

IN THE CASE OF: ██████████

BOARD DATE: 3 April 2024

DOCKET NUMBER: AR20230009632

APPLICANT REQUESTS:

- correction of his military records to show he was honorably discharged.
- a video/telephonic appearance before the Board.

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

DD Form 149 (Application for Correction of Military Record)

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, in effect, he has a certificate that shows he was honorably discharged. He was unaware of an under honorable conditions discharge until he tried to get his certificate of eligibility (COE). He is trying to use his benefits to buy a home. He has been trying to obtain his COE for over two years and he was not aware of any information in his records to prevent him from being eligible for veterans' benefits. He also served at least four months in the Regular Army at Fort Jackson, SC before joining the National Guard in 1981 and there is no mention of it in his records. To his knowledge he served faithfully and has accolades, certificates, and medals.
3. A review of the applicant's service record shows:
 - a. DD Form 4 (Enlistment Contract – Armed Forces of the United States), shows he enlisted as a Reserve of the Army on 9 June 1976 for a period of six years.
 - b. Letter Orders Number LO T-06-687, issued by Headquarters, First United States Army, Fort Meade, MD dated 28 June 1976, ordered him to active duty for training at Fort Jackson, SC, with a reporting date of 29 August 1976. These orders state he was

ordered to active duty for the purpose of entering basic combat training and advanced individual training.

c. TRADOC form 871-R (Trainee Discharge Program (TDP) Counseling), shows:

1) The applicant was counseled by his noncommissioned officer (NCO) on 3 September 1976 concerning his attitude and performance. He identified the applicant as a potential troublemaker in the reception center when he told him to get rid of a pair of sunglasses that he had, and he seemed hesitant to do what he told him. His NCO stated he thought the problem was solved at that time, however, from 3 September 1976 to 7 September 1976 he had to counsel the applicant practically every day because he was constantly being brought to him by someone that he was being wise to, or that he could not do what his peers were capable of doing. His NCO recommended that he be discharged.

2) On 9 September 1976, his commissioned officer counseled him concerning his attitude towards the Army. He stated the applicant had a negative attitude towards being corrected or accepting instruction from someone else. The commissioned officer recommended that the applicant be discharged.

d. A statement dated 13 September 1976, written by the applicant's executive officer (XO), states he counseled the applicant on 11 September 1976 about his attitude towards the Army. The XO stated that he considered the applicant to be of little use to the Army and he recommended that he be discharged.

e. On 13 September 1976, the applicant's immediate commander notified him of his intent to initiate separation in accordance with Army Regulation (AR) (Personnel Separations – Enlisted Personnel), 635-200, paragraph 5-39, Trainee Discharge Program (TDP). The commander listed the following reason for the proposed action: he was counseled by the commander on 9 September 1976 for his poor performance and attitude, and after being given sufficient time to improve, he failed to do so. The commander informed the applicant of his rights.

f. On 13 September 1976, the applicant acknowledged receipt of the notification of the proposed separation under the provisions of AR 635-200, chapter 5-39. He was advised of the rights available to him and the effect of waiving his rights. He understood the following:

- if the discharge was approved, he would be furnished an honorable discharge certificate.
- if he did not have sufficient prior military service, due to non-completion of requisite active-duty time, veterans affairs and other benefits normally associated with completion of honorable active-duty service would be

affected. He would not be eligible for educational benefits under the GI Bill of Rights.

