

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2025

DOCKET NUMBER: AR20240000049

APPLICANT REQUESTS: in effect, reinstatement in Army Guard/Reserve (AGR) status and correction of his narrative reason for discharge to read command recommendation

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

- DD Form 149 (Application for Correction of Military Record)
- Request for Reconsideration
- Request for Relief
- Appointment of Investigating Officer (IO)
- Iowa Army National Guard (ARNG) Response to Congressional Inquiry
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Evidence Provided to Staff Judge Advocate (SJA)
- Examples of Evidence
- Iowa Code of Military Justice Charges
- Iowa Civil Rights Commission
- Letter to Governor
- Email Reason for Removal

FACTS:

1. The applicant states, in pertinent part:

- In January 2022, he filed an Inspector General (IG) complaint against his immediate supervisor
- On 24 May 2022, he filed a second IG complaint
- On 1 June 2022, his supervisor recommended his release from AGR status using false statements
- His Brigade Officer in Charge (OIC) pushed termination forward without consideration of rebuttal and without an Army Regulation 15-6 investigation into the IG complaints
- Counsel informed OIC that removing the applicant might be considered whistleblower retaliation

- On 13 August 2022, an Army Regulation 15-6 investigation was initiated by the Brigade OIC
- IO concluded IG complaints were unfounded and released his summary on 22 September 2022
- The IO did not contact named witnesses nor did he address over 70 pages of evidence
- On 23 September 2022, the applicant reported to behavioral health for selfcare
- On 13 October 2022, an Army Regulation 15-6 was initiated against the applicant
- He presented evidence of false statements to the SJA
- On 23 November 2022, he was charged with conduct unbecoming a noncommissioned officer (NCO) and threatening a superior officer
- On 23 December 2022, he demanded trial by Court-Martial
- Court-Martial was denied and charges were dropped
- The Chief of Staff stated there was enough evidence to assume guilt and proceeded to terminate the applicant's AGR orders
- He was terminated from his AGR status through the administrative process, one month short of achieving 18 years of Active service
- The SJA refused to release evidence to his counsel to rebut his termination from AGR status
- His mental health was exploited; he was denied the right to a Court-Martial; his AGR status was terminated due to misconduct
- On 13 June 2023, the Iowa Civil Rights Commission found cause to further investigate 14th Amendment violations and mental health discrimination
- On 12 October 2023, a new IG informed him his supervisor was being reprimanded
- It was validated that his supervisor used false statements to recommend his termination
- The IG stated the reason for his separation from AGR status was based off command recommendation, not misconduct
- He requested reinstatement on AGR status until his Medical Evaluation Board concluded

3. The applicant provides the following information:

- Motion to Reconsider Removal of applicant from Full-Time National Guard Duty (FTNGD), 10 January 2022, on 6 January 2022, the applicant was told he was to be involuntarily released from FTNGD effective immediately; the applicant raised legitimate due process concerns
- Discovery Request, 26 September 2022, the government is refusing to provide him with the evidence necessary and essential to mount an effective defense, violating his due process rights

- Appointment of IO, 13 October 2022, the IO was to gather information related to threats and social media posts by the applicant; the findings and recommendations of the IO are not available for the Board's consideration
- Iowa ARNG response to Congressional, 3 March 2023, the applicant was involuntarily released for cause from AGR status on 30 January 2023; an investigation substantiated misconduct on the his part; the involuntary release from the AGR program does not preclude him from pursuing medical retirement
- Evidence provided to the SJA and examples of evidence
- Iowa Code of Military Justice charges show he behaved himself with disrespect toward a commissioned officer and failed to obey a lawful general regulation; the dismissal of the charges is not available for the Board's consideration
- The Iowa Civil Rights Commission's recommendation regarding the applicant's disputes was to refer the issue for further investigation
- Letter from the Applicant to the Governor of Iowa, 23 February 2023, which gives a synopsis of the issues the applicant encountered during his Iowa ARNG service

4. The applicant's service record shows:

- He enlisted in the ARNG on 16 June 1995 and was initially ordered to AGR status on 18 August 2005
- On 14 July 2015, he received notification he had completed the required years of service and was eligible for retired pay at age 60
- On 23 October 2017, orders were published ordering him to AGR status from 25 January 2018 through 24 January 2024
- NCO Evaluation Reports (NCOER), 31 May 2020 and 31 May 2021, show he either met standard or exceeded standard
- NCOER, 31 May 2022, shows he did not meet standard; he failed to seek guidance on how to complete tasks; lacked personal drive to lead Soldiers; demonstrated a lack of skill in duties
- He was honorably released from AGR status, on 30 January 2023, for misconduct (serious offense); he had completed 10 years and 2 months of active duty service with 6 years, 8 months, and 7 days of prior active duty service and 9 years, 9 months, and 8 days of prior inactive duty service
- On 23 July 2024, a Informal Physical Evaluation Board found him physically unfit for duty for major depressive disorder; the board recommended a rating of 50 percent and he be permanently retired due to disability; the applicant concurred with the board's finding and waived a formal hearing in his case and did not request reconsideration of his Department of Veterans Affairs ratings
- On 4 October 2024, orders were published placing him on the retired list effective 4 November 2024

5. On 10 December 2024, the Chief, Special Actions Branch, National Guard Bureau (NGB) provided an advisory opinion, which states in pertinent part:

