ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20240001550

APPLICANT REQUESTS:

- Reconsideration of his previous requests to be transferred back to the U.S. Army Reserve (USAR) due to an illegal transfer to the inactive Reserve
- A personal appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: Self-Authored letter to the Secretary of the Army (SA)

FACTS:

1. Incorporated herein by reference are military records, which were summarized in the previous consideration of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers:

- AC83-11230 on 5 June 1985
- AR20180012665 on 11 March 2020

2. The applicant served in the U.S. Army Reserve (USAR) beginning on 2 June 1972. In June 1981, he requested a voluntary transfer to the USAR Reserve Control Group (Individual Ready Reserve (IRR) or Reinforcement). He contends that he signed this transfer under duress" and such transfer is illegal. On 12 December 1981, he was transferred from the 3220th US Army Garrison to the USAR Control Group (Reinforcement). He was honorably discharged from the USAR Control Group effective 18 July 1987. He completed 6 qualifying years of service towards non-regular retirement. He has submitted multiple requests to the ABCMR Board to be transferred back to the U.S. Army Reserve (USAR) due to what he believes or contends was an illegal transfer to the inactive Reserve. For clarity purposes, here is a list of the cases, which will be discussed in full later in this Record of Proceedings:

- Docket Number AC83-11230, dated 5 June 1985: denied by the Board
- Docket Number AR1999027148, dated 7 October 1999: administratively closed; no new information

- Docket Number AR20090005217,dated 16 July 2009: administratively closed; no new information
- Docket Number AR20180012665, dated 11 March 2020: reconsideration request: denied by the Board
- Docket Number AR20210017298, dated 2 June 2021: erroneously administratively closed due to duplicate application
- Docket Number AR20240001550, dated 17 January 2024: Current application

3. The applicant in his letter to the Secretary of the Army (SA), states, in effect, that he is trying to find out what happened to his prior request (AR20210017298, dated 2 June 2021). He states that he has not heard anything since he submitted his reconsideration request and has made numerous attempts to the ABCMR to receive a status of his application to no avail. He wants the SA to intervene on his behalf.

4. ABCMR Docket Number AR20210017298, was erroneously closed on 16 February 2022, as a duplicate case of AR20180012665.Therefore, it was not considered by the Board. ABCMR Docket Number AR20210017298 (the contested docket) has been renumbered AR20240001550, which is now before this Board. The applicant included a self-authored letter, which states:

a. The applicant requests reconsideration based on the criteria formulated by ABCMR Docket Number AR20210017298, dated 2 June 2021. A prior ABMCR Docket Number AR20180012665 reconsideration request was boarded on 11 March 2020. His reconsideration request was denied. The Board noted that the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case were insufficient as a basis for correction of the records of the individual concerned.

b. The issue before the ABCMR in 1985 was whether the applicant's transfer to inactive Reserve status complied with Army Regulation (AR) 140-10 (Assignments, Attachments, Details, and Transfers) and whether it was voluntary on his part. Additionally, the 2 June 2021 ABCMR [letter from ABCMR reference AR20180012665, dated 2 June 2021] decision found no duress from command producing the resulting transfer.

c. The applicant states that his original assignment to the 3220th U.S. Army Garrison, West Palm Beach, FL was in 1975, five years before the February 1980 assignment as 92B (Property Control Officer).

d. Mr. A- , civilian attorney, alleged the applicant signed the transfer request under duress, which the Board found unsubstantiated. Testimony from the applicant and others indicates there were no threats or promises issued as a condition for the applicant to sign the transfer request.

e. The record is incorrect on this point. The applicant states this fact forms the basis for the instant request for reconsideration of the 2 June 2021 denial. The Board and others have relied on misinformation. It was not until the applicant alleged quid pro quo issued personally by the Garrison Commander, Colonel (COL) T- to wit: "If you get out Lieutenant Colonel (LTC) R- will give you a good Officer Evaluation Report (OER). If you don't he will give you another bad OER." This offer was communicated to the ABCMR but found it was not new evidence nor duress. This erroneous finding is apparently the basis for the subsequent Board to find testimony from the applicant showed no duress.

