

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20240001075

APPLICANT REQUESTS: reconsideration of his previous request for the correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show entitlement to separation pay.

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

- Self-authored statement in lieu of DD Form 149
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) for enlistment date 18 August 1995
- DA Form 3340 (Request for Reenlistment or Extension in the Regular Army)
- DD Form 4 for enlistment date 1 October 1998
- DA Form 3286 (Statements of Enlistment)
- DA Form 4789 (Statement of Entitlement to Selective Reenlistment Bonus)
- DD Form 2648 (Pre-separation Counseling Checklist)
- DA Form 2-1 (Personnel Qualification Record)
- DD Form 214 for service ending 28 November 2000
- Army Board for Correction of Military Records (ABCMR) notification of denial with Record of Proceedings (ROP) for ABCMR Docket Number AR20230004864
- Disabled American Veterans (DAV) Identification Card
- North Carolina Driver License
- Handwritten request for Air Force Base housing
- Visitor pass

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Dockets Number:

- AR20220001573 on 9 November 2022
- AR20230004864 on 7 November 2023.

2. The applicant states in effect, his discharge orders and DD Form 214 reflect that he is not entitled to separation pay. He was discharged from the 82nd Airborne Division after serving 6-years during the period of 4 January 1995 through 28 November 2000

not the 4-years and 10-months which are reflected on his DD Form 214. He was advised that the first year he served in the U.S. Army Reserve should be added to his 4-years and 10-months of active service. He deserves his separation pay because he was a single Soldier with no dependents.

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

a. The applicant enlisted in the U.S. Army Reserve (USAR) on 18 August 1995 in the Delayed Entry Program (DEP). The time the applicant served in the DEP was not creditable for pay purposes, it does count toward fulfillment of his military service obligation. He was discharged from the DEP and enlisted in the Regular Army (RA) on 4 January 1996.

b. DA Form 2-1 shows in items:

- 20 (Basic Enlisted Service Date): 4 January 1996
- 35 (Record of Assignments):
 - USAR Control Group (Delayed) during the period of August 1995 through January 1996
 - Enlistment on 4 January 1996

c. The applicant reenlisted in the RA on 1 October 1998.

d. On 2 November 1999, the applicant accepted non-judicial punishment for one specification of failure to follow a lawful order. His punishment included reduction in rank to private first class (PFC)/E3; forfeiture of pay, suspended until 10 December 1999; 45-days restriction and extra duty.

e. On 6 September 2000, the applicant received a mental status evaluation, he was found to have longstanding cognitive difficulties which were sufficient to drastically interfere with his duty performance. His behavioral difficulties reflect a pattern of maladjustment. It was recommended that he be expeditiously discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Separations), paragraph 5-18 (Other designated physical or mental conditions). The applicant's cognitive deficits existed prior to active service.

f. On 4 October 2000, the applicant was notified that action was initiated for his separation under the provisions of AR 635-200, paragraph 5-18 for having longstanding cognitive difficulties which interfered with his duty performance. After consultation with counsel on 16 October 2000, the applicant acknowledged the notification of separation, and he acknowledged his rights, and he could submit statements in his behalf.

g. On 24 October 2000, the applicant's commander recommended he be separated under the provisions of AR 635-200, paragraph 5-18 and be issued an honorable discharge. On 27 October 2000, the applicant's battalion commander recommended he be separated under the provisions of AR 635-200, paragraph 5-18 and be issued an honorable discharge.

h. On 1 November 2000, the separation authority directed the applicant be separated from the service under the provisions of AR 635-200, paragraph 5-18 and be issued an honorable discharge. The applicant would be transferred to the Individual Ready Reserve (IRR) to complete his statutory service obligation.

i. On 7 November 2000, Orders Number 312-0289, issued by Headquarters, 82nd Airborne Division, the applicant was discharged from the RA, effective 28 November 2000, under the provisions of AR 635-200, paragraph 5-18. The additional instruction stated the "Soldier is not entitled to separation pay in accordance with Title 10, United States Code (USC), section 1174 (Separation pay upon involuntary discharge or release from active duty).

j. On 28 November 2000, the applicant received his transition counseling from D- M-, section 16 (Finances) b (Separation Pay), shows the applicant acknowledged he did not want counseling regarding separation pay.

k. On 28 November 2000, the applicant was honorably discharged from active duty under the provisions of AR 635-200, paragraph 5-18 (Separation Code JFV, Reentry Code 3). His DD Form 214 shows the applicant completed 4-years, 10-months, and 25-days of active service. It also shows in items:

- 12a (Date entered active duty this period): 4 January 1996
- 12b (Separation date this period): 28 November 2000
- 12c (Net active service this period): 4-years, 10-months, and 25-days
- 18 (Remarks): Member is entitled to none involuntary separation pay; period of DEP 18 August 1995 through 3 January 1996

l. On 26 July 2022, in the processing of ABCMR Docket Number AR20220001573, the Office of the Deputy Chief of Staff G-1 provided an advisory opinion regarding the applicant's request for correction of his DD Form 214 to reflect he was entitled to separation pay. The advisory official stated:

(1) A DD Form 215 (Correction to DD Form 214) was needed to correct Block 18 of the DD Form 214 to remove the statement regarding separation pay.