- NGB recommends disapproval of the applicant's request
- The applicant alleges he was berated, belittled, and given negative counseling from his commanding officer (CO)
- He was removed from FTNGD due to expressing his frustration to his peers towards his CO
- He asserts that his due process had not been properly handled
- The Iowa ARNG conducted multiple investigations
- The IO findings/recommendations were considered by the leadership
- His character of service could have been under honorable conditions (general) or under other than honorable conditions
- He was diagnosed with major depressive disorder, on 26 July 2021, not attributed to combat stressors
- He was found physically unfit for service and placed on the medical retired list effective 3 November 2024
- A review of his claim was conducted by the Iowa ARNG IG and Judge Advocate General office
- The review concluded he was given fair consideration in the reason for removal
- It is NGB's recommendation his request be disapproved
- The legal process was conducted properly
- When the state dropped the charges and elected to remove him from the AGR program for substandard performance, there were steps such as corrective action or rehabilitative counseling that was not conducted and not in alignment with regulation
- The recommendation for disapproval is based on him being found unfit by the medical board, which would make his request to be retained in AGR status obsolete
- The opinion was coordinated with the Iowa ARNG and the AGR Policy Branch

6. On 11 December 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

**BOARD DISCUSSION:**

1. 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 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 and National Guard Bureau – Special Actions Branch advisory opinion, the Board concurred

with the advising official recommendation for denial finding the applicant alleges he was berated, belittled, and given negative counseling from his commanding officer (CO). He was removed from FTNGD due to expressing his frustration to his peers towards his CO.

2. The Board determined there is insufficient evidence to support the applicant's contentions for reinstatement in Army Guard/Reserve (AGR) status and correction of his narrative reason for discharge to read command recommendation. Furthermore, the Board noted the advising opine's recommendation for disapproval is based on him being found unfit by the medical board, which would make his request to be retained in AGR status obsolete. As such, the Board denied relief.

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.

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):REFERENCES:

1. National Guard Regulation 600-5 (The AGR Program, Title 32, FTNGD Management), dated 21 September 2015, set policy and procedures for the management of ARNG Soldiers serving on FTNGD in the AGR Program.
  - a. AGR Soldiers in a career status are not guaranteed continuation on active service or in any particular status but must be continually managed to ensure they perform in accordance with applicable regulations and policies (involuntary separations for misconduct, inefficiency, medical and other reasons may still occur pursuant to this and other applicable regulations).
  - b. Release from the AGR Program as prescribed by this chapter relates to release from FTNGD. The Adjutant General of the State is the final separation/release authority for AGR Soldiers. Retention will not be directed when release from FTNGD or separation from the ARNG is mandatory under this chapter or any other applicable Army or National Guard regulation.
  - c. Commanders and supervisors may initiate involuntary release from active duty for any reason permitted by Army or ARNG regulations for separation or withdrawal of Federal Recognition, including but not limited to, when a Soldier's duty performance or persistent inefficiency hinders the administration, operation, or training of the National Guard and when corrective action or rehabilitation efforts have not provided the necessary results.
  - d. Paragraph 6-4c states for the following, the Human Resources Office/AGR manager will notify Soldiers in writing, as soon as practical once the disqualifying condition is identified, that they will be released from active service and identify an effective date. The effective date should provide sufficient time for the Soldier to clear all transition requirements and use their accrued leave. A reason for removal was an AGR Soldier who fails to obtain or loses a required security clearance.
  - e. Paragraph 6-5a(2) states, when deciding whether to initiate procedures for involuntary release the following factors may be considered:
    - the seriousness of the events or conditions that form the basis for initiation of release proceedings, and the effect of the Soldier's continued retention on military discipline, good order, and morale

- the likelihood that the events or conditions will continue or reoccur
- whether the actions of the Soldier resulted or are likely to result in an adverse impact on accomplishment of unit missions
- the Soldiers ability to perform FTNGD in a satisfactory manner
- the Soldiers potential for further military service
- the Soldiers military service

2. DOD Directive 7050.06 (Military Whistleblower Protection) implements the provisions of the Military Whistleblower Protection Act as codified in Title 10, U.S. Code, section 1034.

a. The directive established policy that:

- (1) Members of the Military Services (referred to in this directive as "service members") are free to make protected communications.
- (2) No person will restrict a service member from making lawful communications to a member of Congress or an IG.
- (3) Service members will be free from reprisal for making or preparing to make or being perceived as making or preparing to make a protected communication.
- (4) No person may take or threaten to take an unfavorable personnel action or withhold or threaten to withhold a favorable personnel action in reprisal against any Service member for making or preparing to make, or being perceived as making or preparing to make a protected communication.

b. Protected communications are defined as:

- (1) any lawful communication to a Member of Congress or an IG; and
- (2) a communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including:
  - a law or regulation prohibiting sexual harassment or unlawful discrimination
  - gross mismanagement
  - gross waste of funds or other resources
  - an abuse of authority
  - a substantial and specific danger to public health or safety

c. Reprisal is defined as "taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication."

d. A "personnel action" is any action taken that affects, or has the potential to affect, the military member's current position or career. Personnel actions include promotions; disciplinary or other corrective actions; transfers or reassignments; performance evaluations; and any other significant changes in duties or responsibilities inconsistent with the military member's grade.

3. According to the DOD Whistleblower Program Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints, there are four elements that must be established to make a finding of reprisal:

a. Element 1 – Protected Communication. Did a complainant make or prepare to make a protected communication, or was complainant perceived as having made or prepared to make a protected communication?

b. Element 2 – Personnel Action. Was an unfavorable personnel action taken or threatened against the complainant, or was a favorable personnel action withheld or threatened to be withheld from complainant?

c. Element 3 – Knowledge. Did the responsible management official(s) have knowledge of complainant's protected communication(s) or perceive complainant as making or preparing protected communication(s)?

d. Element 4 – Causation. Would the same personnel action(s) have been taken, withheld, or threatened absent the protected communication(s)?

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. The separation code "JKQ" is the appropriate SPD code to assign Soldiers separated for misconduct (serious offense).

//NOTHING FOLLOWS//