

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20240003015

APPLICANT REQUESTS: correction of his military records to show:

- credit for time in service lost from 10 July 2008
- reinstatement of his rank to sergeant (SGT)/E-5
- compensation of all pay and allowances from 10 July 2008 to 29 August 2013
- administrative retirement

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20170001791 on 20 September 2019.
2. The applicant states he signed a contract on 27 August 2007 for six years and it was breached due to his wrongful discharge. He is seeking time served from the breach, his rank upgraded to SGT/E-5 and compensation from 10 July 2008 to 29 August 2013, which was the end of the contract term. He is requesting an administrative retirement since the breach of contract stopped him from serving out his full term.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Army Reserve on 8 March 2002, and on 11 November 2002 he was discharged for enlistment in the Regular Army. The applicant enlisted in the Regular Army on 12 November 2002 for a period of three years.
 - b. On 21 September 2005, he reenlisted for a period of three years and again on 29 August 2007 for six years and for a selective reenlistment bonus.
 - c. The applicant was promoted to SGT on 1 March 2008.

d. DA Form 2823-E (Sworn Statement) dated 27 March 2008, from specialist (SPC) M_C_, which states, in effect, she arrived at Fort Jackson on 11 January 2008 to attend basic training. When she arrived a health and welfare inspection was conducted, and all her civilian clothes and personal items were taken and placed in a storage facility at 120th Adjutant General Battalion. Once she finished in processing, she was given her clothes and personal items back so she could take them to her unit, where they were placed in an unlocked duffle bag, in a closet in the platoon area where she slept. She never looked inside the duffel bag. Her ATM/Visa card was in her wallet the last time she saw it, and she had placed the wallet inside the duffle bag since she had no use for it while she was attending training. She was released for family day and given her duffle bag and noticed her card was gone. She immediately contacted the bank and was told she had charges on her card for \$4,611.35. The lady from the bank referred her case to the fraud department. The fraud department contacted some of the merchants and the name W_F_ [applicant], was attached to each questionable transaction. She was told that they would investigate the charges. She reported the incident to the military police.

e. A Criminal Investigation Division (CID), Agent's Investigation Report, dated 28 March 2008, which indicates the applicant was the subject of an investigation for using SPC C_ ATM/Visa Check Card.

f. On 24 April 2008, the applicant was counseled by his company commander for accepting a credit card from another permanent party Soldier, which he knew was stolen and chose to make purchases. The CID investigation documented all the purchases he made, which totaled almost \$4,000. He stated in an email dated 29 March 2008, "all this happened before he became a noncommissioned officer (NCO)," but his date of rank was 1 March 2008. The bank printout showed he had made almost 20 charges on the stolen credit card since 3 March 2008. He was an NCO at the time he was committing these crimes and knew his actions were illegal, immoral, and he lacked integrity. He lied to the chain of command and his actions would not be tolerated.

g. On 23 May 2008, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for on or about 20 February 2008 and 26 March 2008, wrongfully appropriating U.S. currency, of a value of about \$4,400, the property of SPC M_C_. His punishment included reduction to the rank/grade of SPC/E-4, forfeiture of \$1,023 pay for two months, extra duty for 45 days, suspended to be automatically remitted if not vacated before 21 August 2008, and 45 days of restriction.

h. On 1 July 2008, the applicant's immediate commander notified him of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 14, paragraph 14-12c, commission of a serious offense. The commander listed the following reason for the proposed action: between 20 February 2008 and 26 March

2008, he wrongfully appropriated U.S. currency of about \$4,400 of a basic combat training Soldier. The commander informed the applicant he was recommending he receive an under honorable conditions (general) discharge, and he explained his rights.

i. On 1 July 2008, the applicant requested a conditional waiver for separation under the provisions of AR 635-200, chapter 14-12c. The applicant acknowledged he was advised by his consulting counsel of the basis for the contemplated action to separate him, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights. He waived consideration of his case by an administrative separation Board, contingent upon receiving a characterization of service or description of separation no less favorable than honorable. He stated he was making the request of his own free will and had not been subject to any coercion by any person. He understood that if the separation authority refused to accept his conditional waiver that his case would be heard before an administrative separation Board. In that case:

(1) He waived personal appearance before an administrative separation Board.

(2) He waived representation by legal counsel.

(3) He submitted statements on his own behalf.

(4) He understood that his willful failure to appear before the administrative separation Board by absenting himself without leave would constitute a waiver of his right to a personal appearance before the Board.

