

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2024

DOCKET NUMBER: AR20230011944

APPLICANT REQUESTS: in effect,

- Delayed Entry Program (DEP) time counted as active duty time
- received hazardous duty pay for service in Berlin, Germany
- change the separation date on his DD Form 214 (Certificate of Release or Discharge from Active Duty) to 15 June 1985

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- DD Form 214 service ending 13 June 1985

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 before he enlisted in the Regular Army (RA) he was told that his time in the DEP would count towards his active duty service time. He also did not receive hazardous duty pay for his service in Berlin, Germany, which was a hazardous duty station, and he requests to receive this pay. And lastly, his DD Form 214 needs to be corrected to reflect he was separated from active duty on 15 June 1985. He is currently incarcerated at the [REDACTED], and is in a Veterans program that assists Veterans to get help with post-traumatic stress disorder and other issues. The program also helps the Veterans improve their way of thinking and doing things so they can be a positive person in society when they are released. He is attempting to get his Veterans benefits straightened out before he is released from prison.

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

a. On 11 June 1982, the applicant enlisted in the U.S. Army Reserve (USAR) DEP. On 17 August 1982, the applicant was discharged from the USAR DEP for enlistment in the RA for 4-years. Paragraph 10 of the applicant's DD Form 4 (Enlistment/ Reenlistment Document – Armed Forces of the United States), stated the applicant's enlistment in the DEP was in a non-paid status and he understood the period in the DEP was creditable for pay purposes upon his enlistment on active duty. He also understood that the DEP time was not counted toward the fulfillment of his military service obligation or commitment.

b. DA Form 2-1 (Personnel Qualification Record) shows in items:

- 5 (Oversea Service) the applicant served in Germany during the period 9 June 1984 through 16 August 1986
- 35 (Record of Assignments):
 - served in the USAR DEP during the period June through August 1982 for 2-months and 6-days
 - 1 June 1984, enroute to Germany
 - 10 July 1984, assigned as Light Weight Vehicle Mechanic in the 42nd Engineer Company, Berlin Brigade, Germany
 - 13 June 1985, received a general under honorable conditions discharge

c. On 31 January 1985, the applicant accepted Non-Judicial Punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for wrongfully possessing hashish a schedule I controlled substance. His punishment included the reduction in rank to private first class (PFC)/E-3, forfeiture of pay for 2-months, restriction and extra duty.

d. On 8 April 1985, the applicant accepted NJP under the provisions of Article 15, UCMJ, for violation of his restriction order from his previous NJP. His punishment included reduction in rank to private (PV2)/E-2, forfeiture of pay, restriction and extra duty.

e. On 6 May 1985, the applicant accepted NJP under the provisions of Article 15, UCMJ, for failure to report to his appointed place of duty. His punishment included restriction and extra duty.

f. On 15 May 1985, the applicant was notified of his immediate commander's intention to separate him from the Army under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-2a for unsatisfactory performance of military duties, lack of responsibility and his inability to conform to the standards and rules of military life. His current attitude and display of conduct has proven that his future ability to perform duties effectively, including potential

for advancement or leadership is unlikely. The applicant acknowledge the notification of separation on the same day.

g. On 16 May 1985, after consultation with counsel, he acknowledged:

- he was not entitled to have his case heard by an administrative separation board
- he did not submit statements on his own behalf
- he may expect to encounter substantial prejudice in civilian life

h. On 17 May 1985, the applicant's immediate commander requested the applicant be eliminated from the service under the provisions of AR 635-200, paragraph 13-2a for unsatisfactory performance.

i. On 30 May 1985, the separation authority directed the applicant be separated from the service and furnished a general under honorable conditions discharge.

j. On 13 June 1985, the applicant was discharged from active duty under the provision of AR 635-200, chapter 13 (Separation for Unsatisfactory Performance) with a general under honorable conditions character of service. DD Form 214 shows the applicant completed 2-years, 9-months, and 26-days of active service.

- Item 7 (Last Duty Assignment and Major Command) shows 42nd Engineer Company, Support Battalion, U.S. Army Europe
- Item 12b ((Separation date this Period) shows 13 June 1985

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board noted that it is not an investigative body. The burden of proof is on the applicant to demonstrate by a preponderance of the evidence that an error or injustice occurred. Other than his own statement, the applicant has provided no evidence confirming he was authorized to receive, but did not receive, hazardous duty pay during his service in Berlin. The available service records contain no information regarding what pay he was authorized at any point during his service. The Board determined there is insufficient evidence to support payment of hazardous duty pay.

