

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20230014659

APPLICANT REQUESTS:

- Campaign medals associated with Iraq and Afghanistan deployments
- 1-year retroactive pay to sergeant (SGT)/E-5

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

- DD Form 149 (Application for Correction of Military Record)
- Soldier Deployment History Out-processing Report
- Two (2) DD Forms 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 215 (Correction to DD Form 214)
- Certificate of Achievement
- Two (2) Character Statements

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 is seeking campaign awards for his deployments to Afghanistan in 2003 and Iraq in 2005. In January 2005, the Department of the Army promoted him to SGT; however, his Chain of Command denied him his promotion due to being flagged for body fat. Yet, his unit found him fit enough to reenlist and deploy him to Iraq for an entire year.

3. The applicant provides:

a. Soldier Deployment History Out-processing Report, dated 2 February 2006, reflects the following:

- From 13 May 2003 thru 11 November 2003, Named Exercise, Joint or Non-NATO Combined Exercise, Location Non-US Worldwide, 182 credit days
- From 1 November 2004 thru 15 November 2005, Named Operation, War, Location Non-US Worldwide, 379 credit days

b. Two (2) DD Forms 214 (Certificate of Release or Discharge from Active Duty) which reflect the following:

(1) From 16 November 1994 thru 28 February 2006, Regular Army, Specialist/E-4, honorably discharged under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 4, completion of required active service, separation code KBK, reentry code 1. He served 11 years, 3 months, and 15 days of net active service this period. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons awarded or authorized) shows National Defense Service Medal, Global War on Terrorism Service Medal, Army Service Ribbon.

(2) From 8 December 2008 thru 13 December 2009, Army National Guard, Specialist/E-4, honorably released from active duty and transferred back to his unit located in Los Alamitos, California, under the provisions of AR 635-200, chapter 4, completion of required active service, separation code MBK, reentry code NA. He served 1 year and 6 days of net active service this period and 11 years, 3 months, and 15 days of total prior active service.

(a) Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons awarded or authorized) shows:

- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Korean Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon,
- Army Service Ribbon
- Overseas Service Ribbon
- Armed Forces Reserve Medal w/M Device
- Kosovo Campaign Medal w/Bronze Service Star.

(b) Item 18 (Remarks) reflects the applicant served in a designated imminent danger pay area, Kosovo from 12 February 2009 thru 14 November 2009, ordered to active duty in support of Operation Enduring Freedom/KFOR IAW 10 USC 12302.

c. DD Form 215 (Correction to DD Form 214) reflects a correction to DD Form 214 ending 13 December 2009, item 13 (remove) National Defense Service Medal and (add) National Defense Service Medal with one Bronze Service Star.

d. Certificate of Achievement was awarded for exemplary service as a member of "Task Force Nighthawk in support of the Nation's continuing efforts fighting the global war on terrorism from 28 November 2004 thru 19 November 2005.

e. Two (2) Character Statements, authored by former colleagues, both of which attest to the applicant being deployed to Afghanistan from 13 May 2003 thru November 2003 and then later to Iraq from November 2004 thru November 2005. As of note, neither one of the two former noncommissioned officers were deployed with the applicant.

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

a. He enlisted in the Regular Army on 16 November 1994 for a period of three (3) years. He reenlisted on 21 November 1997, 28 September 2001, and 11 February 2004.

b. Enlisted Record Brief (ERB), dated 16 February 2006, Section I (Assignment Information) does not indicate the applicant served in a combat zone, but rather one 13-month overseas tour in Korea (KS). In addition, the ERB reflects a flag code of "KA" with a start date of 28 April 2005. Per Army Regulation (AR) 600-8-2 (Suspension of Favorable Personnel Actions (FLAG)), Table 2-1 (Reason Codes), "K" is a transferable flag for the Army Body Composition Program and "A" is a nontransferable flag for adverse action. It also reflects his promotion dates of rank as follows:

- PVT: 16 November 1994
- PV2: 16 May 1995
- PFC: 18 November 1995
- SPC: 16 January 1997

c. The applicant's service record found in the Interact Personnel Electronic Records Management System (iPERMS) contain limited documents regarding his service in the Regular Army. Therefore, it is unclear what circumstances (if any) may have prevented the applicant from being recommended to appear before the promotion board to sergeant (SGT)/E-5.

d. On 21 February 2006, he enlisted in the Army National Guard of the United States for a period of three (3) years.

e. The applicant was honorably discharged on 28 February 2006, under the provisions of AR 635-200, chapter 4, completion of required active service, separation code KBK, reentry code 1. He served 11 years, 3 months, and 15 days of net active service this period.

f. DD Form 215 reflects a correction to DD Form 214, ending 28 February 2006, item 26 (Separation code) to reflect JBK.

g. The applicant was honorably released from active duty on 13 December 2009 and transferred back to his unit located in Los Alamitos, California, under the provisions of AR 635-200, chapter 4, completion of required active service, separation code MBK, reentry code NA. He served 1 year and 6 days of net active service this period and 11 years, 3 months, and 15 days of total prior active service.

