

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230010888

APPLICANT REQUESTS: in effect –

1. Correction of his DD Form 214 (Report of Separation from Active Duty) to show:
 - Type of Separation as discharge instead of "release from military control by reason of void enlistment"
 - Authority and Reason as Army Regulation (AR) 635-200, Paragraph 5–3, Secretarial Plenary Authority instead of "Chapter 14, AR 635-200, Misconduct -- Fraudulent Entry"
 - Character of Service as Honorable instead of "DNA"
2. A personal appearance before the Board via video/telephone.

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 (USC), 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:
 - a. At the time of enlistment, he informed the recruiter of his juvenile infraction. The recruiter stated because it was a juvenile offense the case was closed and would not be held against him. However, after he took his military photo, and he totally completed his basic training and graduated he was then informed he was being removed from the military. He left college to enlist, and he was misled by someone who he trusted to give him the correct information. This recruiter should have known better, and the recruiter should have known this would have a huge impact on his life going forward.

b. He would not have left college and wasted the time. He could have furthered his education. He was instructed by the recruiter that there was no need to put the juvenile infraction on his paperwork otherwise he would have, the recruiter misled him to believe if he signed and was accepted the juvenile infraction would not be held against him, not putting that information on the application was not intentional. He went through graduation and was assigned. The only item he has left of proof is his military photo because everything else he had was stolen from storage after moving to another state. Also, the recent DD Form 214 is not and does not have the same information on it as the first DD Form 214 received.

c. Also, presently, as well as in the 1980s, he sent a request for a review of his claim to be examined and a pardon to receive some of the benefits he would qualify for. It was found to be a legitimate claim and approved by who he believes was the governor of Alabama. He was granted a "partial" pardon in the 1980s by the governor of Alabama. Unfortunately, all his belongings and proof of the pardon he received from the State of Alabama is not in his possession anymore. What bothers him more is it is like he never enlisted and the pardon he received stating his benefits does not exist unless it is on file.

3. A review of the applicant's official records show the following:

a. In connection with his enlistment, he completed and/or answered questions on the DD Form 1966 (Application for Enlistment - Armed Forces of the United States) dated 25 March 1976. Specifically, item 40 (Involvement with Police or Judicial Authorities) states:

"Your answers to the following questions will be verified with the Federal Bureau of Investigation and other agencies to determine any previous records of arrests, convictions or juvenile court adjudications. If you conceal such records at this time, you may, upon enlistment, be subject to disciplinary actions under the provisions of the Uniform Code of Military Justice and/or discharge from the military service with other than an honorable discharge."

b. He indicated "YES" to the following questions:

(1) Have you ever been arrested, charged, cited or held by Federal, State or other law enforcement or juvenile authorities regardless of whether the citation or charge was dropped or dismissed, or you were found not guilty?

(2) As a result of being arrested, charged, cited, or held by law enforcement or juvenile authorities, have you been convicted, fined by, or forfeited bond to a Federal, State or other judicial authority or adjudicated a youthful offender or juvenile delinquent

(regardless of whether the record in your case has been sealed or otherwise stricken from the court record)?

c. He indicated "NO" to the following questions:

(1) Have you ever been detained, held in, or served time in, any jail or prison, or reform or industrial school or any juvenile facility or institution under the jurisdiction of any City, County, Federal, or foreign country?

(2) Have you ever been released from parole, probation, juvenile supervision, or given a suspended sentence or relieved of charges pending on condition that you apply for or enlist in the U.S. Armed Forces?

d. Item 40g of his DD Form 1966 instructed the applicant to explain "Yes" answers in items 40a through e, and states "Be careful to include all incidents with law enforcement authorities that you discussed with your recruiter." The applicant listed three speeding tickets. He did NOT list or write any other offenses.

e. On 16 June 1976, he enlisted in the Regular Army.

f. Item 17 (Civilian Education and Military Schools) of his DA Form 2-1 (Personnel Qualification Record) shows he completed the 12-week One Station Unit Training for military occupational specialty 13B (Cannon Crewmember).

g. On 18 June 1976, DD Form 1584 (National Agency Check Request) shows a background check and/or security investigation was initiated for the applicant.

h. On 22 July 1976, a Federal Bureau of Investigation report shows the applicant was charged with two (2) counts of "auto burglary." He did not list the charges on his DD Form 1966.

i. On 23 August 1976, a personnel security investigation was completed on the applicant.

j. On 30 August 1976, DA Form 268 (Report for Suspension of Favorable Personnel Actions) shows the applicant was flagged pending an investigation for possible fraudulent enlistment.

k. On 7 September 1976, he provided a statement and wrote, there are many reasons why he thought he should be able to remain in the Army and the reasons are as follows:

(1) As a civilian he was offered three scholarships to colleges and universities to continue his education and play football, but he gave these offers up because he wanted to do something not only for himself but for his country and that is when he joined the Army. He had hopes of doing them both while he served his country.

