

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2025

DOCKET NUMBER: AR20240001748

APPLICANT REQUESTS:

- In effect, reconsideration of his previous request to award him constructive service credit of 11 years, 1 month, and 17 days, so he can complete a 20-year active-duty retirement
- As a new request, retroactive promotion and associated retired pay adjustments based on 20 years of active-duty service
- Permission to appear personally before the Board, via video/telephone

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

- Reconsideration Request with enclosures
 - Enclosure 1 – DD Form 149 (Application for Correction of Military Record)
 - Enclosure 2 – Letter to the President of the United States (POTUS) and Secretary of the Army (SECARMY)
 - Enclosure 3 – Two Army Board for Correction of Military Records (ABCMR) Letters
 - Enclosure 4 – Two U.S. Army Human Resources Command (HRC) Letters
 - Enclosure 5 – Applicant's Commentary with Two Orders; Memorandum; Two Court Orders
 - Enclosure 6 – Applicant's Commentary with Two Contested Officer Evaluation Reports (OER) for the respective rating periods 19880505 through 19890504 and 19890505 through 19890806
 - Enclosure 7 – Applicant's Commentary with Memorandum; Orders; Extract from ABCMR Docket Number AR20180006217
 - Enclosure 8 – Applicant's Commentary with Extract from U.S. Army Criminal Investigation Command (CID) Report of Investigation (ROI); Two News Articles; Civil Suit Complaint
 - Enclosure 9 – Applicant's Commentary with Department of Defense Inspector General (DODIG) Letter
 - Enclosure 10 – Applicant's Commentary with Orders and Two Memoranda
 - Enclosure 11 – Applicant's Commentary with Two Orders and DD Form 214 (Certificate of Release or Discharge from Active Duty)

- Enclosure 12 – Leave and Earnings Statement
- Enclosure 13 – Extract, Department of Veterans Affairs (VA) Letter
- Early Life and Education with four DD Forms 256A (Honorable Discharge Certificates)
- Letter to ABCMR with enclosures:
 - Civil Suit Complaint
 - Letter to the POTUS, Secretary of Defense, and SECARMY
 - Enclosure 1 – Four DD Forms 256A
 - Enclosure 2 – Two Orders
 - Enclosure 3 – Applicant's Commentary with Extract from ABCMR Docket Number AR20180006217
 - Enclosure 4 – CID ROI; Two News Articles
 - Enclosure 5 – DODIG Letter
 - Enclosure 6 – Extract from ABCMR Docket Number AR20220002594

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 the following Docket Numbers:

- AC91-05367, on 22 July 1992
- AC91-05367A, on 22 September 1993
- AR20080004886, on 8 May 2008
- AR20090003644, on 6 August 2009
- AR20150012593, on 6 December 2016
- AR20170016871, on 5 December 2017
- AR20180006217, on 10 December 2019
- AR20220002594, on 4 November 2022

2. The applicant states, in effect, the following in his letters to POTUS, SECDEF, SECARMY, and the ABCMR:

- His story is one of injustice and dedicated service; he is a disabled Veteran who, both as an enlisted member and commissioned officer, served his country during the Vietnam and Gulf War eras and in three of our Nation's military services
- He was born into a Spanish speaking household and did not learn English until he started school; he dropped out of school to support his family, working in

cotton fields; at 18, he joined the U.S. Navy (USN) and served two tours in Vietnam; after leaving the USN, he entered college and earned his degree