f. As for the others further ground for instant reconsideration are the perjury and conduct of COL D-, 81st ARCOM IG (Army Reserve Command Inspector General). He testified to both Congressman M- and the ABCMR he held a personal interview with the applicant at which time the applicant told the IG there was no quid pro quo. This assertion is a lie. No such meeting took place. The applicant would like to see a transcript of the meeting. This false report by COL D- is illegal outrageous and forms the basis to satisfy two elements required to justify reconsideration by the Board, namely relevant materials not previously presented or considered by the Board.

g. "The ABCMR begins its consideration of each case with the presumption of administrative regularity" which the Board presumes what the Army did was correct." This presumption is invalid in the applicant's case. By not recognizing the applicant's assertion of new evidence of quid pro quo, the Army breached the presumption. The Army by relying on the false assertion by IG COL D- breached its presumption of correct conduct. The Army breached the presumption by not affording the applicant a due process hearing as required by Army regulation.

5. The following prior ABCMR cases reflects the following information in full:

a. ABCMR Docket Number AC83-1120, dated 5 June 1985, the applicant requested correction of his records to show that he did not execute a 1AA Form 831 (Request for Transfer), dated 6 June 1981 and recession of First U.S. Army Orders 243-012, dated 16 December 1981 which reassigned the applicant to the USAR Control Group (Reinforcement). The Board considered all evidence, allegations, and information presented by the applicant, together with the evidence of record, applicable law and regulations, the Board concluded:

(1) The applicant had not established that any material error or injustice occurred in his case.

(2) The evidence of record did not demonstrate the applicant's request for transfer to the USAR Control Group was the result of unlawful command or that the request was the product of duress.

(3) The applicant's subjective belief that he was required to complete the 1AA Form 831 (Request for Transfer), in question does not alter the voluntary nature of his request for transfer, when he had not, in fact, been ordered to complete the form.

(4) His transfer to the USAR control group was proper.

(5) His contentions that he continued to attend drills with the 3220th U.S. Army Garrison until March 1982, pursuant to the orders of the Inspector General (IG), could not be confirmed. However, as the applicant did not request correction of his records so that he would be entitled to pay or retirement points for the June 1981 through March 1982 period, no action was required.

(6) The Board further noted he had failed to submit sufficient relevant evidence to demonstrate the existence of probable material error or injustice. The Board denied the applicant's request.

b. ABCMR Docket Number AR1999027148, dated 7 October 1999, wherein the applicant requested reconsideration of his previous request and personal appearance before the Board. He submitted a letter with his application, which stated:

(1) The letter specified what the applicant felt was reasonable as a settlement regarding his dispute with the U.S. Army. As a preface, the applicant stated categorically, in his opinion, his transfer to inactive status in the USAR was contrary to army regulations in force at the time and therefore illegal. He believes the record also indicates his performance throughout was at least above average as evidenced by the receipt of the Reserve Components Achievement Medal. As to his position regarding possible settlement, the applicant requested:

(2) Back pay from June 1981 to present to include summer camps.

(3) Promotion to the pay grade O4 as this was unfairly denied him having earned it through performance and independent study culminating in completion of the Officer's Advanced Course, a prerequisite for promotion to pay grade O4.

(4) Immediate placement in the Retired Reserve, as he had attained 20 years of qualifying service.

(5) Prevention of any adverse personnel entries into his military personnel record, which would impair his efforts to become a member of another service component.

(6) The applicant would stipulate to a voluntary gag order as to disclosure of these settlement terms. This gag order would be binding by both parties. The applicant honestly felt the settlement was reasonable and just given the U.S. Army's illegal and totally unwarranted adverse personnel action, which it imposed upon the applicant.