3. The Board noted the applicant's record contains no evidence showing he remained on active duty until 15 June 1985. The Board determined the separation date on his DD Form 214 is not in error or unjust.

4. As was clearly stated in his enlistment contract, enlistment in the DEP is in a non-paid status and the period in the DEP was only creditable for pay purposes upon his enlistment on active duty. Time in the DEP does not count toward the fulfillment of a military service obligation or commitment. The Board determined his request to have his DEP time count as active duty time is without merit and should be denied.
5. The Board concurred with the correction described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the correction addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

12/9/2024

X

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.

ADMINISTRATIVE NOTE(S): The applicant's DD Form 214 is missing a required entry. Please correct the DD Form 214 by adding the following to block 18 (Remarks): "Period of Delayed Entry Program: 11 June 1982 through 16 August 1982."

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. Title 37 USC, section 351 (Hazardous duty pay), (a)Hazardous Duty Pay, the Secretary concerned may pay hazardous duty pay under this section to a member of a Regular or Reserve Component of the uniformed services entitled to basic pay who:

- performs duty in a hostile fire area designated by the Secretary concerned, is exposed to a hostile fire event, explosion of a hostile explosive device, or any other hostile action, or is on duty during a month in an area in which a hostile event occurred which placed the member in grave danger of physical injury;
- performs duty designated by the Secretary concerned as hazardous duty based upon the inherent dangers of that duty and risks of physical injury; or
- performs duty in a foreign area designated by the Secretary concerned as an area in which the member is subject to imminent danger of physical injury due to threat conditions

The amount of hazardous duty pay paid to a member shall be based on the type of duty and the area in which the duty is performed, as follows:

- in the case of a member who performs duty in a designated hostile fire area, as described in subsection (a)(1), hazardous duty pay may not exceed \$450.00 per month
- in the case of a member who performs a designated hazardous duty, as described in subsection (a)(2), hazardous duty pay may not exceed \$275.00 per month
- in the case of a member who performs duty in a foreign area designated as an imminent danger area, as described in subsection (a)(3), hazardous duty pay may not exceed \$275.00 per month

3. Title 10 USC, section 513 (Enlistments: Delayed Entry Program), (a)A person with no prior military service who is qualified under section 505 of this title and applicable regulations for enlistment in a Regular Component of an armed force may (except as

provided in subsection (c)) be enlisted as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve for a term of not less than six years nor more than eight years. During the period beginning on the date on which the person enlists under subsection (a) and ending on the date on which the person is enlisted in a Regular Component under this subsection, the person shall be in the Ready Reserve of the armed force concerned.

4. Department of Defense (DoD) Financial Management Regulation 7000.14-R, Volume 7A, chapter 1 (Creditable Service),

a. Paragraph 010104 (Other Creditable Service), M. Service as an enlisted member in the Reserves before beginning active duty in a Regular component, provided the member enlisted in the Reserve component before 1 January 1985. This is frequently referred to as the delayed enlistment program.

b. Paragraph 0102 (Service Not Creditable), in general, do not use any service which is not listed as creditable service to compute a basic pay date. The time between the date of enlistment in the Delayed Enlistment Program and the date the member begins serving on active duty in a Regular Component, if the date of enlistment in the Reserve component is after 31 December 1984.

5. DoD Instruction 1304.25 (Fulfilling The Military Service Obligation), establishes policy; assigns responsibilities; provides procedures; and updates the requirements, conditions, and restrictions for fulfilling the statutory military service obligation (MSO). Paragraph 3.4 (Delayed Entry), service members in the DEP incur an MSO. The period served in such status counts toward fulfillment of the MSO. a. (DEP), Persons who enlist in the Ready Reserve in accordance with Title 10 USC, section 513 and agree to a subsequent enlistment in an Active Component of the Military Services are in the DEP.

6. AR 635-5 (Separation Documents) in effect at the time prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service. Source documents will consist of the DA Form 2-1 (Personnel Qualification Record), separation orders, and any other available records. Item 12b; self-explanatory.

7. AR 15-185 (ABCMR) states in paragraph 2-9, 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//