(2) He also joined the Army to help his family and its financial difficulties and to set up some type of solid future for him and the girl he was going to marry. Since the date he enlisted in the Army, he believed he had been a "damn" good Soldier and believed he could offer a lot to the Army and to this country, if only he was given the opportunities to prove himself. These are the reasons he thought he should be able to remain in the Army.

l. On 7 September 1976, his immediate commander recommended he be separated under the provisions of Chapter 14, AR 635-200 (Personnel Separations Enlisted Personnel), due to fraudulent enlistment -- concealment of conviction by civil court. The commander stated, at the time of enlistment the applicant answered "no" to all questions in item 40, DD Form 1966, or answered "yes" in item 40 but failed to list all convictions or arrests in item 40g, thus concealing a conviction by civil court.

m. The applicant's chain of command recommended approval of the discharge action, or his enlistment contract be voided if recruiter connivance was discovered and substantiated.

n. On 23 September 1976, the Adjutant General endorsed the applicant's discharge packet and stated, by order of the Commanding General, orders will be issued to void the enlistment of the applicant, under the provisions of Paragraph 14-4d, AR 635-200, as individual concealed a civil conviction and there is recruiter connivance.

o. On 29 September 1976, DD Form 214 shows the applicant was released from military control by reason of void enlistment, under the provisions of AR 635-200, Chapter 14, for misconduct--fraudulent entry. It also shows in:

- Item 9c (Authority and Reason) – Chapter 14, AR 635-200 and Separation Program Designator "YKG"
- Item 9e (Character of Service) – "DNA" [not applicable]
- Item 10 (Reenlistment Code) – DNA
- Item 18a (Net Active Service This Period) – "00-00-00"

p. On 1 April 1986, DD Form 215 (Correction to DD Form 214) amended the applicant's DD Form 214, item 10 by adding reenlistment code "RE-3" and item 27 (Remarks) by deleting "Para 2-22, AR 601-280 applies."

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 not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. A fraudulent enlistment occurs when a service member deliberately misrepresents, conceals, or omits information that could have resulted in their rejection for enlistment had this information been known at the time of enlistment. The evidence shows the applicant concealed a conviction by civil court upon his enlistment in the Regular Army. After his entry on active duty, an investigation determined he had concealed his conviction. As a result, his commander initiated separation action against him due to fraudulent enlistment -- concealment of conviction by civil court. When a Soldier is separated from active duty due to fraudulent enlistment, the Army considers their service as having not existed and the appropriate disposition is "release from military control by reason of void enlistment." Additionally, since the service is built on fraud, it cannot be characterized, and the Soldier does not get credit for time served.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

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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, USC, 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. AR 15-185 (ABCMR) states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based 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. Paragraph 2-11 states 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.

3. AR 635-200 (Personnel Separations - Enlisted Personnel) set forth the basic authority for the separation of enlisted personnel. Chapter 14 (Fraudulent Entry) establishes policy and prescribes procedures for the processing of fraudulent entry cases and provides for the administrative disposition of enlisted personnel for misconduct by reason of fraudulent entry into the service. Fraudulent entry is the procurement of an enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment which, if known, might have resulted in rejection.

a. Chapter 14 of the regulation provided, in pertinent part, for the separation of personnel for misconduct - fraudulent entry due to concealment of conviction by civil court and concealment of record as a juvenile offender.

b. The regulation also provided, in pertinent part, that the separation authority would void the fraudulent entry by issuing orders releasing the member from Army control for fraudulent entry in all cases involving alleged or verified connivance by recruiting officials. The purpose was to preserve the value of honorable service, preclude unmerited award of honorable discharges to individuals who, in many cases, would not be in the Army had their disqualifications been known at enlistment/reenlistment.

4. AR 635-200, currently in effect, governs the separation of enlisted personnel.

a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b provides that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 5-3 (Secretarial plenary authority) provides that:

(1) Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

(2) Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special Headquarters, Department of the Army directive that may, if appropriate, delegate blanket separation authority to field commanders for the class category of Soldiers concerned.

5. AR 635-5-1 (Separation Program Designator Codes) prescribes the specific authorities (regulatory, statutory, or other directives), the reasons for the separation of members from active military service, and the separation program designators to be used for these stated reasons. The regulation provides that the reason for discharge based on separation code "YKG" is "Misconduct - fraudulent entry" and the regulatory authority is Chapter 14, AR 635-200.

6. AR 635-5 (Separation Documents) serves as the authority for preparation of the DD Form 214. The regulation, in effect at the time, provided that, individuals who had their enlistments voided by reason of fraudulent enlistment would receive no credit for service nor would their service be characterized.

//NOTHING FOLLOWS//