

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230012822

APPLICANT REQUESTS: Reinstatement of the Montgomery G.I. Bill benefits.

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

- DD Form 149 (Application for Correction of Military Record)
- Mental Disorders Disability Benefits Questionnaire (8 pages)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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's like a second chance at life for the education that he desires at the age of 54. He has taken full responsibility, never denying his action as young stupid mistake 30 years ago [sic]. Since then, he's never been arrested, nor has he caused anyone harm in any way.
3. The applicant provides
  - a. Mental Disorders Disability Benefits Questionnaire (8 pages).
  - b. DD Form 214, Member-1 copy, which does not include the Special Additional Information (items 23 through 30: Type of Separation, Character of Service, Separation Authority, Separation Code, Reentry Code, Narrative Reason for Separation, Dates of Time Lost During This Period).
4. The applicant's complete military records are not available to the Board for review. A complete and thorough search for his military records was conducted; however, they could not be located. This case is being considered based on the documents provided by the applicant.

5. The applicant's DD Form 214 shows:

a. He enlisted in the Regular Army on 30 December 1988, and he held military occupational specialty 94B, Food Service Specialist.

b. He was last assigned to Service Battery, 1st Battalion, 41st Field Artillery, Fort Stewart, GA.

c. The complete facts and circumstances surrounding his discharge are not available for review. However, his DD Form 214 shows he was separated on 14 September 1993. The Member-1 copy he provides does not include the Type of Separation, Character of Service, Separation Authority, Separation Code, Reentry Code, Narrative Reason for Separation, Dates of Time Lost During This Period. It shows he completed 4 years, 8 months, and 15 days net active service this period. He was awarded or authorized:

- Army Achievement Medal (1st OLC)
- Army Service Ribbon
- Army Good Conduct Medal (1st Award)
- Noncommissioned Officer Professional Development Ribbon
- National Defense Service Medal
- Overseas Service Ribbon
- Driver and Mechanic Badge
- Expert Badge (Grenade)
- Sharpshooter Badge (Rifle)

5. U.S. Army Human Resources Command memorandum, dated 26 March 2024, Subject: Advisory Opinion, recommends disapproval of the applicant's request for his Montgomery G.I. Bill – Active Duty (MGIB-AD) benefits be reinstated. Further stating, they do not recommend administrative relief based on the following:

a. The applicant enlisted in the U.S. Army on 30 December 1988 and was discharged for misconduct on 14 September 1993. His separation was characterized as "Under Honorable Conditions (General)", which prevented him from utilizing his education benefits as an honorable discharge is a pre-requisite for eligibility for education benefits.

b. Due to the lack of a Department of Defense (DD) Form 2366 (Montgomery GI Bill Act of 1984, Basic Enrollment) we are unable to conclusively determine if he enrolled in the MGIB-AD. If Mr. Davis enrolled in the MGIB-AD, he would have had his pay reduced by \$100 a month for 12 months by the Defense Finance and Accounting Service (DFAS). But again, due to the lack of documentation, we are not able to verify any MGIB-AD- related pay deductions.

c. Public Law 98-525 instituted a 10-year delimiting date for the MGIB-AD starting from the date of discharge. As Mr. Davis was discharged on 14 September 1993, his education benefits expired on or about 13 September 2003.

d. Unless the applicant requests was granted an upgrade to his original discharge, he will remain ineligible for MGIB-AD benefits. Should the applicant receive an upgrade to his discharge he may contact the Department of Veterans Affairs (OVA) to inquire if he is eligible for any educational benefits. The OVA can be contacted at 1-888-442-4551 or at <https://ask.va.gov>.

6. The applicant was notified of the advisory opinion provided by U.S. Army Human Resources Command. He was afforded the opportunity to submit comments on the advisory opinion; however, as of the date of this writing, none have been received.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's service records are not available for review. The available evidence shows he served on active duty from 30 December 1988 to 14 September 1993, completing 4 years, 8 months, and 15 days net active service. HRC found the applicant was discharged for misconduct on 14 September 1993 with a general, under honorable conditions discharge, which prevented him from utilizing his education benefits as an honorable discharge is a pre-requisite for eligibility for education benefits. Additionally, the Board also agreed that a determination cannot be made whether the applicant was in fact enrolled in the MGIB-AD. Also, by law, the applicant had 10 years from date of discharge to use the MGIB-AD (if he were enrolled) and since he was discharged on 14 September 1993, his education benefits expired on or about 13 September 2003.

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.

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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, 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. The National Defense Authorization Act of 1985 (Public Law 98-525) amended Title 38, US Code to include the MGIB-AD to Service Members who entered Active-Duty 1 July 1985 or later. The MGIB-AD is a Service Member's benefit, which required Service Members who entered service prior to 5 January 2023 to enroll within 3 working days of active duty and agree to a reduction in pay of \$1200 (\$100 each month for the

first 12 months). Service Members must complete the initial term of service with a fully honorable characterization of service and may not enroll in MGIB-AD more than once.

//NOTHING FOLLOWS//