

IN THE CASE OF: ██████████

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20230005521

APPLICANT REQUESTS: removal of the Army Good Conduct Medal (AGCM) disqualification memorandum from his Army Military Human Resource Record (AMHRR).

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Headquarters, U.S. Army Garrison, Hawaii, Order C1-356-038, 22 December 2015
- DA Form 31 (Request and Authority for Leave), 7 January 2016
- DA Form 31, 11 April 2016
- DA Form 705 (Army Physical Fitness Test (APFT) Scorecard), 26 April 2016
- DA Form 705, 31 May 2016
- Company E, 229th Military Intelligence Battalion, Defense Language Institute Foreign Language Center, Memorandum (Disqualification for the AGCM (Army Regulation 600-8-22 (Military Awards), Chapter (should read Paragraph) 4-8), 17 June 2016
- Company E, 229th Military Intelligence Battalion, Memorandum (Disqualification for the AGCM), 17 June 2016
- DA Form 705, 28 June 2016

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 the AGCM disqualification memorandum was filed in his AMHRR by mistake. He was given an APFT within the first 30 days of his permanent change of station to the Defense Language Institute and was not told the test was for record. He was told that he would be flagged since he did not pass the test due to allergies and that the memorandum would not be submitted until the end of his good

conduct eligibility date. He was told the memorandum would not be submitted if he passed the APFT before the end of his eligibility date. During the time when he was flagged, the memorandum was accidentally submitted to his unit S-1 section, which was processed and filed in his records. He told his unit first sergeant who tried to find a way to have it removed from his AMHRR. He was given an APFT and flagged not in accordance with the regulation in effect at the time. He previously went to his battalion S-1, as well as the Military Personnel Division, and they were unable to remove the memorandum from his AMHRR.

3. The applicant enlisted in the Regular Army on 22 August 2001 in the rank/grade of private first class/E-3. He was promoted to the rank/grade of staff sergeant/E-6 effective 1 February 2010.

4. 715th Military Intelligence Battalion Permanent Orders 238-09, 26 August 2013, awarded him the AGCM (4th Award) for the period 2 August 2010 to 21 August 2013.

5. U.S. Army Human Resources Command Order Number 112-25, 22 April 2014, promoted to the rank/grade of sergeant first class/E-7 effective 1 May 2014.

6. Headquarters, U.S. Army Garrison, Hawaii, Order C1-356-038, 22 December 2015, assigned him to Company B, 229th Military Intelligence Battalion, in a permanent change of station status with a reporting date of 9 April 2016.

7. His DA Form 31, 7 January 2016, shows he was granted permanent change of station leave from 7 March 2016 through 9 April 2016, a period of 32 days.

8. His DA Form 31, 11 April 2016, shows he was granted permissive temporary duty leave for house hunting from 14 April 2016 through 23 April 2016, a period of 10 days.

9. His DA Form 705, 26 April 2016, shows he was administered a record APFT on 26 April 2016 wherein he failed the two-mile run. This form was verified and digitally signed by the noncommissioned officer or officer in charge (NCOIC/OIC) on 27 April 2016.

10. His DA Form 705, 31 May 2016, shows he was administered a record APFT on 31 May 2016 wherein he passed all events. This form was verified and digitally signed by the NCOIC/OIC on 1 June 2016.

11. The Company E, 229th Military Intelligence Battalion, Defense Language Institute Foreign Language Center, memorandum from the commander (Disqualification for the Award of the AGCM (Army Regulation 600-8-22, Chapter 4-8), 17 June 2016, notes it was his intention to disqualify him for award of the AGCM for the period 22 August 2013 to 21 August 2016 due to APFT failure. The applicant acknowledged receipt of the

memorandum, signed the memorandum on 17 June 2016, and initialed the statement indicating he understood the unfavorable information and elected not to submit a statement or any documents in his own behalf.

12. The Company E, 229th Military Intelligence Battalion, memorandum from the commander (Disqualification for the Award of the AGCM), 17 June 2016, disqualified him for award of the AGCM for the period 22 August 2013 to 21 August 2016.

13. His DA Form 705, 28 June 2016, shows he was administered a record APFT on 28 June 2016 wherein he passed all events. This form was verified and digitally signed by the NCOIC/OIC on 30 June 2016.

14. His AMHRR is devoid of orders awarding him the AGCM for the period 22 August 2013 to 21 August 2016.

15. Headquarters, U.S. Army Garrison, Presidio of Monterey, Permanent Orders 203-7, 22 July 2019, awarded him the AGCM (5th Award) for the period 22 August 2016 to 21 August 2019.

16. U.S. Army Human Resources Command Order Number 141-12, 20 May 2020, promoted him to the rank/grade of master sergeant/E-8 effective 1 June 2020.

