

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 August 2024

DOCKET NUMBER: AR20240000163

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect he completed his first term of service
- personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- Basic Combat Training Reservation confirmation
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States)
- Statement for Enlistment U.S. Army Enlistment Program U.S. Army Delayed Enlistment Program (DEP)
- Packet for Separation under Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 14 (Commission of a Serious Offense)
- Headquarters (HQs), 101st Airborne Division (Air Assault) and Fort Campbell Orders Number 142-0614
- DD Form 214 service ending 2 June 2008
- [REDACTED] State Department of Labor Notice of Determination of Non-entitlements
- U.S. Department of the Treasury letter
- Army Review Boards Agency (ARBA) letter, 18 July 2014
- ARBA letter, 7 August 2014
- DD Form 149 for Army Board for Correction of Military Records (ABCMR) Docket Number AR20140012380

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 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 he requests the correction of his DD Form 214 to reflect in block 18 (Remarks) – "Member has Completed First Term of Service." This error should be corrected because it has caused him and his family a hardship which wrongfully had taken an entitlement from him. He is currently having to pay \$139.80 per month to the Department of the Treasury for a bonus he received when he reenlisted. He was told he owes the money because he did not complete his first term of service.

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

a. On 27 September 2004, the applicant enlisted in the U.S. Army Reserve (USAR) for a period of 8-years in the DEP with the requirement to report on 28 October 2004 for enlistment in the Regular Army (RA) for a period of 3-years and 23-weeks.

b. On 28 October 2004, the applicant was discharged from the USAR DEP and enlisted in the RA for 3-years and 23-weeks. DD Form 1966 (Record of Military Processing – Armed Forces of the United States) shows in section IV (Certification), item 32a (Specific Option/Program Enlisted for): the applicant enlisted of 3-years and 23-weeks.

c. On 8 November 2005, Permanent Orders Number 312-15, issued by HQs, 3rd Infantry Division, the applicant was awarded the Combat Action Badge for actively engaging or being engaged by the enemy on 26 October 2005.

d. On 25 May 2006, Permanent Orders Number 145-009, issued by HQs, Multi-National Division (Baghdad), the applicant was awarded the Purple Heart for wounds received as a result of hostile enemy action on 30 April 2006.

e. On 31 March 2008, the applicant was notified his commander was initiating separation action under the provisions of AR 635-200, paragraph 14-12c(2) for a commission of a serious offense for wrongful use of marijuana on multiple occasions. Subsequently, after consultation with counsel, the applicant acknowledged the notification of separation. He:

- did not submit statements in his own behalf
- waived his right for consideration before an administrative separation board
- requested a personal appearance before the board
- requested representation by counsel
- may encounter substantial prejudice in civilian life
- may be ineligible for many or all benefits of a veteran under Federal and State laws

f. The applicant's commander recommended the applicant be separated under the provisions of AR 635-200, paragraph 14-12c(2) with an other than honorable conditions discharge prior to his expiration term of service.

g. On 19 May 2008, the applicant's battalion commander recommended the applicant be separated under the provisions of AR 635-200, paragraph 14-12c(2) with a general under honorable conditions discharge.

h. On 20 May 2008, the separation authority directed the applicant be separated under the provisions of AR 635-200, paragraph 14-12c(2) with a general under honorable conditions discharge.

j. On 2 June 2008, the applicant was discharged from active duty under the provisions of AR 635-200, paragraph 14-12c(2) (Misconduct, Drug Abuse) with a general under honorable conditions discharge. DD Form 214 shows the applicant completed 3-years, 7-months (28-weeks) and 5-days of active service. It also shows in item 18 (Remarks): Member has not completed first full term of service.