(7) A letter from the ABCMR, 7 October 1999, to the applicant in reference to his request for reconsideration states in effect, the staff of ABCMR is authorized to determine whether or not the applicant submitted new evidence for reconsideration of a previous ABCMR decision. Expressions of dissatisfaction with previous decisions, contentions, unsubstantiated assertions, interpretations, and argument, do not warrant reconsideration. The applicant did not submit new evidence. Accordingly, there was no basis for resubmitting the applicant's request to the Board and the application was closed without further action by the Board

c. ABCMR Docket Number AR20090005217,dated 16 July 2009, wherein the applicant requested a second reconsideration of his case and a personal appearance before the Board. He stated he was illegally transferred to the inactive reserve and there were violations of AR 140-10. A letter to the applicant from the ABCMR, dated 16 July 2009, states, in pertinent part:

(1) ABCMR records show the applicant's case was originally considered and denied by the ABCMR in AC83-11230 on 5 June 1985 and that it was reconsidered and administratively closed without referral to the Board on 24 February 1998 (not available for the Board's review) and again on 7 October 1999.

(2) During its original review of the applicant's case, the Board determined the applicant had voluntarily requested transfer to the USAR Control Group on 6 June 1981, and found no evidence the transfer was the result of unlawful command or that it was the product of duress. In the two subsequent administrative reviews of the applicant's case, the Director of the ABCMR determined the applicant failed to provide new evidence or argument that was not previously available to and/or considered by the Board.

(3) Since the applicant's case was originally considered and denied by the Board on 5 June 1985 and reconsidered and administratively closed on 27 February 1998 and 7 October 1999 there were no regulatory provisions that provided for further consideration of the applicant's case by the Board. The applicant had exhausted all administrative remedies available to him through the ABCMR and the ABCMR contemplated no further action on this matter. The applicant had the option to seek relief in a court of appropriate jurisdiction.

d. ABCMR Docket Number AR20180012665, dated 3 June 2021, reflects the applicant submitted a third reconsideration of his case stating the issue before the

Board in 1985 was: did his transfer to inactive reserve status comply with AR 140-10, in that it was voluntary on his part. As part of his request for reconsideration, he included his original DD Form 149 (Application for Correction of Military Record), wherein he requested personal appearance before the Board. On 11 March 2020, the Board reconsidered the applicant's request. The record of proceedings (ROP) states, pertinent part:

(1) The Board determined relief was not warranted. Based upon the available documentation, the findings outlined with the IG letter and regulatory guidance found in Army Regulation (AR) 140-10 (Assignments, Attachments, Details, and Transfers), the Board concluded there was insufficient evidence of an error or injustice which would warrant transferring the applicant back to the USAR due to an illegal transfer to the inactive reserve.

(2) The Board also stated it felt in order to be more fair and equitable in their decision, the applicant should appear before the Board.

(3) There is no evidence that the applicant appeared before the Board.

5. The applicant's service record contains:

a. An undated Computation Sheet, which shows the applicant accepted initial appointment on 2 June 1972.

b. DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows the applicant in the rank of second lieutenant and a member of the USAR, entered active duty on 18 September 1972 and was honorably released to the USAR on 17 December 1972

c. DA Form 2-1 (Personnel Qualification Record) shows in Section VII (Current and Previous Assignments) on:

- 2 June 1972 he was commissioned via the Reserve Officer Training Corps
- 2 June 1972 through 17 September 1972 USAR officer service not on active duty (AD)
- 18 September 1972 through 17 December 1972 USAR officer service on AD
- 18 December 1972 through 31 October 1975 USAR Officer service not on AD
- 1 November 1975 transferred to 3220th U.S. Army Garrison
- 1 November 1975 USAR Ready, Headquarters, Company Executive Officer
- 1 August 1978 Ammunitions Officer, USAR Ready
- 5 May 1979 Industrial Engineer, USAR Ready
- 1 February 1980 Property Control Officer 3220th U.S. Army Garrison, USAR.
- This is the last entry of this document.

d. The document, wherein the applicant requested transfer to the USAR Control Group (Reinforcement) is not available for the Board's consideration; however, Orders 243-12, published by Headquarters, First United States Army, dated 16 December 1981 relieved the applicant from 3220th U.S. Army Garrison. He was voluntarily transferred to USAR Control Group (Reinforcement) effective 12 December 1981.

e. Letter from applicant's attorney to Congressman D- A. M-, dated 4 February 1982 states:

(1) The attorney represented the applicant and was in receipt of a copy of letter to the Congressman dated 9 December 1981 from COL W- A. D-, Jr who made several statements in his letter, which appeared to be incorrect. The applicant wanted to respond to those items.