17. Headquarters, U.S. Army Garrison, Presidio of Monterey, Permanent Orders 278-05, 5 October 2022, awarded him the AGCM (6th Award) for the period 22 August 2019 to 21 August 2022.

18. He is currently serving as the first sergeant of Company A, 229th Military Intelligence Battalion, Presidio of Monterey.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, a majority of the Board found relief is not warranted.

2. A majority of the Board found the reason for disqualifying the applicant for the AGCM for the period 22 August 2013 to 21 August 2016 was properly documented and, when given the opportunity to submit statements or documents in his behalf, the applicant declined. Based on a preponderance of the evidence, a majority of the Board determined the presence of the AGCM disqualification memorandum in the applicant's record is not an error or unjust.

3. The member in the minority noted that while the record confirms the applicant failed the run portion of a record APFT, he did pass the APFT shortly after and before his commander proposed to disqualify him for the AGCM. The member in the minority found the commander’s decision to be unduly harsh and determined the AGCM disqualification memorandum should be removed from the applicant’s record.

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.

6/25/2024

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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, 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 600-8-22 (Military Awards), prescribes Department of the Army policy, criteria, and administrative instructions concerning individual and unit military awards. Chapter 4 provides guidance for award of the AGCM.

a. Paragraph 4-1 (Intent) states the AGCM is awarded for exemplary behavior, efficiency, and fidelity in active federal military service. It is awarded on a selective basis to each Soldier who distinguishes himself or herself from among his or her fellow Soldiers by exemplary conduct, efficiency, and fidelity throughout a specified period of continuous enlisted active Federal military service. There is no right or entitlement to the AGCM until the immediate commander has approved the award and the award has been announced in permanent orders.

b. Paragraph 4-4 (Basis for Approval) states the immediate unit commander's decision to award the AGCM will be based on his or her personal knowledge of and the individual's official records for periods of service under previous commanders during the period for which the award is to be made.

c. Paragraph 4-6 (Character of Service) states that throughout a qualifying period, each enlisted Soldier must meet all the following criteria for an award:

(1) The immediate commander evaluates the Soldier's character as above reproach.

(2) The record of service indicates the Soldier has:

- willingly complied with the demands of the military environment
- been loyal and obedient to his or her superiors
- faithfully supported the goals of his or her organization and the Army
- conducted himself or herself in an exemplary manner as to distinguish him or her from fellow Soldiers

(3) While any record of nonjudicial punishment could be in conflict with recognizing the Soldier's service as exemplary, such record should not be viewed as automatically disqualifying. The commander will analyze the record, giving consideration to the nature of the infraction, the circumstances under which it occurred and when. Conviction by court-martial terminates a period of qualifying service; a new period begins following the completion of sentence imposed by court-martial.

(4) In terms of job performance, the Soldier's efficiency must be evaluated and must meet all requirements and expectations for that Soldier's grade, military occupational specialty, and experience.

d. Paragraph 4-8 (Disqualification for the AGCM) states:

(1) Conviction by courts-martial terminates a period of qualifying service; a new period begins the following day after completion of the sentence imposed by the court-martial.

(2) Individuals whose retention is not warranted or for whom a bar to reenlistment has been approved are not eligible for award of the AGCM.

(3) In instances of disqualification as determined by the unit commander, the commander will prepare a memorandum stating the rationale for his or her decision. This memorandum will include the period of disqualification and will be referred to the individual. The unit commander will consider the affected individual's statement. If the commander's decision remains the same, the records manager will upload the memorandum and the individual's statement for filing in the Soldier's AMHRR.

(4) Disqualification for an award of the AGCM can occur at any time during a qualifying period (for example, when manner of performance or efficiency declines). The personnel office will establish the new "beginning date" for the Soldier's eligibility for award of the AGCM, enter the new date and code in the Soldier's Electronic Military Personnel Office record, and submit the Electronic Military Personnel Office transaction. These procedures do not apply if a Soldier is disqualified under the provisions of paragraph 4-8b.

3. Army Regulation 600-37 (Unfavorable Information), provides that once an official document has been properly filed in the Official Military Personnel File (OMPF), it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

4. Army Regulation 600-8-104 (Army Military Human Resource Records Management), prescribes policies governing the Army Military Human Resource Records Management Program. The AMHRR includes, but is not limited to, the OMPF, finance-related documents, and non-service related documents deemed necessary to store by the Army.

a. Paragraph 3-6 provides that once a document is properly filed in the AMHRR, the document will not be removed from the record unless directed by the ABCMR or other authorized agency.

b. Appendix B (Documents Required for Filing in the Army Military Human Resource Record and/or Interactive Personnel Electronic Records Management System) contains

the list of all documents approved by Department of the Army and required for filing in the AMHRR and/or interactive Personnel Electronic Records Management System. The disqualification memorandum for the AGCM is filed in the performance folder of the Soldier's OMPF.

//NOTHING FOLLOWS//