

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240003397

APPLICANT REQUESTS: in effect:

- payment for 40 days of accrued leave
- personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's statement

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. His leave days were supposed to get sold when he left the Joint Regional Correctional Facility (JRCF) (last station). They told him after he left the military prison. He was completely done with the Army, but he did not know they granted him excess leave after the fact. He wanted to be paid for his leave for a long time, but his DD Form 214 (Certificate of Release or Discharge from Active Duty) says he has none.

b. He was promised money for selling his leave days. He is currently incarcerated for a crime he did not commit, and he needs the money for his legal assistance. He was charged with first degree murder with no evidence, and he did not have, nor was he appointed an Army defense lawyer. His civilian attorney did not represent him well. In addition to getting his 40 days leave refund/funds, he requests something be done with his life sentence based on lies.

3. A review of the applicant's military service records show:

a. He enlisted in the Regular Army on 22 March 2011.

b. On 29 October 2014, DD Form 2707 (Confinement Order) shows the applicant was found guilty by General Court-Martial of unlawful assault on a noncommissioned officer, "assault x2", and prejudice of good order and discipline x3. He was sentenced to be confined for 15 months and a Bad Conduct Discharge.

c. On 7 November 2014, Headquarters, U.S. Army Garrison Fort Sill, OK, published Orders Number 311-038, which assigned the applicant to the Personnel Control Facility, Fort Sill, OK, with confinement at Midwest JRCF Fort Leavenworth, KS, with a report date of 12 November 2014.

d. On 9 July 2015, in pertinent part:

(1) The applicant acknowledged upon release from confinement, he would be placed on excess or appellate leave. He understood that he would not be entitled to any pay or allowances while he was on excess leave. His leave balance as of this date was 35 days and he requested this leave be granted in conjunction with the requested excess leave.

(2) He acknowledged that he had been notified he was being considered for Involuntary Excess Leave in accordance with (IAW) Army Regulation 600-8-10 (Leaves and Passes), paragraph 5-19. He requested to remain on active duty while awaiting appellate review of his court-martial in which he was sentenced to a punitive discharge.

(3) He requested Voluntary Excess Leave IAW AR 600-8-10, paragraph 5-21, while awaiting punitive discharge and waived notification requirements with the understanding that he would not be contacted to submit matters on his behalf before being considered for involuntary excess leave.

(4) DD Form 2717 (Department of Defense - Voluntary/Involuntary Appellate Leave Action) shows, in pertinent part, the applicant acknowledged he understood that he had accrued ordinary leave in the amount of 35 days and elected to receive pay and allowances during the period of accrued leave, and then continue in unpaid appellate leave status.

e. On 18 July 2015, DA Form 4187 (Personnel Action) shows the applicant's duty status was changed from confined by military authorities to present for duty.

f. Headquarters, U.S. Army Fires Center of Excellence and Fort Sill General Court-Martial Order Number 28, dated 16 February 2016 (Corrected Copy), shows the applicant's sentence of confinement for 15 months and a bad-conduct discharge, adjudged on 29 October 2014, as promulgated by General Court-Martial Order Number

96, this Headquarters, dated 3 April 2015, as corrected by U.S. Army Court of Criminal Appeals Notice of Court-Martial Order Correction, dated 18 August 2015, had been finally affirmed. The automatic reduction to E-1 was effective 3 April 2015. Article 71(c) had been complied with and the bad conduct discharge was ordered executed.

g. On 25 March 2016, the applicant was discharged by reason of General Court-Martial with a "Bad Conduct" character of service. DD Form 214 shows:

- item 16 (Days Accrued Leave Paid) – "0"
- item 18 (Remarks) – "Excess Leave (Creditable for All Purposes Except Pay and Allowance) -- 243 Days: 20150727 - 20160325"
- item 29 (Dates of Time Lost During This Period) – Under Title 10, U.S. Code, section 972: 20 May 2014 - 17 July 2015

4. On 29 July 2024, the Defense Finance and Accounting Service, Supervisor, Correction of Records/Claims, Debt and Claims Management responded to a request for information regarding the applicant's request and stated, the applicant was not paid for any of his leave days at separation. Per his pay record, the applicant separated with a leave balance of 35.5 days, however, his separation was processed as Under Other Than Honorable Conditions. The applicant forfeited his leave days at separation, so no payment was made for those leave days.

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.
2. The Board carefully considered the applicant's statement, his record of service, the frequency and nature of the misconduct, the outcome of General court-martial proceedings, the execution of his discharge after completion of his sentence and the DFAS review of his pay record. The Board considered the applicant's leave balance at the time of separation and the provision in law (Title 37, USC, section 501) that states "Payments for unused accrued leave, states, a member of the Army who is discharged under other than honorable conditions forfeits all accrued leave to his credit at the time of his discharge." Based on a preponderance of evidence, the Board determined that the non-payment for accrued leave as requested by the applicant was not in error or unjust.
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:

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. Title 10, USC, 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. Title 37, USC, section 501 - Payments for unused accrued leave, states, a member of the Army who is discharged under other than honorable conditions forfeits all accrued leave to his credit at the time of his discharge.
3. AR 600-8-10 (Leaves and Passes) prescribes the policies and mandated operating tasks for military absences, including leave, pass, and administrative absence. Chapter 2 (Policy for Leave), paragraph 2-5 (Forfeiture of accrued leave), Soldiers discharged under other than honorable conditions must forfeit all accrued leave to their credit at the time of discharge per Title 37, USC, section 501. This section applies to all Soldiers, including those with prior military service (breaks in military service of 90 or more consecutive days) who are separated for enlisted separation reasons such as, (a) Unsatisfactory performance. (b) Drug and/or alcohol abuse rehabilitation failure. (c) Misconduct; moral and/or professional dereliction. (d) Separation in lieu of trial by court-martial.
4. AR 15-185 (ABCMR) states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states 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//