4. The applicant provides:

a. Basic Combat Training reservation confirmation which shows the applicant's One Station Unit Training at Fort Knox, KY, began on 5 November 2004 for a duration of 18-weeks. He enlisted for 3-years with a \$6,000.00 seasonal bonus.

b. Statement of Enlistment U.S. Army Enlistment Program U.S. Army DEP shows the applicant enlisted in the USAR for a total of 8-years in the U.S. Armed Forces. Fulfillment of his obligation begins on the date he enlisted in the DEP. He volunteered to serve on active duty in the RA for a period of 3-years and 23-weeks.

c. HQs, 101Airborne Division (Air Assault) and Fort Campbell Orders Number 142-0614, shows the applicant was assigned to the U.S. Army transition point, effective 2 June 2008 for separation under the provisions of AR 635-200, paragraph 14-12c(2).

d. ■■■ State Department of Labor notice of determination of non-entitlement of Unemployment Compensation Program for Ex-service members informed the applicant his military wages under Federal law could not be used in calculation of a benefit rate because he did not complete the first full term of active service for which he agreed to serve.

e. U.S. Department of the Treasury letter notified the applicant part or all of his payment from the Social Security Administration was applied to his non-tax Federal debt to the Defense Finance and Accounting Service.

f. ARBA letters dated 18 July 2014 and 7 August 2014 which notified the applicant that the Board was in receipt of his application. However, his application was letter closed for failure to exhaust.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. Based upon the applicant's original enlistment contract showing he enlisted in the Regular Army for 3 years, 23 weeks and his DD Form 214 showing more service than that period, the Board concluded that adding "Continuous Honorable Service from 28 October 2004 to 5 April 2008." is appropriate. However, since the misconduct contributed to the applicant being extended to complete separation processing, the Board recommended denying changing the record to show he completed his first term of service.

BOARD VOTE:

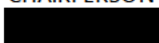
Mbr 1 Mbr 2 Mbr 3

:	:	:	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 adding the following additional statement to block 18 (Remarks) of his DD Form 214: "Continuous honorable active service from 28 October 2004 to 5 April 2008."
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 changing the record showing the applicant completed his first term of service.

3/6/2025

XCHAIRPERSON


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, 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. AR 635-5 (Personnel Separations – Separation Documents) in effect at the time, prescribes the separation documents that must be prepared for Soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It establishes standardized policy for preparing and distributing the DD Form 214 (Certificate of Release or Discharge from Active Duty). Paragraph 2-4 (Completing the DD Form 214), h, The following provides detailed instructions and source document(s) for completing each block of the DD Form 214. (18) REMARKS. Use this block for Headquarters Department of the Army mandatory requirements when a separate block is not available, and as a continuation for entries in blocks 11, 13, and 14. (a) Mandatory entry: "DATA HEREIN SUBJECT TO COMPUTER MATCHING WITHIN DOD OR WITH OTHER AGENCIES FOR VERIFICATION PURPOSES AND DETERMINING ELIGIBILITY OR COMPLIANCE FOR FEDERAL BENEFITS." (b) Mandatory entry: "SOLDIER (HAS) (HAS NOT) COMPLETED FIRST FULL TERM OF SERVICE." This

information assists the State in determining eligibility for unemployment compensation entitlement. The following guidance will help determine which entry to use:

1. Routinely, a Soldier should not be considered to have completed the first full term of active service if separation occurs before the end of the initial contracted period of service. However, if a Soldier reenlists before the completion of that period of service, the first term of service is effectively redefined by virtue of the reenlistment contract. 2. To determine if an enlisted Soldier has completed the first full term of enlistment, refer to the enlistment/reenlistment documents and compare the term(s) of enlistment to the net service in block 12c of the DD Form 214. If Soldier has completed or exceeded the initial enlistment, enter "has." If item 12c of the DD Form 214 is less than the Soldier's initial enlistment, enter "has not." If item 12c of the DD Form 214 is less than the Soldier's commitment, enter "has not." 4. Exception. If the narrative reason for separation on the DD Form 214 is "completion of required active service," then enter "has."

3. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//