- In 1976, he received a commission in the U.S. Air Force Reserve (USAFR) and volunteered to reenter active duty; he later resigned so he could accept a direct Presidential commission in the U.S. Army Reserve (USAR)
- In 1987, he volunteered for a 3-year term in the USAR Active Guard/Reserve (AGR), and orders assigned him to an Army hospital in Texas (TX); he served as the training officer
- "In 1989...I was placed in an unfortunate position of becoming a whistleblower and contacted the Army Inspector General (IG) concerning my commander/senior rater, COL (Colonel) R__ R. E__'s, illegal conduct..."
- "While performing my duties with the rank of Captain (CPT), I was directed by my commander, COL R__ R. E__, to make an illegal change to a payroll showing him as present for duty when in fact he was not...I refused and reported this attempted illegal conduct through the Army IG..."
- "AT THIS POINT, ISSUES WITH MY COMMANDER BEGIN" (emphasis added by applicant)
- "Soon after my refusal, (COL R__ R. E__) initiated a pattern of reprisals against me; I was issued two inaccurate, derogatory OERs and (an) involuntary release action was initiated against me for alleged substandard performance of duty and misconduct"
- "It was ultimately determined that I was harmed by the reprisal actions (COL R__ R. E__) took against me...Through subsequent actions by (higher headquarters)...and the ABCMR, all the retaliatory actions were 'terminated and never acted on' and I was returned to my regular duties"
- However, "all the documentation that formed the basis for the release action was sent to the AGR Continuation Board, scheduled to convene the day after the termination of the administrative actions"
- "I was unaware of the Board having access to the information which ultimately had been totally cleansed and which could have been defended by me had I had knowledge that the Board was considering the information...the (AGR) Continuation Board elected not to continue me on active duty..."
- Prior to the convening of the AGR Continuation Board, the applicant was not allowed to present evidence in his defense; only after his release from active duty was he able to provide proof and "every one of the allegations were acknowledged to be incorrect..."
- "The two derogatory OERs that formed the basis for the 'involuntary release and misconduct actions' were removed from my record by the ABCMR, the last one having been removed by order of the Deputy Assistant Secretary of the Army (DASA), on June 2023..."
- The DASA's decision to remove the second contested OER "reflects my release from active duty was due to malicious intent, despite my attempts to do the

honorable thing and be honest about the criminal activities in my line of command"

- "Although the ABCMR found it appropriate to remove the OERs 'retroactively' from my record, they still decline to acknowledge that this was a denial of my constitutional rights 'due process' and failed to acknowledge the damages done to me and my continued punishment through the loss of my career"
- In commentaries included with his enclosures, the applicant makes the following points:
 - The applicant provides copies of the initial versions of the contested OERs and notes they were voided after a Commander's Inquiry found command influence; the ABCMR never accepted or considered this significant point, and this constitutes a "GREAT ADMINISTRATIVE ERROR AND INJUSTICE"
 - "The ABCMR's Official Record of Proceedings states, 'the OERs are NOT mentioned in the release action...WRONG...The Release Action Specifically mentions these OERs as the reason for the involuntary release action"
 - Regarding garnishment of pay, the applicant contends the ABCMR got it wrong; the document "clearly shows it (as) a 'MODIFICATION' of an existing Order, and I received a refund 'warrant' for over payment"; also, the ABCMR insisted the warrant was for overpayment of taxes but this is also wrong
 - As to refusing a blood alcohol test, Army Regulation 190-5 (Motor Vehicle Traffic Supervision) states a general officer memorandum of reprimand (GOMOR) "may be issued when (there) is a 'reasonable belief' that a member is driving under the influence"
 - A jury trial found the applicant "Not Guilty," thereby "eliminating the reasonable belief that I was under the influence at the time" (emphasis added by applicant)
 - At his trial, the applicant testified under oath that he had refused to be tested for fear his senior rater would tamper with the results; this was a genuine concern, given that his senior rater was later convicted for tampering with toxicology reports in his capacity as a civilian forensic pathologist
 - The applicant points out that it was the initial and flawed versions of the contested OERS that formed the basis for his involuntary release action; he did not receive the revised versions until October 1989; he declares this as "GREAT ADMINISTRATIVE ERROR AND INJUSTICES"
 - Further, the revised contested reports were referred reports and required his signature; the reports were inappropriately placed in his OMPF; ""GREAT ADMINISTRATIVE ERROR AND INJUSTICE"
 - The 16 January 1990 memorandum by COL S__ E. T__ (U.S. Army Garrison commander) ended the involuntary release action; COL T__ indicated the AGR Accession and Continuation Board would be convening the next day (17 January 1990), and the board would have access to the applicant's OMPF