- he would not be permitted to reenlist in the Armed Forces within two years from the date of discharge.
- he had the right to present a rebuttal or statements in his own behalf and elected not to do so.
- he elected not to have a separation medical examination.

g. On 13 September 1976, the immediate commander formally recommended the applicant's separation from service under the provisions of AR 635-200, paragraph 5-39.

h. On 28 September 1976, the intermediate commander recommended approval. The intermediate commander stated that he interviewed the applicant on 16 September 1976 and 23 September 1976. The applicant was given a seven-day trial period with his company. He failed to respond and continued to be a marginal performer.

i. On 29 September 1976, the separation authority reviewed the recommended action and approved an honorable discharge under the provisions of AR 635-200 paragraph 5-39.

j. Orders Number 76-702, issued by Headquarters, United States Army Training Center and Fort Jackson, dated 7 October 1976 shows the applicant was relieved from active duty for training and discharged from the Reserve of the Army.

k. A Request for Waiver for [REDACTED] Army National Guard (ARNG) Enlistment or Reenlistment, dated 23 February 1981, shows a waiver was submitted for the applicant to join the ARNG. This form shows in:

- Item 6 (Last Discharge Type-SPN-Authority-RE Code): Honorable, RE-3
- Item 8 (Type of Waiver Requested): Previous discharge for RE-3 code.
- Item 10 (Unit Commander's Evaluation and Recommendation): Due to the fact that efforts to gain a copy of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) has been met with negative results, this commander can only base his opinion on personal interview with the applicant.

l. DA Form 2496 (Disposition Form), dated 25 February 1981, shows several unsuccessful attempts were made to get a copy of the applicant's DD Form 214. A request was submitted to St Louis on 3 November 1980, with no response.

m. On 17 April 1981, the applicant's RE code waiver as approved. It was noted that the applicant was discharged under the Trainee Discharge Program. No DD Form 214 was found in his official military personnel file.

n. A DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States), shows he enlisted in the ARNG of the State of ■■■ on 28 April 1981, for a period of 6 years.

o. A DD Form 214 shows he was honorably released from initial active-duty training on 24 September 1981.

p. He received the following Letters of Instructions – Unexcused Absences:

- 10 March 1986 – charged with unexcused absence on 8 March 1986 because of improper military appearance.
- 28 April 1986 – absent from the scheduled unit training assembly (UTA) on 28 April 1986.
- 4 August 1986 – absent from the scheduled UTA or multiple UTAs from 1-3 August 1986.
- 15 September 1986 – absent from the scheduled, multiple UTA from 13-14 September 1986.
- 17 September 1986 – absent from the scheduled UTA on 16 September 1986.

q. DA Form 4856 (General Counseling Form), dated 24 September 1986, states it had been reported that the applicant had continually and willfully absented himself, without proper authority, from training during the period 8 March 1986 through 16 September 1986. He accumulated a total of 12 unexcused absences within a one-year period. All attempts to reach the applicant by phone failed.

r. Orders Number 13-1, issued by Battery C, 1st Battalion, 209th Field Artillery, ■■■ ARNG, dated 27 September 1986 show the applicant was reduced to the grade of rank, private (PVT/E2), for misconduct (absent without leave/AWOL).

s. A letter to the applicant, dated 9 December 1986, shows he was being considered for discharge from the National Guard in accordance with AR 135-91, paragraph 4-11a and National Guard Regulation (NGR) 600-200 (Personnel – General Enlisted Personnel Management), which covered unsatisfactory participation and continued and willful absence. As a last resort the Attrition Management Review Board (AMRB) extended him the opportunity to come in to talk with them and tell his side of the story.

t. DA Form 2496 states request for orders were reviewed by the AMRB on

10 January 1987. The unit administrator was called before the Board. He stated the applicant came in during the month of August 1986 and wanted to make amends to correct the situation and had not been seen since that date. The unit tried unsuccessfully to get the applicant to return to drill status. The applicant signed for AWOL letters and the notice of the Board meeting. The brigade counselor attempted to contact the applicant, and the phone number was no good. Due to the findings, the Board recommended separation from the [REDACTED] ARNG.

u. The applicant was discharged on 1 March 1987 in the rank and grade of PV2/E-2. His NGB Form 22 (National Guard Bureau Report of Separation and Record of Service) confirms he was discharged under the provision of NGR 600-200. His service was characterized as under honorable conditions. This form shows in:

- Block 9 (Command to Which Transferred): United States Army Reserve Group (Annual Training), St. Louis, MO
- Block 18 (Remarks): NGB Forms 22 and 56a (General Discharge) were mailed to the applicant's last known address

v. Orders Number D-08-C57567, issued by the U.S. Army Reserve Personnel Center, St. Louis, MO, shows the applicant was honorably discharged from the Ready Reserve, effective 5 August 1987.

4. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence to support the applicant's contentions for correction of his military records to show he was honorably discharged. The Board found the applicant received an honorable characterization of service for his active-duty period of serving ending 24 September 1981

2. The Board noted the applicant had twelve (12) unexcused absences during a 12-month period. Evidence shows the applicant was discharged from the National Guard with an NGB Form 22, with an under honorable conditions (general) discharge. The Board determined there is no error or injustice and found the applicant's characterization of service accurate. Therefore, the Board denied relief.


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:

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



 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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 5 outlined the Trainee Discharge Program (TDP).

(1) The program provided that commanders may expeditiously separate members who lack the necessary motivation, discipline, ability, or aptitude to become a productive Soldier when these individuals:

a. Were voluntarily enlisted in the Regular Army, Army National Guard, or the United States Army Reserve.

b. Were in basic combat training or basic training or in military occupational specialty (MOS) training in advanced individual training, a service school or on the job training to the award of the MOS for which being trained and would have completed no more than 179 days active duty or initial active duty for training on current enlistment by the date of separation.

c. Demonstrated that they are not qualified for retention because they cannot or would not adapt socially or emotionally to military life or could not meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline, or demonstrated character and behavior characteristics not compatible with satisfactory continued service or did not meet enlisted standards by reason of disqualifying drug use.

(2) The program was intended to provide a rapid means to process members for separation. Transfer processing activities were to issue honorable discharge certificates and prepare (and deliver on request) DD Form 214's for all members discharged under provisions of this paragraph.

3. Army Regulation 135-91 (Army National Guard and Army Reserve – Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures), in effect at the time, stated in paragraph 4-11a (Unexcused absence from unit training assemblies), unsatisfactory participation: a member fails to participate satisfactorily when he accrues in any 1-year period a total of 9 or more unexcused absences from scheduled unit training assemblies.

4. National Guard Regulation 600-200 (Personnel – General Enlisted Personnel Management), in effect at the time, stated:

a. Unless transferred to the Inactive National Guard, an enlisted member who has a remaining Reserve obligation will be discharged from the Army National Guard for continuous and willful absence from military duty.

b. Each enlisted person discharged from the Army National Guard under the provisions of this regulation will be furnished an appropriate certificate of a type to be determined solely by the member's record of military service.

(1) Honorable Discharge (NGB Form 55). Awarded to each enlisted person who is concurrently discharged from the Army National Guard and as a Reserve of the Army with honor, and whose service and performance of duty meet the qualifications for this certificate.

(2) General Discharge (NGB Form 56A). Awarded to each enlisted person discharged from the Army National Guard only, who reverts to control of the Army Reserve, and whose military record was not sufficiently meritorious to warrant an honorable discharge.

c. NGB Form 22 (National Guard Report of Separation and Record of Service) is prepared in triplicate for each enlisted person being discharged from the Army National Guard.

5. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, stated a DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) would be issued at time of separation to:

a. Each member of the Regular Army.

b. Each member of the Reserve components, and the Army of the United States without component, called or ordered to active duty.

c. Each member of the Reserve components ordered to active-duty training for a period of 90 days or more.

d. Each member of the Army National Guard of the United States ordered to perform full-time training or other full-time duty in his status as a member of the Army National Guard for a period of 90 days or more.

e. Each person who is released from custody and control of the Army by virtue of void service.

f. Reserve components and Army National Guard ordered to active duty, without regard to the period for which he was ordered to active training if he was separated for physical disability.

6. Army Regulation 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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//