(2) The statement was made that the applicant was counseled by the Commander of the 3220th U.S. Army Garrison on his performance. The applicant assured the attorney he was never counseled by and of the various commanders of the 3220th, during the period in question. Counseling requires an identification of specific deficiencies, suggestions as to curing such deficiencies, and a definite time period within which to show improvement. The applicant was never told by any of the various commanders of any specific deficiencies or of any actions, which he could take to improve.

(3) COL D's letter stated that attempts were made to find the applicant another position in the unit. The letter further stated the applicant's perceived reputation was detrimental to him being considered by other section chiefs. The applicant knew of no attempts to find him another position in the unit. In fact, the applicant's section chief, Major (MAJ) J- S-, in December 1981, made the statement that he wished to have the applicant remain in his section. In fact, MAJ S- stated to another Army officer, MAJ G-, that he had gotten more work out of the applicant than he had any other officer, during the previous five years. This statement would seem to belie the allegation in COL D-'s letter.

(4) COL D's letter stated the applicant voluntarily requested to transfer to the USAR Control Group. This is absolutely untrue. COL J- A. T-, Jr., the commanding officer, at one time told the applicant he felt the applicant should request a transfer to the Control Group based upon the fact that COL T- felt LTC T- R- would give the applicant a bad evaluation. LTC T-R- prepared a [1AA Form] 831, which he attempted to coerce the applicant into signing. The applicant specifically states he was forced to sign the 831 under duress and that he intended to appeal the action. This express statement by the applicant in June 1981 was in direct contradiction to COL D-'s statement that the applicant voluntarily initiated the transfer.

(5) COL D's letter states that in view of the applicant's stated intention to transfer, action was initiated to delete him from the unit's annual training orders. Again, the attorney would refer to the form 831, which the applicant signed in June of 1981, which the applicant specifically states he signed the document under duress. It would seem that a statement to this effect is in direct contravention with any allegation the applicant had expressed a stated intention to transfer to the USAR Control Group. In any event, the applicant was under specific written orders to report to annual training. The applicant was never advised by any officer, prior to summer camp, that he should disregard the written orders. The applicant was told by a sergeant, at the unit in a telephone conversation, that LTC R- had stated the applicant was not to go to summer camp. However, the applicant received no confirmation of this either in writing or verbally from either LTC R- or COL T-.

(6) Upon arrival at summer camp, the applicant was confronted by LTC R- who told the applicant to go home and sign the [1AA] Form 831. The applicant refused to sign the [1AA Form] 831 voluntarily and spoke with the unit IG concerning whether or not he should sign the [1AA Form] 831. The unit IG advised the applicant not to sign the [1AA Form] 831 and to require LTC R- and/or COL T- to rescind the summer camp orders in writing. At no time did the applicant agree to execute the [1AA Form] 831 voluntarily.

(7) Upon returning from summer camp at ensuing drills, the applicant was subjected to vile and abusive language in formation by LTC R-. The abuse from LTC R- became so intense the applicant agreed to sign the [1AA Form] 831 under duress as is clearly shown thereon. The applicant felt that he had no support from his commander within the unit and had no alternative but to sign the [1AA Form] 831 under duress. It would appear that the pressure brought to bear on the applicant to sign the [1AA Form] 831 is a direct result of the lack of hard evidence, which would be necessary to have an administrative hearing to require the applicant to be transferred to the USAR Control Group.