- The memorandum further noted that the applicant's OMPF "should contain the (GOMOR), the most recent OERs, and the material that formed the basis for the involuntary release action...The board did not have a need to know (about) this information; it only served to negatively influence the board"
- The applicant asserts, "The letter is dated 16 January 1990, and the AGR Continuation Board convened 17 January 1990, just one day before the AGR continuation board was to convene...These two actions are too close not to be related"
- The applicant includes copies of his separation orders, which are dated after his release from active duty; he contends that the fact they were issued after his release constitutes an administrative error
- "These orders further (corroborate) my (complaint) that I was never properly processed...denial of due process...ADMINISTRATIVE ERROR AND GREAT INJUSTICE"
- Additionally, a review of his pay record should show the Army paid him separation pay, then took it back after he was extended on active duty and placed on a medical hold; as of the date of his current application, he has never been out-processed and did not receive his separation pay

3. Apart from his letters to POTUS, SECDEF, SECARMY, and the ABCMR, and his honorable discharge certificates, all documentary evidence, submitted as part of the applicant's current application, was previously considered by the Board.

4. The applicant's complete service record is unavailable for review; however, the records included in the Board's previous considerations are sufficient to address the applicant's requests. The available documents show the following:

- On or about 20 December 1982, after completing prior enlisted service and commissioned service, the applicant executed his oath of office as a commissioned Medical Service Corps officer in the USAR; effective 20 December 1986, the Army promoted him to CPT/O-3
- On 19 April 1987, per U.S. Army Reserve Personnel Center (ARPERCEN) Orders Number R-03-000783, the applicant entered active duty in an AGR status and was attached to an Army hospital in TX; the ARPERCEN Orders stated the applicant's AGR term was to end 18 April 1990
- At the Army hospital, the applicant served as training officer; his rater was the hospital executive officer (Lieutenant Colonel (LTC) J__ F. W__) and the hospital commander (Colonel (COL) R__ R. E__) was the senior rater
- On 4 September 1988, local police observed the applicant driving on the road's shoulder; after stopping the vehicle, the police noted the applicant swayed as he stood, had an odor of alcohol, and had bloodshot, watery eyes; they cited the applicant for driving while intoxicated (DWI)

- On 3 January 1989, the Commanding General, Fifth U.S. Army and Fort Sam Houston issued the applicant a GOMOR for refusing to take a lawfully requested chemical test for blood alcohol content
- On 17 January 1989, the applicant submitted his rebuttal and argued he had worked as a military police officer on active duty and as a civilian law enforcement officer; breathalyzer tests were neither 100 percent accurate nor tamper-proof; blood tests, while more reliable, were not infallible
- In or around May 1989, the applicant's rating chain issued him an adverse evaluation report (first contested OER); the report addressed the rating period 19880505 through 19890504
- On 27 June 1989, the applicant requested a Commander's Inquiry, maintaining the OER contained administrative and substantive errors, and that both rater and senior rater had been pressured into giving him an adverse report
- The applicant additionally stated that, on 27 March 1989, his senior rater had told him he was doing a good job; both his rater and senior rater "at one time or another made it clear to me that I would be getting a good OER for the rating period in question"
- On 4 August 1989, the Fort Sam Houston garrison commander initiated an involuntary release action against the applicant, citing the applicant's "substandard performance of duty," (as reflected in the OER for the period ending 19890504); six incidents of neglect of duty; and two acts of misconduct
- In or around August 1989, the applicant's rating chain issued him a second adverse OER, for the rating period 19890505 through 19890806
- On 5 September 1989, the applicant submitted his rebuttal to the proposed involuntary separation action; he addressed each of the reasons identified in the garrison commander's notification memorandum
- Regarding his GOMOR, the applicant argued that, to date, it had not been proven he was ordered to submit to a blood test; he knew it was his right to refuse a breathalyzer test, and he added that "Hispanics are frequent targets of harassment...."
- He continued, "A Hispanic officer driving a Corvette at 0200 hours in the morning must have been too great a temptation for the police officers to pass up"
- As an enclosure to his rebuttal, the applicant included, a 1 September 1989 letter, written by the civilian defense attorney representing him in his DWI case and addressed to the applicant's military defense counsel; the comments included the following:
 - While representing the applicant, he discovered improper actions on the part of the applicant's senior rater (COL R__ R. E__); shortly after civilian authority charged the applicant, the senior rater took it upon himself to speak directly to the Assistant District Attorney

