

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2024

DOCKET NUMBER: AR20230008379

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:
  - entitled awards and decorations
  - combat service in Iraq during Operation Iraqi Freedom
  - additional active duty service
- he further requests a complete copy of his military records.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement, 16 May 2023
- DD Form 214

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 Board will not address the applicant's request for a complete copy of his military records. The applicant is advised that he may request a copy of his military records by submitting a Standard Form 180 (Request Pertaining to Military Records) to the U.S. Army Human Resources Command. Instructions for completing a request for military records are resident on the form.
3. The applicant states, in effect, he served a tour of duty in Baghdad, Iraq in 2003-2004 until he ran into trouble in garrison. He received a Bad Conduct discharge in 2004. He is not proud of the nonsense he was involved in and would do anything to return and be a good Soldier since it is all he knows how to do well. Upon completion of the

correction of his DD Form 214, he will be putting together a portfolio to request an upgrade of his discharge so he may reenlist. He further states he has more active duty time than what is currently listed on his DD Form 214.

4. The applicant enlisted in the Regular Army on 29 April 2003. He successfully completed training and he served in military occupational specialty 21B (Combat Engineer).

5. On 25 February 2005, a general court-martial (GCM) found the applicant guilty of violating the following offenses:

- being disrespectful toward his superior commissioned officer
- wrongfully using marijuana between 23 June and 22 July 2004,
- wrongfully using marijuana between 22 July and 9 August 2004
- wrongfully possessing marijuana on 11 September 2004
- unlawfully kicking a military police sergeant in the face and on his shin
- wrongfully possessing some amount of marijuana on 19 September 2004

The court sentenced him to forfeiture of all pay and allowances, 18 months of confinement, and a BCD.

6. On 29 June 2005, the convening authority approved the sentence in Headquarters, 24th Infantry Division (Mechanized), Fort Riley, KS, GCM Order Number 17.1, and directed that all but the BCD portion be executed.

7. On 10 July 2006, the United States Army Court of Criminal Appeals affirmed the findings and sentence.

8. Headquarters, United States Army Armor Center and Fort Knox, KY, GCM Order Number 35, dated 22 February 2007, directed, Article 71(c) of the UCMJ having been complied with, that the BCD portion of the sentence be duly executed. On 15 June 2007, the applicant was discharged accordingly.

9. The applicant was discharged with from active duty in accordance due to court-martial conviction and received a bad conduct discharge. The DD Form 214 he was issued shows he completed 2 years, 4 months, and 2 days of active service. It also shows in:

- Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) National Defense Service Medal, Army Service Ribbon
- Block 29 (Dates of Time Lost During This Period) "Under 10 USC 972: 2004-12-09 – 2006-09-23" and Excess Leave from 2006-09-24 to 2007-06-15 (265 days)

10. During the processing of this case, the Defense Finance and Accounting Service (DFAS) provided his Master Military Pay Account, which shows service in Kuwait and evidence of Hostile Fire/Imminent Danger Pay from 1 November 2003 to 31 March 2004 (a period of 5 months). Records are wholly unclear as to the actual dates when the applicant deployed and returned from deployment. (Note: DFAS only verifies receipt of hostile fire/imminent danger pay. DFAS does not verify inclusive dates of deployed service or deployment locations beyond the first qualifying country (e.g., Kuwait versus Iraq). DFAS pay records are not considered "source documents," but may be considered as supporting documents leading to a preponderance of the evidence. A second source document is required.)

11. His Official Military Personnel File does not contain, and the applicant did not provide evidence showing he served in Iraq.

12 The applicant previously applied to the ABCMR for an upgrade of his discharge and a change to his Reentry Code. On 25 February 2010, the Board considered his request and denied his application. However, the applicant was informed that while the decision in his case is final, he may request reconsideration of the decision if he can present new evidence or argument which was not considered by the Board when it denied his original application.

13. Army Regulation 635-8 (Separation and Processing and Documents), establishes the standardized policy for preparing and distributing the DD Form 214. Chapter 5 contains guidance on the preparation of the DD Form 214, to include entering foreign service and remarks pertaining to deployment locations and through dates.

#### BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The DFAS information indicate the applicant received IDP for Kuwait from 1 November 2003 to 31 March 2004 but does not identify the exact dates of deployment. Prior to December 2011, members eligible for Imminent Danger Pay (IDP) when serving on official duty within a designated IDP area were paid the full monthly rate of for any complete or partial month they served in a qualifying area, regardless of the date they deployed or returned from deployment. The 2012 National Defense Authorization Act

modified IDP payments, limiting eligibility to only the actual days served in a qualifying area. The Board accepted the DFAS verification email as evidence that the applicant served in Kuwait. The Board determined, in order to list his deployment, additional documents are needed with specific dates of deployment and return from deployment.

b. The Board did not find evidence he served in Iraq. Aside from the DFAS confirmation for Kuwait, there are no certificates, awards, or other evidence that places the applicant in Iraq.

c. Based on his service in Kuwait and the time frame identified by DFAS, he is eligible for awards of the Global War on Terrorism Expeditionary Medal and the Global War on Terrorism Service Medal.

d. As for his request for additional service time, the evidence show he enlisted on 29 April 2003, and he was discharged on 15 June 2007, a period of 4 years, 1 month, and 17 days. However, he had lost time from 9 December 2004 to 23 September 2006, a period of 1 year, 9 months, 15 days, leaving him with 2 years, 4 months, and 2 days of active service. Lost time is not creditable time.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant’s DD Form 214 to show in Block 13:

- Global War on Terrorism Service Medal
- Global War on Terrorism Expeditionary Medal

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to correction of his DD Form 214 to show: additional awards and decorations, combat service in Iraq during Operation Iraqi Freedom, and/or additional active duty service.



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, establishes the standardized policy for preparing and distributing the DD Form 214. Chapter 5 contains guidance on the preparation of the DD Form 214, to include entering foreign service and remarks pertaining to deployment locations and through dates:

- block 12c amount of service this period, computed by subtracting block 12a from 12b. Lost time under 10 USC 972 and noncreditable time after expiration term of service, if any, are deducted. Lost time will be listed in block 29; other noncreditable time will be identified in block 18.
- block 12f enter the total amount of service performed Outside Continental United States (OCONUS) during the period covered by the DD Form 214, to include deployments. List periods of deployed service in block 18 (Remarks)
- block 18 for an active duty Soldier, list any/all OCONUS deployments completed during the period of the DD Form 214 being created, the statement "Service in (Name of Country Deployed) From (inclusive dates)"

3. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Global War on Terrorism Expeditionary Medal is authorized for award to members of the Armed Forces of the United States who deployed abroad for service in Global War on Terrorism operations on or after 11 September 2001 to a date to be determined. The general area of eligibility encompasses all foreign land, water, and air spaces outside the fifty states of the United States and outside 200 nautical miles of the shores of the United States in operations approved by the Secretary of Defense. Under no conditions will units or personnel within the United States or the general region excluded above be deemed eligible for the Global War on Terrorism Expeditionary Medal. Service members must be assigned, attached, or mobilized to a unit participating in designated operations for 30 consecutive days or 60 nonconsecutive days in the area of eligibility, or meet other, specified criteria. Initial award of the Global War on Terrorism Expeditionary Medal was limited to service members deployed abroad in Operations Enduring Freedom and Iraqi Freedom in a designated specific geographic area of eligibility, including Kuwait.

b. The Global War on Terrorism Service Medal is authorized for award to members of the Armed Forces of the United States who have participated in Global War on Terrorism operations outside of the areas of eligibility designated for award of the Global War on Terrorism Expeditionary Medal, Afghanistan Campaign Medal, or Iraq Campaign Medal. All Soldiers on active duty, including Reserve Component Soldiers mobilized or National Guard Soldiers activated, on or after 11 September 2001 to a date to be determined having served 30 consecutive days or 60 nonconsecutive days are authorized the Global War on Terrorism Service Medal. The Global War on Terrorism Service Medal may be awarded posthumously. Only one award of the Global War on Terrorism Service Medal may be authorized to any individual; second and subsequent awards will not be awarded.

4. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

//NOTHING FOLLOWS//