(5) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

(6) He further understood that if he received a discharge/character of service that was less than honorable, he could make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, he realized that an act of consideration by either Board did not imply that his discharge would be upgraded.

j. On 1 July 2008, the applicant's immediate commander formally initiated separation under the provisions of AR 635-200, chapter 14, paragraph 14-12c. The commander noted the applicant had been counseled, and through subsequent behavior, had demonstrated a lack of acceptance to rehabilitative measures.

k. The intermediate commander recommended approval of the separation with a general, under honorable conditions discharge, and recommended that the requirement for a rehabilitative transfer be waived.

l. On 3 July 2008, the separation authority approved the discharge and directed the applicant be issued an under honorable conditions (general) discharge and stated the applicant was ineligible for transfer to the Individual Ready Reserve. He also directed that the requirement for a rehabilitative transfer be waived.

m. The applicant was discharged on 10 July 2008. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct (serious offense). His service was characterized as under honorable conditions (General). He completed 5 years, 7 months, and 29 days of active service during this period. Additionally, his DD Form 214 shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Commendation Medal, National Defense Service Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, NCO Professional Development Ribbon, and the Overseas Service Ribbon
- Item 18 (Remarks):
 - Immediate Reenlistments This Period: 29 August 2007 – 10 July 2008
 - Service in Iraq: 14 November 2003 – 24 October 2004
 - Member has completed first full term of service.
- Item 26 (Separation Code): JKQ
- Item 27 (Reentry Code): RE-3

4. On 31 October 2013, the ADRB carefully examined the applicant's record of service during the period of enlistment that was under review, and determined the applicant's discharge was improper. The evidence indicated the applicant was entitled to an administrative separation board because he had over 6 years of total active and reserve service at the time of initiation of the separation action. The evidence of record showed the applicant voluntarily waived consideration of his case by an administrative separation board contingent upon receiving a characterization of service no less favorable than honorable. The Board voted to grant full relief in the form of an upgrade of the characterization of service to honorable and a change to the narrative reason for separation to Secretarial Authority. The Board further voted to change the reentry eligibility code to 1.

5. DD Form 214, dated 5 December 2013, shows the applicant's service characterization was upgraded to honorable on 31 October 2013 per ADRB proceedings AR20130008060. This form also shows in:

- Item 26 (Separation Code): JFF

- Item 27 (Reentry Code): 1
- Item 28 (Narrative Reason for Separation): Secretarial Authority

6. The ABCMR considered the applicant's request in ABCMR Docket Number AR20170001791, on 20 September 2019. The Board denied his requested relief after determining that the evidence presented did not demonstrate the existence of a probable error or injustice and the overall merits of the case were insufficient as a basis for correction.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, 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 review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant served on active duty from 12 November 2002 to 10 July 2008. The Board also determined the applicant was discharged from the Regular Army for commission of a serious offense, which was later amended by the Army Discharge Review Board. The Board determined the applicant's request for time served from 10 July 2008 is not in error. He was discharged on this date and his record is void of evidence of service after this date.

2. Upon review of the applicant's petition and available military records, the evidence of record shows the applicant was reduced by nonjudicial punishment on 22 May 2008 in the rank/grade of sergeant (SGT)/E-5 to specialist (SPC)/E-4 and then to the lowest enlisted grade from specialist (SPC)/E-4 to private (PVT)/E-1 upon separation. There is no basis to amend his rank to SGT/E-5. The Board denied this portion of his request.

3. Upon review of the applicant's petition and available military records, the evidence of record shows the applicant was discharged on 10 July 2008. The Board concluded compensation of all pay and allowances from 10 July 2008 to 29 August 2013 is denied. There is no error or injustice.

4. The applicant's request for an administrative retirement was carefully considered by the Board. However, the Board found by a preponderance of the evidence that the separation proceedings completed at the time of discharge from active duty did not rise to the level of an administrative retirement as the applicant completed 5 years, 7 months, and 29 days of service; not the 20 years required for a retirement.

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 for correction of the records of the individual concerned.

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 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

b. Paragraph 14-12 (Conditions that subject Soldiers to discharge), states Soldiers are subject to action for a commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances or the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

c. Paragraph 2-5 (Waiver), states:

(1) When a soldier waives his/her right to a hearing before an administrative board and the separation authority approves the waiver, the case will be processed without convening a board. However, the separation authority will be the same as if the board was held.

(2) A Soldier may wish to waive his/her right to a hearing before an administrative separation board contingent upon receiving a characterization of service or description of separation more favorable than the least favorable characterization authorized for the separation reason set forth in the notice of separation action. Soldiers wishing to submit a conditional waiver will submit a completed Request for Conditional Waiver. Commanders will ensure that a Soldier is not coerced into waiving his/her right to a hearing before an administrative separation board.

(3) The appropriate separation authority may approve or disapprove the conditional waiver. If the conditional waiver is disapproved, the case will be referred to a hearing before an administrative separation board unless there is a subsequent unconditional waiver of the right to a hearing before an administrative separation board under paragraph 2-2 (Notification of Procedure - Notice) or 2-4 (Administrative Board Procedure – Notice). There is no requirement to delay board proceedings pending action by the convening authority on the conditional waiver. However, once the board

has made its findings and recommendations, the convening authority may not approve the conditional waiver.

(4) Waivers of the board hearing will not be accepted in the cases of soldiers who have completed 18 years or more active Federal service.

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

//NOTHING FOLLOWS//