- Initially, the applicant believed his senior rater was attempting to help resolve the situation; however, the civilian defense attorney later learned the senior rater had falsely claimed the applicant had admitted to being intoxicated, and that he (applicant) had a severe drinking problem and needed help
 - Because of the senior rater's improper meddling, the Assistant District Attorney assumed a "no negotiation" posture on the case; as a result, the applicant had no choice but to request a jury trial
 - The Assistant District Attorney also advised the civilian counsel that the senior rater had been making case status inquiries and had specifically requested to testify against the applicant in regard to the applicant's reputation for truthfulness and veracity
 - The civilian defense attorney added that the first trial had ended with a "hung jury," and the date for a second trial had been set
-
- On 6 September 1989, the applicant filed an IG complaint (DA Form 1559 (IG Action Request)); the applicant accused his senior rater of conduct unbecoming of an officer, unauthorized use of an identification card, misrepresentation on official documents, and misuse of government property
 - On or about 12 October 1989, the applicant's rating chain forwarded the applicant revised (and final) versions of the two contested OERS (for rating periods 19880505 through 19890504 and 19890505 through 19890806)
 - On 13 October 1989, the applicant's brigade commander announced the results of his Commander's Inquiry into the first adverse OER
 - The commander stated, after investigating the applicant's allegations, he was returning the report to the rating officials, and the rating officials would be contacting the applicant
 - On 13 December 1989, the Fort Sam Houston garrison commander (COL S__ E. T__) issued the applicant a letter of reprimand (LOR); the LOR was for an incident that had taken place on 4 August 1989; on that date, the applicant drove past COL R__ R. E__ waiving his middle finger
 - On 8 January 1990, a civilian court found the applicant not guilty of the 4 September 1988 DWI charge
 - On 9 January 1990, ARPERCEN amended Orders Number R-03-000783 to show the applicant's AGR status end date as 18 July 1990, vice 18 April 1990
 - On 16 January 1990, the Fort Sam Houston garrison commander stated he was returning the applicant's pending involuntary release action
-
- After noting there had been several delays, the commander pointed out that an AGR Accession and Continuation Board was to convene on 17 January 1990, and that board would have access to the applicant's official military personnel file (OMPF)

- Given that the applicant's OMPF should already contain his 3 January 1989 GOMOR and his most recent OERs, the AGR board would be able to review most of the material the commander used to initiate the applicant's separation action
- In the rebuttal to the 13 December 1989 LOR, the applicant alleged the adverse OERs were retaliation for complaints the applicant had filed against his senior rater (COL R__ R. E__)
- Because several of the applicant's allegations were still being investigated, "this matter should not be forwarded to Department of the Army"
- On 6 March 1990, an Office of the Chief, Army Reserve memorandum announced that, after an impartial review of the applicant's entire record, the AGR Continuation Board chose not to recommend his continuation in the AGR program; the applicant was to be released not later than 9 June 1990
- On 8 March 1990, the applicant appealed to the Officer Special Review Board (OSRB) for the removal of the two contested OERs
- On 4 April 1990, the Fifth U.S. Army IG responded to the applicant's 6 September 1989 complaint against COL R__ R. E__
 - A review of the Commander's Inquiry substantiated the applicant's allegation that COL R__ R. E__ had applied undue pressure on the applicant's rater to prepare an adverse OER; the command subsequently voided the OER for the rating period 19880505 through 19890504
 - An inquiry affirmed the applicant's allegation that COL R__ R. E__ had improperly used an identification card, and the command referred the matter to the Federal Bureau of Investigation
 - The command was not able to substantiate the applicant's allegation that COL R__ R. R__ was paid for training he did not attend; however, the accusation that COL R__ R. E__ improperly filed a travel voucher was referred to CID for further investigation
 - The remaining allegations made by the applicant could not be substantiated
- On 7 June 1990, the OSRB considered the applicant's appeal of his two contested OERs; the OSRB concluded the applicant had failed to provide clear and convincing evidence to support his contentions and determined they should remain in the applicant's OMPF
- On 18 July 1990, after delays due to medical evaluations, the Army honorably released the applicant from active duty and transferred him to the USAR Control Group (Individual Ready Reserve)
- The applicant's DD Form 214 shows he completed 3 years and 5 months of net active-duty service, with 5 years, 5 months, and 13 days prior active duty service; (combined total of 8 years, 10 months, and 13 days)