(8) A review of the applicant's previous OERs shows he was constantly rated either superior or outstanding, the two top rating classifications. The applicant's most recent evaluation was done by MAJ B- at LTC R-'s direction. While the report is somewhat unfavorable, it should be noted MAJ B- specifically states in the OER that he did not directly observe the applicant's performance. Army regulations require that raters directly observe the performance of the officer in question. The applicant has protested the OER and MAJ J- G-, personal management officer, advised the applicant the OER should be removed from his file.

(9) To illustrate the lengths to which LTC R- went in harassment, he spoke with fellow civilian employees about the applicant. The applicant was employed by Southern

Bell. LTC R- contacted civilian management employees of Southern Bell and spoke with them directly concerning the applicant's performance as an employee of Southern Bell. Under Florida law, this is probably a tortious activity and LTC R- could have been liable to the applicant for damages. In any event, such conduct was improper and constituted harassment.

(10) A letter from COL T-, which is not available for the Board's review, appeared to state COL T- believed the applicant should continue with his military career.

(11) The purpose of the attorney's letter was not an attempt to attack COL D-. It would appear that statements made in COL D-'s letter were based upon information, which he had received and relied upon. The attorney and applicant wanted to know from whom COL D- received the information. Perhaps if they knew the source of the information, they could resolve the apparent conflicting factual information.

f. Letter from COL W- A. D- Jr., IG, Headquarters, First United States Army, to Congressman M- in response to the applicant's attorney's letter, states:

(1) The matters presented by the applicant's lawyer, Mr. P- C. A-, in his 4 February 1982 letter, were inquired into by Headquarters, First United States Army.

(2) The inquiry revealed the applicant was informally counseled concerning his poor performance on several occasions by his superiors. An informal counseling session may consist of an on-the-spot correction or an evaluation of performance of a specific task, such as the counseling the applicant received when he was removed from the position of unit Property Book Officer. Such informal counseling are normally sufficient for an officer to take corrective action. The more formal form of counseling referred to by Mr. A- was not required in the applicant's situation.

(3) Mr. A-'s allegation that no attempts were made to find the applicant another position and the applicant's perceived reputation was detrimental to his being considered for another position by other section chiefs were also reinvestigated. Sworn testimony affirmed the fact the applicant's name was submitted before the 3220th U.S. Army Garrison's Officer's Personnel Management Board for possible reassignment within the Garrison. However, he was not favorably considered.

(4) The applicant was judged a marginal officer by his superiors based on their evaluation and observation of his performance. The applicant's perceived lack of initiative, aggressiveness, and his frequent failure to complete assigned tasks were the major factors in that determination. The Garrison Commander was aware the applicant had performed very well, while briefly assigned to MAJ S-, but he concluded the

applicant's overall performance was such that the process of the transfer request should continue.

(5) Mr. A-'s allegation the applicant signed the 1AA Form 831 under duress was not substantiated. Testimony from the applicant and others indicates there were no threats or promises issued as a condition for the applicant to sign the transfer request. The inquiry, however, substantiated the applicant incorrectly interpreted the statement "Request of Commander" in block 4e of the Request for Transfer as an order to sign the request and therefore believed he was under duress.

(6) The applicant's allegation that LTC R- subjected him to vile and abusive language in a formation by saying to him "get the hell out of here" was neither refuted nor substantiated by available evidence.

(7) Inquiry into matters pertaining to the applicant reporting to summer camp and subsequently being told to return home reveled the applicant was verbally notified not to attend by an officer and a noncommissioned officer from Headquarters, 3220th U.S. Army Garrison, approximately one week prior to annual training. The applicant acknowledged these notifications but chose not to comply with that guidance, because he felt his written orders took priority over the verbal notifications. The applicant was correct. No adverse actions were associated with his reporting to annual training.

