

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240001018

APPLICANT REQUESTS:

- correction to the authority and reason for separation listed on his NGB Form 22, Report of Separation and Record of Service, to show Expiration Term of Service (ETS)
- personal appearance before the board

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

- DD Form 149, Application for Correction of Military Record
- NGB Form 22
- Human Immunodeficiency Virus (HIV) Lab Report

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, that he completed his eight-year term of service; however, his NGB Form 22 shows that he was separated because he was confirmed to have contracted HIV. This was a clerical error that has caused him personal and relationship problems.
3. Having prior service in the Regular Army (25 October 2001 to 7 August 2004), the applicant enlisted in the Army National Guard (ARNG) on 8 August 2004.
4. His record contains a DA Form 4187, Personnel Action, 18 November 2009, which shows the applicant failed to pass his Army Physical Fitness Test (APFT) and did not extend his enlistment. His military service obligation expiration date is listed as 25 October 2009.

5. A review of his Soldier Management System record shows he was involuntary discharged due to expiration of ARNG or U.S. Army Reserve service obligation.

6. Orders 323-879, 19 November 2009, published by The Adjutant General's Office, Mississippi, discharged the applicant from the ARNG and the reserve of the Army effective 25 October 2009. The type of discharge is listed as "Honorable." The authority for discharge is shown as "NGR 600-200, paragraph 6-35A." [Note: Paragraph 6-35a pertains to APFT Failure].

7. On 25 October 2009 the applicant was discharged from the ARNG. He completed 5 years, 2 months, and 18 days of net service for the period. His NGB Form 22 shows in:

- Block 23, Authority and Reason, the entry "NGR 600-200, 6-35(7) confirmed as infected with Human Immunodeficiency Virus per AR 600-110."
- Block 24, Character of Service, Uncharacterized

8. The applicant provides a lab report, 9 May 2015 which shows he is negative for HIV 1 and HIV-2.

9. There is no indication the applicant requested assistance through the State Adjutant General that issued his NGB Form 22.

10. By regulation –

a. A Soldier can be discharged by reason of ETS for failing the APFT (NGR 600-200, paragraph 6-35a).

b. A Soldier can be discharged for Secretarial plenary separation authority when they refuse to submit to medical care, Human Immunodeficiency Virus (HIV) infection, and when religious practices cannot be accommodated (NGR 600-200, paragraph 6-35I(7)).

11. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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.

### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief is warranted. The Board found the

available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board found the authority and reason for discharge and character of service recorded on the applicant's NGB Form 22 are clearly in error. The Board determined the applicant's record should be corrected to show he was honorably discharged by reason of ETS.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 and Army National Guard records of the individual concerned be corrected by correcting his NGB Form 22 to show he was honorably discharged by reason of the expiration of his term of service.

3/31/2025

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 135-178, Army National Guard and Army Reserve-Separation of Enlisted Personnel, Chapter 4, Expiration of Service Obligation, states a Soldier will be discharged from the Army upon expiration of the later of the term of contractual service or the statutory military service obligation.
3. National Guard Regulation 600-200, Personnel-General-Enlisted Personnel Management establishes standards, policies and procedures for the management of the Army National Guard (ARNG) and the Army National Guard of the United States enlisted Soldier in the area of separations.
  - a. Paragraph 6-35a states to refer to AR 135-178, Army National Guard and Reserve-Enlisted Administrative Separations, chapter 4. For discharge for Expiration Term of Service (ETS): RE1 or if an approved bar to reenlistment or extension is in effect, of the Soldier is ineligible for extension due to overweight, Army Physical Fitness Test failure, or a positive urinalysis, but is not barred at time of ETS: RE 3.
  - b. Paragraph 6-35k states to refer to AR 135-178, chapter 14 for Secretarial plenary separation authority. Requests under this authority must go through command channels to Chief, National Guard Bureau. The basis for separation can include, but is not limited to, refusal to submit to medical care, Human Immunodeficiency Virus (HIV) infection, and when religious practices cannot be accommodated.
  - c. Paragraph 6-35l(7) states that an individual confirmed as infected with HIV may request voluntary discharge under paragraph 6-35k above and AR 135-178, chapter 14.
4. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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//