

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 August 2024

DOCKET NUMBER: AR20230013237

APPLICANT REQUESTS: correction of Item 9 (Date of Birth (DOB)) on his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to reflect the DOB listed on his Birth Certificate (requested DOB) instead of the DOB listed on his DD Form 214 (contested DOB).

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

- DD Form 149 (Application for Correction of Military Record)
- Birth Certificate
- DD Form 214, and Letter
- Department of Veterans Affairs (VA)

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 his DD Form 214 should show his requested DOB as listed on his birth certificate.
3. The applicant's service record is not available for review with this case. However, he provided a DD Form 214 and a Birth Certificate which are sufficient to conduct a fair and impartial review of this case.
4. The DD Form 214 shows his contested DOB [REDACTED]
5. The Birth Certificate he provided reflects the requested DOB [REDACTED]

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's service records are not available for review. Board members agreed that the Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created, unless there is sufficient evidence that shows a material error or injustice.

a. A majority of the Board determined that the applicant provides his birth certificate, and with his service record missing, there is nothing to contest it. Therefore, a majority of the Board determined a correction of his DD Form 214 to show the requested DOB is warranted.

b. The member in the minority determined there is no evidence he served under or used the requested DOB during his service. Since the ABCMR begins its consideration of each case with the presumption of administrative regularity and since the applicant has the burden of proving an error or injustice by a preponderance of the evidence, the member in the minority determined there is insufficient evidence to grant him 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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the date of birth shown on his DD Form 214 to reflect the date shown on his birth certificate.

8/1/2024

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.

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 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that must be prepared for Soldiers upon retirement, discharge, or release from active-duty service or control of the Active Army and established standardized policy for preparing and distributing the DD Form 214. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The specific instructions for item 9 (DOB) states self-explanatory.

//NOTHING FOLLOWS//