

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 December 2024

DOCKET NUMBER: AR20230009679

APPLICANT REQUESTS:

- correction to his military records due to an erroneous discharge
- reinstatement in the U.S. Army Reserve (USAR)
- award of military occupational specialty (MOS)
- time in grade credited

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

- DD Form 149 (Application for Correction of Military Record)
- Brief in Support of Application
- Military Service Timeline
- Joint Personnel Adjudication System (JPAS) Incident Report
- Background Check
- National Capital Region Cyber Protection Center Memorandum subject: Security Clearance Event, 7 January 2017
- 335th Signal Command (Theater) Memorandum subject: Notification of Show Cause Board for Retention [Applicant], 6 April 2017
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 17 February 2018
- Headquarters, 335th Signal Command (Theater) Memorandum subject: Notification of Show Cause Board for Retention [Applicant], 23 January 2019
- [Show Cause Board] Findings and Recommendations Worksheet, 8 February 2019
- DA Form 4856 (Developmental Counseling Form), 13 June 2020
- National Capital Region Cyber Protection Center Memorandum subject: Acknowledgment and Election Regarding Requirement to Show Cause for Retention in the USAR, 22 May 2021
- National Capital Region Cyber Protection Center Memorandum subject: Initiation of Involuntary Separation [Applicant], 7 November 2021
- Request for Army Reserve Trial Defense Service (TDS) Attorney, 8 November 2021

- Memorandum for Commander, 335th Signal Command (Theater), subject: Involuntary Separation [Applicant], 22 November 2021
- National Capital Region Cyber Protection Center Memorandum subject: Resignation in Lieu of Separation Proceedings
- Headquarters, U.S. Army Reserve Command (USARC) Orders 22-047-0007, 16 February 2022
- Applicant's Resume

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, through counsel, states:

a. The correction is requested as a result the depravation of due process. He served honorably, including during his time as an enlisted Soldier, until 13 August 2016, which is when he allegedly tested positive on a urinalysis for an illegal substance. He was notified of the urinalysis results on 16 October 2016.

b. An initiation of an involuntary separation was prepared on 21 December 2016, however the very next day he was ordered to active duty training (ADT), for the Basic Officer Leaders Course (BOLC). He was instructed to proceed to training, despite the urinalysis results and the action pending against him. Shortly after he was notified, his security clearance was flagged, and he was reportedly allowed to continue BOLC. A show cause hearing was scheduled during the time the applicant was on active duty, so it was adjourned until 8 February 2019.

c. The show cause hearing was held, and the board unanimously recommended the applicant be retained on active duty. The reason for the decision was due to the inconsistency of lab test procedures calling into question the validity of the test. The sample was not retested to confirm the results before it was destroyed. Furthermore, the use of drugs was unbefitting of his character, and not consistent with prior and follow up urinalysis.

d. After additional administrative issues, concerning military education deficiencies, for which resulted in the applicant failing to attain his branch qualification, arose the initiation of an administrative separation. Despite the applicant's timely request for his case to be presented to a board of officers, he was never afforded the opportunity to appear before a board or submit a formal rebuttal, a violation of his due process rights. He was discharged on 18 March 2022.

3. The applicant, through counsel, provides:

a. A military service timeline, that is available in its entirety for the Board's review, shows the dates and corresponding incidents as they led up to the applicant's discharge.

b. JPAS Incident report, shows a follow up on his security clearance determination was submitted, due to drug involvement.

c. Background check shows, following a random urinalysis, the applicant tested positive for amphetamines. He provided his commanding officer with a prescription; however it did not explain the result.

d. In a memorandum subject: Security Clearance Event, 7 January 2017, shows an adverse event entered into JPAS from his previous unit. This adverse event was based on a positive urinalysis, that was transferred with the applicant to his new unit. He was to be retained for school attendance, while further action is taken. He had no prior history of illegal drug usage and has tested negative each month since the positive result.

e. On 6 April 2017, he received Notification of Show Cause Board for retention, to determine if he would be separated from the USAR.

f. On 23 January 2019, he received Notification of Show Cause Board for retention, to determine if he would be separated USAR, due to the wrongful use of amphetamines and conduct unbecoming an officer.

g. Findings and recommendations worksheet, 8 February 2019, shows he was to be retained in the military service, due to the inconsistency of lab test procedures calling into question the validity of the test. The sample was not retested to confirm the results before it was destroyed. Furthermore, the use of drugs was unbecoming of his character, and not consistent with prior and follow up urinalysis.

h. The Acknowledgment and Election Regarding Requirement to Show Cause for Retention in the U.S. Army Reserve (USAR) memorandum, 22 May 2021, shows that before making any selections, he consulted with his counsel and further understood that this consultation was mandatory. He further elected:

- A hearing before a board of officers
- He elected to appear in person at the board of inquiry
- He desired copies of records which will be submitted to the board

i. In a memorandum subject: Initiation of Involuntary Separation, 7 November 2021,

shows he was required to show cause for retention in the service under the provisions of Army Regulation 135-175 (Separation of Officers), Chapter 2, paragraph 12, Substandard performance of duty.

j. On 8 November 2021, the applicant requested USAR TDS attorney.

k. In an unsigned memorandum subject: Resignation in Lieu of Separation Proceedings, shows he submitted his resignation and waived the following rights, contingent on the acceptance of the resignation:

- To appear before board of officers
- Be represented by counsel
- Submit a statement in his own behalf
- Have a reasonable amount of time to prepare his case

l. Orders 22-047-0007, 16 February 2022, show he was to be honorably discharged from the USAR, with an effective date of 18 March 2022.