(1) Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons awarded or authorized) shows:

- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Korean Defense Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon,
- Overseas Service Ribbon
- Armed Forces Reserve Medal w/M Device,
- Kosovo Campaign Medal w/Bronze Service Star.

(2) Item 18 (Remarks) reflects the applicant served in a designated imminent danger pay area, Kosovo from 12 February 2009 thru 14 November 2009, ordered to active duty in support of Operation Enduring Freedom/KFOR IAW 10 USC 12302.

h. DD Form 215 reflects a correction to DD Form 214, ending 13 December 2009, item 13 (remove) National Defense Service Medal and (add) National Defense Service Medal with one Bronze Service Star.

i. NGB Form 22 (National Guard Bureau) reflects the applicant was honorably discharged on 28 October 2015 and transferred to the U.S. Army Reserve Control Group (Retired Reserve) under the provisions of Section 260 California M/VC and paragraph 6-39b, NGR 600-200, transfer to Retired Reserve. He served 9 years, 7 months, and 28 days of net service this period and 11 years, 3 months, and 15 days of prior active federal service.

5. Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions (FLAG)) prescribes Army policy for the suspension of favorable personnel actions (Flag) function of the military personnel system.

6. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board 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 of the applicant's petition, available military records, the Board determined there is insufficient evidence to support the applicant's contentions for one-year retroactive pay to sergeant (SGT)/E-5.

2. However, the Board noted, based on the applicant's DFAS master military pay account (MMPA) verifying his two (2) deployments periods, there is sufficient evidence to support correction of the applicant's record. Evidence shows the applicant was deployed to Afghanistan from 29 May 2003 to 25 November 2003 and deployed to Iraq from 6 December 2004 to 1 December 2005. Based on this, the Board granted partial relief to add the applicant's foreign service and authorized awards for his periods of deployment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | GRANT FULL RELIEF |
| ■ | ■ | ■ | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 28 February 2006 to show in

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons awarded or authorized)
 - Iraq Campaign Medal (ICM)
 - Afghanistan Campaign Medal (ACM)
- Item 18 (Remarks)
 - SERVICE IN AFGHANISTAN FROM 29 MAY 2003 UNTIL 25 NOVEMBER 2003 and
 - SERVICE IN IRAQ FROM 6 DECEMBER 2004 UNTIL 1 DECEMBER 2005

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to one-year retroactive pay to sergeant (SGT)/E-5.

■ [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]
[REDACTED]

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 600-8-2 (Suspension of Favorable Personnel Actions (FLAG)) prescribes Army policy for the suspension of favorable personnel actions (Flag) function of the military personnel system.

a. Paragraph 2-3 states, a Soldier flagged under the provisions of this paragraph may be reassigned to another unit by following guidance in paragraph 2-8. The specific actions listed below require initiation of a transferable Flag (see table 2-1). More than one Flag may be required concurrently.

b. Paragraph 2-3c. states, "Noncompliance with Army Body Composition Program" (Flag code K). The effective date of the Flag is the date that the Soldier was found to be in noncompliance with AR 600-9.

c. Paragraph 3-1a states, a properly imposed FLAG prohibits appointment, reappointment, reenlistment, or extension unless authorized by AR 601-280, AR 135-180, AR 135-205, or AR 140-111.

d. Paragraph 3-1b(5) states, a properly imposed FLAG prohibits reassignment with the following exception (see para 2-8 for additional guidance), when a Soldier is flagged solely based on APFT failure or for enrollment in the ABCP.

3. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system. Paragraph 7-4l states, Soldier is in a nonpromotable status and will not be selected, promoted, advanced, appointed to a higher grade, or laterally appointed if Soldier is under a FLAG per AR 600-8-2 or has a circumstance that requires a FLAG. The Soldier is in a nonpromotable status whether the FLAG is actually initiated and completed or not, for example, for failure of APFT, body composition standard, completion of processing and punishment under UCMJ, Art. 15, (except for summarized proceedings imposed according to AR 27-10, para 3-16), or comparable State law.

//NOTHING FOLLOWS//