

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 September 2024

DOCKET NUMBER: AR20230008708

APPLICANT REQUESTS: In effect, to be shown to have completed 2 years of active duty service.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge) in lieu of the DD Form 149

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 he was denied a Department of Veterans Affairs (VA) home loan, because he was separated from active duty 1 week before completing the required 2 year active duty requirement. He was discharged as an early overseas returnee and should not be penalized for this.
3. A review of the applicant's service record shows he enlisted on 3 March 1982 for 2 years. He completed training with award of the military occupational specialty 95B (Military Police). The highest grade he held was E-4.
4. The applicant served in Germany from 16 July 1982 through 22 February 1984.
5. The applicant was released from active duty (REFRAD) and transferred to the U. S. Army Reserve (Ready Reserve) on 23 February 1984. The DD Form 214 issued at this time provides the following:
 - Net service this period 1 year, 11 months, and 21 days
 - 1 year, 7 months, and 7 days of foreign service
 - An honorable character of service
 - A separation authority of Army Regulation 635-200, Chapter 4
 - A narrative reason for separation of Completion of Term of Service
 - A separation code of LBK (Expiration of Term of Service)

- His awards are listed as the:
 - Army Achievement Medal (2nd award)
 - Army Service Ribbon
 - Overseas Service Ribbon
 - Sharpshooter Qualification Badge with Rifle and Grenade Bars
 - Marksman Qualification Badge with Pistol Bar

6. The applicant is shown to have an active status with an MP Company in MI and with the 755th Maintenance Company, USAR (Ready). He retrained into the MOS of 52D (Power Generator Equipment Repairman) on 22 June 1984.

7. There is no provision in law or regulation to grant a Soldier time not served on active duty.

8. The authority granted by Title 10, U.S. Code, Section 1552 (Correction of Military or Naval Records) is not unlimited. The ABCMR has the authority to correct only Army records. The Board has no authority to correct records created by the Department of Defense, other branches of the Services, Department of Veterans Affairs, or any other governmental agency.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant entered active duty on 3 March 1982 and was honorably released from active duty on 23 February 1984. He completed 1 year, 11 months, and 21 days of active service. He did not complete 2 years of active duty. Therefore, an adjustment to his separation date or net active service to credit him with 2 years is not justified or warranted. However, the Board noted that an entry in the Remarks Block should be made to indicate the applicant completed his full term of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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 adding to Block 18 (Remarks) the entry "Member Completed First Full Term of Service."

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 crediting him with 2 years of active service.

9/9/2024

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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 15-185 (ABCMR)) states the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//