(8) The allegation that LTC R- harassed the applicant by contacting the applicant's fellow civilian employees at Southern Bell was not inquired into. Such matters are normally outside the jurisdiction of the military and should be addressed by other means, should the applicant and his attorney elect to pursue the matter.

g. Memorandum: Subject: Options upon Non-Selection for Promotion after Second Consideration, dated 10 June 1987, to the applicant, in the rank of captain, states in pertinent part, Reserve officers who are considered for promotion and fail to be selected are again considered by a selection board approximately one year later. If they fail to be selected on this second consideration, they will thereafter not be considered for promotion. Subject officers will be discharged within 90 days after the selection board reports its findings unless the officer has a service obligation, is eligible for and requests transfer to the Retired Reserve or has been credited with 18 or more but less than 20 years of satisfactory federal service for retired pay purposes. The applicant had twice been considered for promotion and had not been selected.

h. Orders D-06-04422, published by U.S. Army Reserve Personnel Center, dated 24 June 1987, honorably discharged the applicant from the USAR Control Group (Ready Reserve) effective 18 July 1987.

i. Applicant's proposed findings of uncontroverted Facts in the United States Claims Court, dated 22 June 1989, case number 224-88C, states in pertinent part:

(1) On 25 November 1987, the applicant filed suit against the SA in the United States District Court for the Southern District of Florida. He alleged in his complaint that he was involuntarily transferred to the control group and that the involuntary transfer violated Army regulations. He sought the pay he would have received had he remained in an active reserve unit and participated in it training sessions.

(2) On 31 March 1988 the District Court transferred the case to the Claims Court. The applicant filed his complaint with the Claims Court on 29 April 1988, seeking correction of his military records, restoration to his prior active Reserve status, and monetary relief in excess of $10,000.

(3) The computation of credits prepared by Chief, Claims Inquiries Division, Centralized Pay Operations, United States Army Finance and Accounting Center, established had the applicant participated in all scheduled drills and active duty for training periods from the time of his transfer until July 1988, he would have earned $33,185.35. This computation is correct but must be revised to include the period of time since July 1988. The result of the case is not available for the Board's consideration.

j. United States Court of Federal Claims Opinion, dated 10 August 2001, case number 00-141C, states in pertinent part:

(1) In case number 224-88C, the court held the applicant had voluntarily signed the form despite his subjective belief he had been forced to sign. The applicant's subjective belief he was under duress did not alter the voluntary nature of his request for transfer, i.e., he was not ordered to complete the form. Finding a lack of duress, the trial court judge granted the government's motion to dismiss for failure to state a claim upon which relief could be granted. The judge also stated he did not find the Board's decision was arbitrary, capricious, unsupported by substantial evidence, or contrary to law. In 1991, the applicant appealed the decision of the Claims Court to the United States Court of Appeals for the Federal Circuit, which affirmed the trial courts judgement.

(2) On 21 March 2000, the applicant filed his complaint with the United States Court of Federal Claims, case number 00-141C. The applicant seeks the same redress he sought in his previous United States Claims Court action (1) back pay and all associated benefits he would have received had he not been transferred (2) restoration to the military status he enjoyed prior to his transfer, and (3) correction of his military records to reflect his changed status.

(3) Conclusion: the applicant's claim was barred by the statute of limitations and by the doctrine of res judicata [a matter that has been adjudicated by a competent court and may not be pursued further by the same parties]. Furthermore, the applicant's claim did not rest on a proper money-mandating statute. For those reasons, any one of which would preclude the applicant's claim, the motion to dismiss was granted.

k. United States Court of Appeals for the Federal Circuit, case number 02-5004, dated 30 April 2002, shows the applicant as the plaintiff and the United States as the defendant. The applicant submitted his case before the Court of Appeal for the Federal Circuit. The entire document is available for the Board's consideration.

l. United States Court of Appeals for the Federal Circuit, case number 02-5004, decision, dated 6 September 2002, states in pertinent part in light of the applicant's admission that his transfer to a non-pay billet was voluntary, the Court saw no reason to grant the applicant back pay even if statutory support for his claim could be unearthed. Consequently, the applicant's request for relief from an unlawful discharge due to coercion was rendered moot.

m. Letter from Office of Chief of Legislative Liaison to the applicant's Congresswoman, dated 27 March 2003, states:

(1) The applicant’s request for relief centers on his contention that his requested reassignment and transfer to a non-pay billet in the USAR Control Group (Individual Ready Reserve (IRR)) was coerced in violation of regulation. Since 1981, the applicant has pursued the same claim on several occasions to internal Army investigative agencies, the ABCMR, The Court of Federal Claims, and the United States Court of Appeal for the Federal Circuit. On each occasion, the applicant's contentions have been found to be without merit.