- On or about 5 March 2018, the applicant requested reconsideration of ABCMR Docket Number AR20150012593; in its deliberations, the Board had approved the removal of the second contested OER, but denied the requests for removal of the first OER and for reinstating the applicant in AGR status
- As part of his request for this reconsideration, the applicant asked the Board to grant him constructive service credit for an active duty retirement; the Board denied the applicant's requests, on 10 December 2019
- On 19 August 2021, the applicant requested reconsideration of his requests to remove the first contested OER and to be granted constructive service credit
- On 4 November 2022, after considering the applicant's evidence, the Board voted to deny relief; however, on 27 April 2023, the DASA overrode the Board's recommendation and granted partial relief; the DASA directed the removal of the first contested OER but indicated no other relief was warranted

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 and available military records, the Board determined there is insufficient evidence to support the applicant's contentions that warrants giving the applicant constructive credit for time he was not on active-duty that would award him constructive service credit of 11 years, 1 month, and 17 days, so he can complete a 20-year active-duty retirement. The Board found not error or injustice and noted the applicant successfully served 3 years and 5 months of net active-duty service, with 5 years, 5 months, and 13 days prior active-duty service: (combined total of 8 years, 10 months, 2 days).

2. Furthermore, the Board determined the applicant new request for, retroactive promotion and associated retired pay adjustments based on 20 years of active-duty service is without merit. Based on regulatory guidance, the Board agreed promotion eligibility is determined by the Deputy Chief of Staff, G-1 and approved by the Secretary of the Army. For centralized promotions, eligibility is based on an officer's time in grade (TIG) and active date of rank (ADOR; the date used in determining relative seniority among officers of the same grade on the ADL in the U.S. Army). The Board determined based on the preponderance of evidence there is insufficient documentation that merits retired pay adjustments based on 20 years of active duty which the applicant did not service. Therefore, reversal of the previous Board determinations is without cause and relief is denied.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 AR20220002594, on 4 November 2022, AR20180006217, on 10 December 2019, AR20170016871, on 5 December 2017 or

- AR20150012593, on 6 December 2016
- AR20090003644, on 6 August 2009
- AR20080004886, on 8 May 2008
- AC91-05367A, on 22 September 1993
- AC91-05367, on 22 July 1992

//SIGNED//

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 (AR) 600-8-24 (Officer Transfers and Discharges), currently in effect, includes policies and procedures addressing officer retirements in chapter 6 (Retirements).

a. Paragraph 6-1 (Officer Retirement Program). Chapter 6 applies to non-disability retirements of active duty commissioned officers, to include Active Guard/Reserve commissioned officers, who have 20 or more years of Active Federal Service (AFS). To retire in a commissioned officer grade, the officer must generally have at least 10 years of active service as a commissioned officer.

b. Paragraph 6-12 (Voluntary Retirements – Approval Authority). The Secretary of the Army is the approval authority for retirements.

c. Paragraph 6-13 (Service for Determining Retirement Eligibility). Voluntary retirement eligibility is determined by AFS. To determine whether an officer may be retired voluntarily, the years of AFS are computed by adding:

- All active service in the Army or the Air Force
- All service in the Navy or Marine Corps that would be credited for determining retirement eligibility in the respective Service

2. AR 600-8-29 (Officer Promotions), currently in effect, prescribes policies and procedures for officer promotions.

a. Paragraph 2-7 (Promotion Eligibility). To be considered for promotion by a selection board, an officer must be on the Active-Duty List (ADL) on the day the board convenes.

