papers, no movement papers, not even a DD Form 214. It was as if he was dropped from the face of the earth. He had over 25 years of active duty service, at the time of this action. He had over 50 days of accrued leave that was lost. He was not allowed to move his household good because he had no orders to be discharged.

c. His DD Form 214 for the period ending May 2017 was not produced until November 2017 after the NGB IG intervened on his behalf, requesting the OHARNG help create a DD Form 214 for over 11 years he had served as an AGR at NGB. He is requesting that all consideration be made to the pay and allowances he is owed.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 Board reviewed and concurred with the National Guard Bureau's advisory finding the investigation erroneously revoked the applicant's Federal recognition. The applicant's Active Guard Reserve orders were amended and his DD Form 214 end date was to be 5 May 2017 despite the previously agreed upon date of 24 July 2017. His current Army National Guard separation date is 25 September 2016. His end date on

his DD Form 214 should be corrected to 24 July 2017 and his Active Guard Reserve order amended to 25 July 2017 and any associated pay with this correction.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by:

- amending item 12b (Separation Date This Period) of his DD Form 214 to show 24 July 2017
- amending Orders 280-901, State of Ohio, Adjutant General's Department, dated 6 October 2016, to show an effective date of 24 July 2017
- entitlement to back pay and allowances as a result of this correction

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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, 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 635-8 (Separation Processing and Documents) prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation document. It states:

a. Reporting for final transitioning: after completion of pre-transition processing, Soldiers will report to the supporting transition center for final out-process on the reporting date established by the transition center on the actual separation date or on the last duty day prior to beginning date of transition leave or permissive temporary duty.

b. In block 12b (Separation Date this Period) of the DD Form 214 list the Soldier's transition date. This date may not be the contractual date if the Soldier was separated early, voluntarily extends, is extended to make up lost time, or is retained on active duty for the convenience of the government.

3. 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. It states:

a. 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.

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.

4. Title 31, U.S. Code, section 3702, also known as the Barring Statute, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U.S. Code, is relieving the Government

of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

//NOTHING FOLLOWS//