

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230005681

APPLICANT REQUESTS:

- correction of his military record to amend his separation date from 1 August 2018 to 28 November 2018
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Email Correspondence between 24 April 2018 and 9 May 2018
- NGB Form 22 (National Guard Report of Separation and Record of Service), effective 1 August 2018
- Orders 332-1047, dated 28 November 2018
- Email Correspondence between 23 July 2020 and 27 August 2020
- Medical debt billing statement

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 correction of his military record to reflect his separation date as 28 November 2018 because his separation date was backdated to 1 August 2018 without prior notification.

b. The separating unit lacked a standard protocol for officer resignations and did not provide proper guidance on the timelines associated with the resignation request. His resignation was submitted in July 2018 and was not completed until 28 November 2018. During this time he was not informed that the separation date would be retroactively dated. He was also not notified of his options to remain in pay status during the

separation process. Due to the lack of guidance, the retroactive separation date caused him and his dependents to be ineligible for Tricare coverage from the period of 1 August 2018 through 31 December 2018. As a result, he incurred a debt of over \$150,000.00 for care rendered to his daughter. His daughter has a life threatening condition that required daily medicines to sustain life.

c. He resigned from the Army National Guard in order to enlist in the Air National Guard to maintain Tricare and retirement benefits. He had been working with the Air National Guard since February 2018 in order to complete a transfer between branches in order to maintain benefits. This medical debt has cause financial hardship and mental stress on the family. He states he was not notified about his separation when the orders were published in November 2018, and only found out when a healthcare claim was denied in January 2019.

3. The applicant provides:

a. Email traffic between himself and TSgt Exxx Kxxx, between 24 April 2018 and 9 May 2018, that discusses a sister service transfer, enlistment process, entry rank, and benefits of joining the Air National Guard.

b. NGB Form 22, effective 1 August 2018, shows he completed 8 years, 9 months, and 4 days of net service. Item 18 (Remarks) states "NGB Form 22 was mailed to soldier's last known address as shown in Item 19 (Mailing Address After Separation). Additionally, Item 20 (Signature of Person Being Separated) shows "Soldier Not Available to Sign."

c. Orders 332-1047, issued by the Commonwealth of Pennsylvania, Department of Military and Veterans Affairs, dated 28 November 2018, that separated the applicant from the Army National Guard effective 1 August 2018.

d. Email traffic between the applicant, 171st Air Refueling Wing Staff Judge Advocate, 28th Expeditionary Combat Aviation Brigade Chief of Operations, and PAARNG G1 Personnel Division discussing the correct course of action for the applicant to resolve his Tricare debt and possibly have his discharge date amended.

e. Medical debt collection letter from the Department of Defense (DoD), Defense Health Agency (DHA) (formerly Tricare Management), addressed to the applicant, dated 3 March 2023 in the amount of \$257,792.67.

4. Review of the applicant's service record shows:

a. On 28 October 2009, he was appointed as a Warrant Officer One/WO1 in the Pennsylvania Army National Guard (PAARNG). He attended and completed the Initial Entry Rotary Wing Course from 28 October 2009 until 11 August 2011.

b. On 11 August 2011, he was released from active duty training with an honorable characterization of service. His DD Form 214 shows he completed 1 year, 9 months, and 14 days of active service.

c. Orders 201-043, dated 19 July 2012, directed the applicant to active duty in support of Operation Enduring Freedom (OEF).

d. On 28 September 2013, he was released from active duty with an honorable characterization of service. His DD Form 214 shows he completed 1 year, 1 month, and 8 days of active service.

e. On 1 August 2018, he was released from the PAARNG. His NGB Form 22 shows he completed 8 years, 9 months, and 4 days of net service. Item 18 (Remarks) states "NGB Form 22 was mailed to soldier's last known address as shown in Item 19 (Mailing Address After Separation). Additionally, Item 20 (Signature of Person Being Separated) shows "Soldier Not Available to Sign."

f. Orders 332-1047, dated 28 November 2018, honorably separated the applicant from the Army National Guard with an effective date of 1 August 2018.

5. On 17 November 2023, the Case Management Division (CMD) requested an advisory opinion from the ARNG Bureau pertaining to the applicant's request of correction to his discharge date being amended to 28 November 2018 from 1 August 2018.

6. On 26 January 2024, CMD requested a copy of any Defense Finance Account Service (DFAS) debt documents pertaining to the applicant.