(2) In accordance with Title 10 USC, section 1174 (Separation pay upon involuntary discharge or release from active duty), a Service member must complete six

or more years, but less than 20 years, of active service immediately before the date of discharge. The applicant's DD Form 214 shows he completed 4 years, 10 months, and 25 days of active service at the time of separation. Therefore, he did not meet the statutory requirement to be paid a separation pay.

m. On 9 November 2022, after reviewing the application and all supporting documents, 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 Deputy Chief of Staff, G-1 advisory opinion, the Board concurred with the advising official findings the applicant must complete six or more years, but less than 20 years, of active service immediately before the date of discharge. Evidence shows the applicant completed four years, 10 months, and 25 days of active service at the time of separation. Based on statutory requirements, the applicant did not meet the criteria for separation pay. Therefore, the Board denied relief.

n. on 7 November 2023, the Board reconsidered his application. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The statute (10 USC section 1174 (Separation pay upon involuntary discharge or release from active duty)) states a service member must complete six or more years, but less than 20 years, of active service immediately before the date of discharge. The applicant's DD Form 214 shows he completed 4 years, 10 months, and 25 days of active service at the time of separation. Therefore, the Board agreed that he did not meet the statutory requirement to be paid a separation pay.

4. The applicant provides:

a. On 30 September 1998, DA Form 3340-R shows the applicant requested to reenlist in the RA. It was determined he was fully qualified for his request and it was approved by his commander.

b. DD Form 4 for reenlistment on 1 October 1998 shows the applicant reenlisted in the RA for 4-years in the rank/grade of specialist/E-4. It also shows in:

- Item 7 (Previous Military Service Upon Enlistment/Reenlistment), a: (Total Active Military Service): 2-years, 8-months, and 27-days
- Item 7b (Total Inactive Military Service): zero-years, 4-months and 16-days

c. DA Form 3286 shows in connection with the applicant's reenlistment in the RA for a station of choice he desired assignment at Fort Bragg, NC (currently known as Fort Liberty).

d. DA Form 4789 shows in conjunction with his reenlistment in the RA for 4-years in the military occupational specialty of 52C (Utility Equipment Repairer) he would be receive a selective reenlistment bonus.

e. DD Form 2648 shows the applicant accepted transition assistance counseling. In item 16b (Separation Pay) – "no" was selected. The applicant signed the document on 28 November 2000.

f. DAV identification card which shows the applicant is registered as a 100 percent disabled veteran.

g. North Carolina learner permit was issued on 31 May 2022 and driver license issued on 13 June 2022 shows the applicant as a veteran.

h. Handwritten request for an apartment on Seymour Johnson Air Force Base in Goldsboro, NC. It also stated the applicant served 6-years in the U.S. Army and was airborne qualified. He served in Bosnia Herzegovina in support of Operation Joint Guard Task Force Eagle and was honorably discharged on 28 November 2000.

i. Seymour Johnson Air Force Base visitor pass which shows it was issued to the applicant on 24 October 2023 because he forgot his common access card on base.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant completed 4 years, 10 months, and 25 days of active service at the time of separation. The statute (10 USC section 1174 (Separation pay upon involuntary discharge or release from active duty)) states a service member must complete six or more years, but less than 20 years, of active service immediately before the date of discharge. Based on statutory requirements, the applicant did not meet the criteria for separation pay. Therefore, 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 to amend the decision of the ABCMR set forth in Docket Number the ABCMR in Docket Numbers AR20220001573 on 9 November 2022 and AR20230004864 on 7 November 2023.

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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 1174 (Separation pay upon involuntary discharge or release from active duty), states (b) (Regular Enlisted Members), (1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20- years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.
2. Army Regulation 635-5 (Personnel Separations-Separation Documents), in effect at the time, prescribed the separation documents that must be prepared for Soldiers on retirement, discharge, or release from active duty service or control of the Active Army and contained item-by-item instructions for completing the DD Form 214. It showed for item 18, a Soldier receiving separation/readjustment or non-disability severance pay (as indicated by the finance office), to enter the type of pay and amount.

//NOTHING FOLLOWS//