(1) Promotion eligibility is determined by the Deputy Chief of Staff, G-1 and approved by the Secretary of the Army. For centralized promotions, eligibility is based on an officer's time in grade (TIG) and active date of rank (ADOR; the date used in determining relative seniority among officers of the same grade on the ADL in the U.S. Army).

(2) For promotion to captain, major, and lieutenant colonel, the officers must have served at least 3 years of TIG to be considered for promotion. This requirement may be waived by the Secretary of the Army only for consideration from below the zone (BZ). If selected, officers may be promoted without regard to any additional TIG requirements.

b. Chapter 6 (Special Selection Boards (SSB)).

(1) Paragraph 6-2 (Purpose of Boards). SSBs may be convened under Title 10 (Armed Forces), U.S. Code, section 628 (SSB) to consider or reconsider commissioned or warrant officers for promotion when HQDA determines that one or more of the following circumstances exist: administrative error or material unfairness.

(2) Paragraph 6-7 (Information Provided to Special Selection Boards). An SSB will consider the record of the officer as it should have been considered by the original board. The record will be compared with a sampling of those officers of the same competitive category, who were recommended and not recommended for promotion by the original selection board.

(3) Paragraph 6-10 (Effect of Selection for Promotion). Officers selected for promotion by an SSB will, as soon as practicable, be appointed to that grade. When appointed to the next higher grade as the result of the recommendation of an SSB, the officer will have the same date of grade, the same effective date for the pay and allowances of that grade, and the same position on the ADL as the officer would have had if he or she had been recommended for promotion to that grade by the board which should have considered, or which did initially consider, him or her.

3. Army Regulation (AR) 600-37 (Unfavorable Information), in effect at the time, set forth policies and procedures to ensure the best interests of both the Army and Soldiers were served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's official military personnel file (OMPF).

a. Paragraph 1-1 (Purpose). The regulation's intent is to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's OMPF.

b. Paragraph 3-2 (Policies). Unfavorable information could not be filed in official personnel files unless the recipient was given the opportunity to review the documents and was given a reasonable amount of time to make a written response.

c. Paragraph 3-4 (Filing of Nonpunitive Administrative Letters of Reprimand, Admonition, or Censure in Official Personnel Files).

(1) Authority to issue and direct the filing of such memoranda in an enlisted Soldier's local file is restricted to the recipient's immediate commander or an officer exercising general court-martial jurisdiction over the recipient.

(2) A memorandum, regardless of issuing authority, can be placed in a recipient's OMPF upon the order of a general officer who exercised general court-martial convening authority over the recipient.

d. Paragraph 7-2 (Policies and Standards).

(1) Once an official document has been properly filed in an OMPF, it is presumed to be administratively correct, and to have been filed pursuant to an objective decision by a competent authority.

(2) Normally, consideration of appeals is restricted to grades E-6 and above, to officers, and to warrant officers. Although any Soldier may appeal the inclusion of a document placed in his or her file under this regulation, the appeals of Soldiers in grades below E-6 will only be considered as an exception to policy. The recipient had the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.⁴ AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

d. Paragraph 3-1 (Authority). The Army, by law, may pay claims for amounts due to applicants as a result of correction of military records.

e. Paragraph 3-2 (Settlement of Claims).

(1) The ABCMR will furnish the Defense Finance and Accounting Service (DFAS) copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(2) The DFAS will settle claims on the basis of the corrected military record. The DFAS will compute the amount due, if any, and may require applicants to furnish additional information to establish their status as proper parties to the claim and to aid in deciding amounts due. The applicant's acceptance of a settlement fully satisfies the claim concerned.

//NOTHING FOLLOWS//