

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240002980

APPLICANT REQUESTS: In effect, an exception to policy (ETP) to show a reinstatement of his expired transportation entitlements.

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

- DD Form 149 (Application for Correction of Military Record)
- Final Decree of Divorce
- Orders 007-0511
- DD Form 214 (Certificate of Release or Discharge from Active Duty) (2)

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 upon retirement, his divorce was finalized while receiving full custody of his three kids. He was blessed with custody, but the Judge placed a geographical restriction on his kids and this geographical restriction could not be lifted unless his ex-wife departed El Paso, TX. He did not know when she would depart and this delayed/prevented submission of his extensions for transportation entitlements. He is humbly asking for an ETP to allow him to move his family closer to immediate family to receive much needed support/help in providing a better quality of life for his kids. His children were put on geographical restriction at the same time of his retirement year. He could not relocate until his ex-wife left the city. She has officially departed El Paso. A paragraph in his divorce decree (page 6 or 38) states: it is ordered that the primary residence of the children shall be El Paso County and the parties shall not remove the children from El Paso County for the purposes of changing the primary residence of the children. In addition, it is further ordered that this Geographical Restriction" on the restriction of the children shall be "lifted" if at the time ADR__ wishes to remove the children from El Paso County for the purpose of changing the primary residence of the children, "CB__ DOES NOT RESIDE IN EL PASO COUNTY".

3. A review of the applicant's records show the following information:

- a. The applicant enlisted in the Regular Army and served continuously until his appointment as a Regular Army commissioned officer in the U.S. Army on 24 November 2010. His available record is void of his oath of office.
- b. His Final Decree of Divorce heard on 20 March 2017 shows on page 6 that it is ordered that the primary residence of the children shall be El Paso County, TX, and the parties shall not remove the children from El Paso County for the purpose of changing the primary residence of the children until modified by further order of the court of continuing jurisdiction or by written agreement signed by the parties and filed with the court. The applicant shall have exclusive right to designate the children's primary residence within El Paso. CB__ does not reside in El Paso County.
- c. DA Form 199 (Informal Physical evaluation Board (PEB) Proceedings) convened on 28 June 2019 reflects the applicant was found to be physically unfit and was placed on the Temporary Disability Retired List (TDRL).
- d. Orders number 007-0511, 7 January 2020 released him for assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his placement on the TDRL. Item c of these orders authorized the applicant movement of house goods at Government expense. "Family members: Yes. You are authorized up to (1) year to complete selection of a home and complete travel in connection with this action".
- e. He was honorably retired from active duty on 12 March 2020. His DD Form 214 shows he was retired under the provisions of Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), Chapter 4 for disability. He completed 9 years, 3 months, and 19 days of net active service with 11 years, 5 months, and 26 days of prior active service.

4. On 8 August 2024, the Army Review Boards Agency (ARBA) requested the Logistics, Staff Action Control Officer issue an advisory opinion/exception to policy for household goods (HHG).

5. On 19 August 2024, the advisory opinion states:

- a. The Office of the Deputy Chief of Staff, G-4 reviewed the application and noted the following regulatory provisions in support of a decision.
- b. The Joint Travel Regulations (JTR) is the basic statutory regulation governing a uniformed member's travel and transportation at Government expense and has the

force and effect of law issued primarily under the authority of Title 37 United States Code Section 481.

c. The following JTR requirement was in effect for all retirement orders with a retirement date prior to 24 June 2022. JTR paragraph 051003-11, Time Limitations for Travel to the Home of Selection (HOS). A Service member and dependents must begin travel to an HOS within 1-year of the Service member's termination from active duty unless additional time is authorized or approved. JTR paragraph 052013, HHG Transportation in Connection with Retirement, B. Time Limits. HHG must be turned over for transportation within 1-year following active-duty termination.

d. The applicant's retirement orders dated January 07, 2020, with a retirement date of 12 March 2020, provided for additional instructions in paragraph c: "You are authorized up to one (1) year to complete selection of a home and travel in connection with this action." The applicant requested reinstatement 34 months after travel and transportation expired on 12 March 2021.

e. This office lacks the JTR authority to retroactively approve an expired travel and transportation authorization 34 months after the fact.

6. On 20 August 2024, ARBA notified the applicant, via electronic mail that he could adopt the advisory opinion recommendation in whole, in part, or reject the recommendation, based on the Board's analysis of the facts and circumstance of his case, and placed the processing of his application on hold for 15 days from the date of the letter to allow him the opportunity to submit comments. No response was received as of 4 September 2024.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted.
2. The Board carefully considered the applicant's request, his record of service to include retirement, the civil court proceedings and his retirement for disability. The Board considered the review and conclusions of the G4 advising official. The Board found that his circumstances regarding relocation of his children constituted an unusual situation that prevented his move in a timely manner, in accordance with his orders. Based on a preponderance of evidence, the Board determined that relief was warranted to extend his retirement transportation benefits.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

██████████	██████████	██████████	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 records of the individual concerned be corrected to show:

- He timely submitted requests for extension of his transportation benefits following his retirement;
- His requests were received and processed by the appropriate authority, and;
- His travel and transportation benefits were restored as a result of these corrections.

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. Volume 1 (Uniformed Service Personnel) of the Joint Travel Regulation (JTR) contains basic statutory regulations concerning official travel and transportation of members of the uniformed services.

a. Paragraphs U5130, U5230, and U5365-F contain the policy and procedures pertaining to the shipment of HHG to a permanent duty station (PDS) by uniformed service personnel upon retirement. In effect, these paragraphs authorize a member travel and transportation allowances to a PDS selected by the member from his or her last PDS upon retirement. They state that a member on active duty is entitled to travel and transportation allowances to a home selected by the member from the last PDS upon retirement. They also establish time limitations for shipment of HHG and state that travel must be completed within 1 year from the active service termination date.

b. Extension provisions to the 1-year time limit are also provided for deserving cases under the Secretarial process. This process allows for extensions based on an unexpected event beyond the member's control that prevents movement to a PDS within the specified time limit. An extension of the time limit may be authorized by the Secretarial process if it is in the best interest of the service or substantially to the benefit of the member and not costly or otherwise averse to the service. These extensions are approved for the specific period of time that the member anticipates is needed to complete the move, and if additional time is required, the member may request a further extension. Paragraph U5012-I of volume 1 of the JTR provides the policy on restrictions to time limit extensions and states that a written time limit extension that includes an explanation of the circumstances justifying the extension may be approved for a specific additional time using the Secretarial process. However, extensions under this process will not be authorized if it extends travel and transportation allowances for more than 6 years from the separation/retirement date.

3. JTR section 052013 C1 (HHG Transportation in Connection with Retirement) states a Service member is authorized HHG transportation from the last permanent duty station to the Service Member's Home of Selection (HOS). Extensions may be granted through the Secretarial process for an unexpected event beyond the Service member's control that occurs and that prevents him or her from moving to the HOS within the specified time limit. A Service member must request all extensions in writing using the Secretarial process. An extension may not be for more than 6 years from the date of retirement.

4. Joint Travel Regulation (JTR), section 051003-II. (Time Limitations for Travel to the Home of Selection (HOS)). A Service member and dependent must begin travel to an

HOS within 1 year of the Service member's termination from active duty unless additional time is authorized or approved.

//NOTHING FOLLOWS//