7. The Chief, Special Actions Branch, responded to the request for an advisory opinion and recommends providing full relief to the applicant's request is warranted for the following reasons:

a. The applicant signed his resignation request on 11 July 2018. This request had 1 August 2018 as the requested effective date of transfer to the IRR. On 5 September 2018, the company commander endorsed this request, and the battalion commander endorsed it on 4 October 2018. The brigade submitted the signed request to division G1 on 15 October. The division endorsed it on 20 November and JFHQ G1 published the orders transferring him to IRR on 28 November 2018 with an effective date of 1 August 2018.

b. According to National Guard Regulation (NGR) 635-100, para 5(3)(a)(b), an officer may tender a resignation through channels to the State adjutant general. If accepted, the State adjutant general will publish orders separating the officer from his Army National Guard appointment and furnish copies to the Chief, National Guard Bureau. The resignation may also be concurrent from the Army National Guard and Reserve of the Army for officers without a remaining service obligation. When the resignation of an Army National Guard officer has been accepted and Federal recognition withdrawn, revocation of the separation order will not be considered as a basis for restoration of Federal recognition. If the officer desires to be reinstated, he/she must apply for reappointment to the Army National Guard.

c. It is PAARNG's recommendation that the applicant's separation date be adjusted to align with his transfer to the Air National Guard, as was his intention when he initially requested separation from the ARNG. Due to the lack of guidance during the processing of his request, along with the delay in processing his separation, the backdated separation date and extended break in service was no fault of the applicant. PAARNG acknowledges the lack of clear guidance in this process and have since taken steps to update their separation policy which will require Soldiers to request an effective resignation date that is no earlier than six months when submitting the request. PAARNG and the PAANG have tried to amend his orders, but when he was transferred to the IRR, his FED REC was withdrawn and was accessed into the strength of USAR. Revoking that FED REC would not be the basis for reinstating him, and he would have to request reappointment to PAARNG. PAARNG does not have the authority to reinstate him back in 2018 and therefore, there is no way to amend his orders from 2018.

d. Based on the applicant's claims and the documents he provided in support of his request, its office recommends approval. The applicant's separation date should be adjusted to align with his transfer to the Air National Guard, as was his intention when he initially requested separation from the ARNG. Due to the lack of guidance during the processing of his request, along with the delay in processing his separation, the backdated separation date and extended break in service was no fault of the applicant.

8. The advisory opinion recommends relief beyond the applicant's request, as he requests his discharge date to be amended to 28 November 2018. However, the advisory opinion recommends the applicant's separation date be adjusted to align with his transfer to the Air National Guard (18 April 2019), as was his intention when he initially requested separation from the ARNG.

9. On 6 February 2024, the applicant was notified of the communication received by the NGB and was given the opportunity to respond within 15 days of the date of the notification.

10. The applicant responded to the advisory opinion on 19 February 2024, and concurred with the findings. He states that he, along with his wife, have attempted to resolve the debt for nearly 5 years. His intention was to leave the ARNG to join the ANG without a break in service in order to maintain his benefits. Upon joining the ANG he resumed Tricare coverage and kept it until his retirement in November 2023. He states that the debt incurred has caused an insurmountable deal of mental distress and could financially ruin everything for which he has worked.

10. By regulation, a Warrant Officer may tender a resignation through channels to the appropriate adjutant general . If accepted, the adjutant general will publish orders separating the Warrant Officer from the ARNG appointment and furnish copies to the Chief, National Guard Bureau, ATTN: ARNG-HRP.

#### 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. Upon review of the applicant's available military records, the Board determined there is sufficient evidence to grant full relief. Based on this, the Board granted relief to correct the applicant's separation date from 1 August 2018 to 28 November 2018.

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 orders 332-1047, dated 28 November 2018, to show he was honorably separated from the Army National Guard with an effective date of 28 November 2018.

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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. National Guard Regulation (NGR) 635-100 (Personnel Separations – Termination of Appointment and Withdrawal of Federal Recognition) states:
  - a. An officer may tender a resignation through channels to the State adjutant general. If accepted, the State adjutant general will publish orders separating the officer from his Army National Guard appointment and furnish copies to the Chief, National Guard Bureau. The resignation may also be concurrent from the Army National Guard and Reserve of the Army for officers without a remaining service obligation.
  - b. When the resignation of an Army National Guard officer has been accepted and Federal recognition withdrawn, revocation of the separation order will not be considered as a basis for restoration of Federal recognition. If the officer desires to be reinstated, he/she must apply for reappointment to the Army National Guard.
3. NGR 600-101 (Warrant Officers Federal Recognition and Related Personnel Actions) states a Warrant Officer may tender a resignation through channels to the appropriate adjutant general . If accepted, the adjutant general will publish orders separating the Warrant Officer from the ARNG appointment and furnish copies to the Chief, National Guard Bureau, ATTN: ARNG-HRP.
4. Army Regulation (AR) 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 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.

//NOTHING FOLLOWS//