(2) On 9 December 1983, the IG, First United States Army, after conducting an investigation into the applicant's complaints, determined his transfer to the IRR was voluntary. On 5 June 1985, the ABCMR in docket number AC83-11230, after considering the applicant's submissions and contentions, and thoroughly reviewing his records, reached the same conclusion and denied his application for relief.

(3) On 29 April 1988, the applicant filed a complaint in the United States Court of Federal Claims. On 25 January 1991, the judge found the applicant's requested transfer was voluntary and dismissed his complaint. The United States Court of Appeals for the Federal Circuit affirmed the dismissal on 9 October 1991.

(4) On 12 September 1996, 13 years after his first application to the ABCMR, the applicant requested, with assistance from the Congresswoman's office, the ABCMR reconsider its prior ABCMR Docket Number AC83-11230 1985 opinion. On 24 February

1998, the ABCMR returned the applicant's request for reconsideration without action due to his failure to present any new evidence, information, or argument not in the record at the time of the Board's original consideration as is required by AR 15-185 (ABCMR).

(5) On 7 October 1999, in ABCMR Docket Number AR199027148 denied yet another request for reconsideration.

(6) On 21 March 2000, the applicant filed a new lawsuit against the Army in the United States Court of Federal Claims. On 10 August 2001, the judge issued a detailed opinion once again rejecting the applicant's contentions and dismissing his complaint. On 6 September 2002, the United States Court of Appeals for the Federal Circuit upheld the judge's dismissal of the applicant's complaint. The applicant petitioned for a rehearing, and this too was denied on 23 October 2002. The applicant has not sought a writ of certiorari to the Supreme Court of the United States from the appellate court's decision on his case.

(7) The applicant implies he is entitled to relief under the provisions of Title 10 United States Code (USC) section 277. The applicant asserted this very claim in his appeal to the United States court of Appeals for the Federal Circuit, which rejected his argument.

(8) Section 277, which is no longer in force, provided "laws applying to both regulars and Reserves, shall be administered without discrimination -- (1) among regulars; (2) among reserves; (3) between regulars and reserves." As the Court of Appeals for the Federal Circuit has held, section 277 did not encompass laws applying to reservists only.

(9) The applicant's contention appears to center on the well-established body of case law distinguishing, for purposes of Tucker Act jurisdiction, between Title 37 USC section 204, the military pay statute applicable to active duty service members and Title 37 USC section 205, the military pay statute applicable to reservists. Because the applicant was a reservist paid pursuant to section 205, the Court of Federal Claims determined, under controlling precedent, he could not establish the requisite right to back pay to support jurisdiction under the Tucker Act. Since section 205 applies only to reservists Title 10 USC section 277 has no bearing on these precedents or the Court of Federal Claim's decision in the applicant's cases.

n. DA Form 5016 (Chronological Statement of Retirement Points), dated 8 February 2024, shows the applicant was in the USAR from 2 June 1972 through 18 July 1987. He had a total of 275 inactive duty points, 68 extension course points, 227 membership points, 175 active duty points, and 6 qualifying years of service for retirement.

o. The applicant's service record was void of the IG investigation.