4. A review of the applicant's service record shows:

a. He enlisted in the Army National Guard (ARNG), on 21 October 2011.

b. On 21 November 2011, he was ordered to active duty for training. He was honorably released on 30 August 2012, after the completion of required active service. He completed 9 months and 10 days of active service. His rank/grade at the time of discharge was specialist (SPC)/E-4.

c. He reenlisted in the USAR, on 1 October 2014, as a cadet with the U. S. Army Reserve Officers' Training Corps (ROTC).

d. DA Form 71 (Oath of Office), 11 December 2015, reflects he was appointed as a Reserve Commissioned Officer, in the rank/grade of second lieutenant (2LT)/O-1.

e. NGB Form 22 (National Guard Report of Separation and Record of Service), shows he was honorably discharged from the Maryland ARNG (MDARNG), on 4 March 2016, due his appointment as a commissioned officer. He completed 4 years, 4 months, and 14 days of service. His rank/grade at the time of discharge was SPC/E-4.

f. On 30 December 2016, he was ordered to active duty for training. He was honorably released on 17 February 2018, after the completion of required active service. He completed 1 year, 1 month and 18 days of active service. His rank/grade at the time of discharge was 2LT/O-1.

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 through counsel 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 through counsel of the applicant's petition and available military records, the Board determined the applicant's counsel did not demonstrate an error of injustice that support the applicant's contentions for correction to his military records due to an erroneous discharge, reinstatement in the U.S. Army Reserve (USAR) and time in grade credited. The Board noted, officers upon completion of the basic course are awarded a branch specialty not a military occupational specialty which is for enlisted servicemembers.
  
2. The Board determined a show cause hearing was held, and the board unanimously recommended the applicant be retained on active duty. The reason for the decision was due to the inconsistency of lab test procedures calling into question the validity of the test. The sample was not retested to confirm the results before it was destroyed. However, evidence in the record shows after additional administrative issues, concerning military education deficiencies, for which resulted in the applicant failing to attain his branch qualification, arose the initiation of an administrative separation.
  
3. The Board found the applicant submitted his resignation and waived the following rights, contingent on the acceptance of the resignation: Evidence in the records reflects on 16 February 2022, the applicant was honorably discharged from the USAR, with an effective date of 18 March 2022. The Board determined based on the preponderance of evidence no error or injustice and 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
XXX	XX	XXX	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.

X //SIGNED//

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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 (Armed Forces), 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), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation 600-37 (Unfavorable Information), sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's Army Military Human Resource Record (AMHRR). The authority to adjudicate appeals for Article 15 removal, rests with the ABCMR, under Army Regulation 15-185.
4. Army Regulation 135-175 (Separation of Officers), prescribes the policies, criteria, and procedures governing the separation of Reserve officers of the Army.

a. Retention or separation. In determining whether an officer should retain military status or be administratively separated, any factors that are material and relevant to his or her current period of service should be evaluated. Prior periods of service should not be evaluated.

b. Substandard performance of duty. While not an all-inclusive list, existence of one of the following or similar conditions, at the standard of proof required by Army Regulation 15-6 (U.S. Army's guide to investigations), authorizes initiation of involuntary separation proceedings for substandard performance of duty. Officers discharged solely for any of the following reasons will receive an Honorable characterization of service:

(1) Downward trend in overall performance resulting in an unacceptable record of efficiency or a consistent record of mediocre service.

(2) Failure to keep pace or to progress with contemporaries, such as successive promotion failures or a low record of efficiency when compared with other officers of the same grade, branch, and length of service.

(3) Failure to exercise necessary leadership or command required of an officer of his or her grade.

(4) Failure to perform with the technical proficiency required by the grade held.

(5) Failure to meet standards in a course of instruction at a Service school due to academic or leadership deficiencies.

(6) Failure to properly discharge assignments commensurate with his or her grade and experience.

(7) Apathy, defective attitude, or other character deficiency, including inability or unwillingness to expend effort.

(8) Failure to achieve satisfactory progress after a period of 6 months after enrollment in the Army Body Composition Program or failure to maintain the weight/body fat standards during the 12-month period following removal from an established body composition program. Involuntary separation action will be initiated, except that officers with a remaining statutory or contractual service obligation will be involuntarily transferred to the Individual Ready Reserve (IRR).

(9) When no medical problems exist, and an officer has two consecutive failures of the APFT, separation action will be initiated.

(10) Failure to conform to prescribed standards of dress, personal appearance, or military deportment.

(11) The discovery of any conditions concerning a probationary officer that, had they been known at the time of appointment, would have precluded appointment.

(12) Failure to participate adequately in or to respond successfully to rehabilitation for alcohol or drug abuse, or a subsequent alcohol or drug related incident of misconduct at any time during the 12-month period following successful completion of the Army Substance Abuse Program or during the 12-month period following removal from the program for any reason will result in the Soldier being processed for separation as an alcohol or drug abuse rehabilitation failure. Care should be taken to avoid the inclusion of limited-use evidence.

(13) Receipt of a "Relief for Cause" officer evaluation report when the basis for relief is for reasons that do not involve acts of misconduct or moral or professional dereliction.

//NOTHING FOLLOWS//