

c. GCMO Number 5, dated 22 January 2008 shows the applicant, in the rank of sergeant/E-5, was found guilty at a GCM on 8 May 2007 of the following charges:

(1) Charge I, Article 81 – did at or near Ar Ramadi, Iraq, on divers occasions between on or about 20 August 2006 and 28 August 2006, conspire with another Soldier to housebreaking, and in order to effect the object of the conspiracy, he directed their government vehicle to move in front of a pharmacy, break the pharmacy door with a turret screwdriver, go inside the pharmacy, take several boxes of drugs out of the pharmacy and later ingest the pills that were in the boxes. – Plea: Guilty: Finding: Guilty

(2) Charge II, Article 112a –

(a) Specification 1: did at or near AR Ramadi, Iraq, on divers occasions between on or about 20 August 2006 and on or about 30 August 2006, wrongfully used diazepam, commonly known as Valium, a Schedule IV controlled substance, while receiving pay. Plea: Guilty. Finding: Guilty

(b) Specification 2: did at or near AR Ramadi, Iraq, on divers occasions between on or about 20 August 2006 and on or about 30 August 2006, wrongfully used codeine, a Schedule II controlled substance, while receiving pay. Plea: Guilty. Finding: Guilty.

(c) Specification 3: Dismissed.

(d) Specification 4: did at or near AR Ramadi, Iraq, on or about 9 October 2006, wrongfully use diazepam, a Schedule IV, a Schedule IV substance while receiving pay. Plea: Guilty. Finding: Guilty

(3) Charge III, Article 113 – did at or near AR Ramadi, Iraq, on divers occasions between on or about 20 August 2006 and on or about 28 August 2006, wrongfully used diazepam, commonly known as Valium, a Schedule IV controlled substance, while receiving pay. Plea: Guilty. Found: Guilty.

(4) Charge IV, Article 130 – did at or near AR Ramadi, Iraq, on or about 21 August 2006, unlawfully enter a pharmacy, the property of an Iraqi local national, with intent to commit a criminal offense, to wit: to commit larceny. Plea: Guilty. Finding: Guilty.

d. The court sentenced him to be reduced to E-1, to be confined for 32 months, and to be discharged from the service with a bad-conduct discharge (BCD).

e. DD Form 2707 (Confinement Order), dated 8 May 2007, shows the applicant was initially confined in Mannheim, Germany, and later received at the Fort Knox Confinement Facility on 9 May 2007.

f. On 22 January 2008, the convening authority stated only so much of the sentence as provided for reduction to E-1, confinement for 17 months, and a discharge from the service with a BCD was approved, and except for the part of the sentence extending to a BCD would be executed. The automatic forfeiture of all pay and allowances required by Article 58b, Uniform Code of Military Justice, is waived effective 18 October 2007 until 18 March 2008 with direction that these funds be paid to the wife of the applicant.

g. The U.S. Army Court of Criminal Appeals decision, dated 30 April 2008 held the findings of guilty and the sentence as approved by the convening authority correct in law and fact and affirmed the findings of guilty and the sentence.

h. A DA Form 4187 (Personnel Action) shows the applicant's duty status was changed from Confined Military Authorities to Present for Duty on 23 June 2008.

i. Following his release from confinement, the applicant was placed on excess leave from 23 June 2008 to 20 March 2009.

j. GCMCO Number 220, dated 25 September 2008, states the sentence to a BCD discharge, confinement for 17 months, and reduction to the grade of E-1 had been finally affirmed and the BCD would be executed. The automatic forfeiture of all pay and allowances required by Article 58b, UCMJ, was waived effective 18 October 2007 until 18 March 2008, with direction that these funds be paid to the wife of the accused.

k. The applicant was discharged from active duty on 20 March 2009. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was discharged with a BCD in accordance with Army Regulation 635-200 (Active Duty Enlisted Administrative Separations). He completed 6 years, 3 months, and 6 days of active duty service. He had lost time from 8 May 2007 to 22 June 2008 (412 days) and excess leave from 23 June 2008 to 20 March 2009 (271 days)

l. The applicant's service record was void of, and the applicant did not provide, documentation showing his debt to the government.

5. On 27 September 2023, DFAS sent the Army Review Boards Agency an email stating that the servicemember has a debt that is a "out of service" debt. His debt was for the following two reasons. The applicant had paid the debts in full.

- loss or damage of government property in the amount of \$760.33

- overpayment of pay and allowances while AWOL due to military confinement from 8 May 2007 to 22 June 2008 in the amount of \$18,946.52

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available evidence, the Board found that the applicant's pay was properly adjusted based upon misconduct, therefore, the debt collection by DFAS was appropriate and just. As a result, the Board recommended denying the applicant's requested relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:	:	:	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.

5/14/2024

X

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 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

//NOTHING FOLLOWS//