6. The applicant's previous correspondence with the Board, his previous cases, and his correspondence with Congressmen and Senators are available for the Board's review.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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.

a. The applicant served in the USAR from 2 June 1972 to 18 July 1972. In June 1981, he requested a voluntary transfer to the USAR Reserve Control Group (IRR). He contends that he signed this transfer under duress" and such transfer is illegal. On 12 December 1981, he was transferred from the 3220th US Army Garrison to the USAR Control Group (Reinforcement). He was ultimately honorably discharged from the USAR effective 18 July 1987. He completed 6 qualifying years of service towards non-regular retirement.

b. The Board found the applicant's subjective belief that he was required to complete the 1AA Form 831 (Request for Transfer), is not supported by any evidence, and it does not change the voluntary nature of his request for transfer. The Board was not persuaded by the applicant's argument, and he did not provide new evidence that his transfer was the result of an unlawful command influence, or that it was the product of duress. The Board concluded the applicant's transfer to the USAR Control Group was proper.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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 Dockets Number AC83-11230 on 5 June 1985 and AR20180012665 on 11 March 2020.

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. Army Regulation 140-10 (Assignments, Attachments, Details, and Transfers) paragraph 2-24 (Involuntary Release of Officers) states Officers may be involuntarily released from an assignment when—

(1) Their degree of efficiency and manner of performance require such action, and

(2) Involuntary separation action is not appropriate.

(3) Mandatory promotion action as appropriate in accordance with AR 600–8–29. This includes but is not limited to officers twice non-selected for promotion.

2. AR 140-10 (Assignments, Attachments, Details, and Transfers) paragraph 4-2 (Voluntary transfer or reassignment of troop program unit or individual mobilization augmentee officers and warrant officers) An officer or warrant Officer (WO) who is not obligated to serve in a troop program unit (TPU), an individual mobilization augmentee (IMA) assignment, or on AD in an AGR status, by statute or contract may be reassigned to control group (Reinforcement) on request. Approval authority for these requests rest with the CAR/area commander or delegated representative. Reassignment is authorized under any one of the following conditions:

a. Unless sooner promoted, an officer will be reassigned to the IRR upon completion of maximum time-in-grade when promoted. Office of Reserve promotions will notify the appropriate MSC/DRC/GOCOM of the promotion to ensure reassignment to the IRR.

b. An officer or WO not selected for retention in a TPU by a selective retention board and chooses reassignment to control group (Reinforcement).

3. Army Regulation 140-10 (Assignments, Attachments, Details, and Transfers) paragraph 4-5 (Involuntary reassignment of troop program unit or individual mobilization augmentee officers and warrant officers states The involuntary reassignment of an officer or WO to the IRR is authorized under any one of the following conditions:

a. Released for cause from assignment.

b. Not branch/functional area qualified for an assigned TPU position.

c. CH Branch COL and LTC upon completion of a 5-year TPU assignment

d. An officer's or WO's assigned TPU is inactivated, relocated, or reorganized and another TPU assignment is not available within reasonable commuting distance. However, an officer may remain assigned over strength in a TPU for 1 year because of over strength conditions brought about by TPU reorganization or inactivation.

e. An officer's or WO's IMA position is deleted, relocated, or the requirements have been changed, and there is no other IMA position available within the unit.

f. Reassignment is a result of TPU reduction in officer or WO strength directed by HQDA.

g. Has not completed an Officer Basic Course (OBC)/BOLC, or is assigned above the maximum allowable strength limits, or has been declared an unsatisfactory participant.

h. The position tenure has expired and the officer has not obtained a new assignment.

4. Title 10 USC, 1552a(3b)(a)(1) states "No correction may be made under subsection unless the claimant or his heir or legal representative files a request for the correction within three years after he discovers the error or injustice.

5. Title 37 U.S.C. § 206 (Reserve; Members of the National Guard inactive duty training) states Under regulations prescribed by the Secretary concerned, and to the extent provided for by appropriations, a member of the National Guard or a member of a reserve component of a uniformed service who is not entitled to basic pay under section 204 of this title, is entitled to compensation, at the rate of 1⁄30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay—

(1) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday;

(2) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe.

(3) for a regular period of instruction that the member is scheduled to perform but is unable to perform because of physical disability resulting from an injury, illness, or disease incurred or aggravated.

6. Title 31, U.S. Code, section 3702, also known as the Barring Statute, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U.S. Code, is relieving the Government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

7. Army Regulation 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent

evidence submitted with the application. The application has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing a request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's do not have a right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//