

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240004592

APPLICANT REQUESTS: payment of lost pay and allowances based on 11 days of incorrect excess leave.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 16 June 1969
- NA Form 13060 (Referral - VA), 14 February 1990
- SF 180 (Request Pertaining to Military Records), 19 November 1990
- Applicant letter to Senator, 27 November 1991

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 he did not have 11 days of excess leave. He would like his records corrected and lost pay for this mistake. His records are wrong about excess leave. Finance said he was docked for 11 days. Research records show he has applied several times over the past 55 years.
3. A review of the applicant's service records show:
 - a. He was inducted in the Army of the United States on 17 August 1967.
 - b. Item 31 (Foreign Service) of his DA Form 20 (Enlisted Qualification Record) shows he served in Vietnam from 11 January 1968 to 6 January 1969.
 - c. On 6 May 1969, DA Form 2496 (Disposition Form) shows the applicant requested an early separation to attend school.

- d. On 12 May 1969, the applicant's request for early separation to attend school was approved.
- e. On 12 June 1969, DA Form 137 (Installation Clearance Record) shows the applicant cleared the Finance and Accounting Office and the installation.
- f. On 16 June 1969, the applicant was released from active duty to attend school and was transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training). He completed 1 year and 10 months net active service. DD Form 214 shows in:
 - Item 26a (Non-Pay Periods Time Lost) – None
 - Item 26b (Days Accrued Leave Paid) – "0"
 - Item 30 (Remarks) – "Excess leave of 11 days from 1APR69 THRU 11APR69"
- g. On 18 July 1973, the Office of the Adjutant General, USAR Components Personnel and Administration Center published Letter Orders Number 07-1180547, which discharged the applicant from USAR Control Group (Standby Reserve), effective 1 August 1973.
- h. On 14 December 1974, he enlisted in the USAR for 1 year.
- i. On 20 August 1975, Headquarters Sixth United States Army published Reserve Letter Orders Number 8-167, which assigned the applicant to the USAR Control Group (Reinforcement), effective 21 February 1975.
- j. On 16 December 1975, the Office of the Adjutant General, Reserve Components Personnel and Administration Center published Letter Orders Number 12-1327343, which discharged the applicant from USAR Control Group (Reinforcement), effective 13 December 1975.

4. In support of his request the applicant provides:

- a. NA Form 13060 dated 14 February 1990, which shows he was referred to the U.S. Army Finance and Accounting Center, [REDACTED]
- b. SF 180 dated 19 November 1990, which shows he requested leave orders before and after Vietnam. He needed to know how many days of leave taken before and after Vietnam.
- c. A letter written by him to Senator [REDACTED] dated 27 November 1991, wherein, he reiterated his previously mentioned contentions. He also stated since his discharge in 1969 he has been trying to recover 11 days of lost wages. Service men are allowed 30

days leave per year. Before Vietnam he was given a 20-day leave which left him with 10 unused days of leave. In April 1969, he applied for and was granted a 11-day leave. On the day of his discharge, while at Finance, the clerk said he was being docked for 11 excess days of leave. He said that was not correct. The clerk reviewed his records and agreed a mistake was made.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lack of corroborative evidence related to the applicant's statement and the information annotated on the applicant's DA Form 2-1, "Approved early sep to attend school", the Board concluded that by a preponderance of the evidence available, there was insufficient evidence of an error or injustice warranting a correction to the applicant's record.

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.

5/4/2025

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CHAIRPERSON


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. Army Regulation (AR) 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.
3. AR 600-8-10 (Leaves and Passes) prescribes the policies and mandated operating tasks for military absences, including leave, pass, and administrative absence. This regulation is binding on all entities involved in granting leave, pass, and other forms of absence from duty. Paragraph 5-8 (Excess leave) states:
 - a. Excess leave is a no-pay status; therefore, entitlement to pay and allowances and leave accrual stops on the first day of excess leave.
 - b. Excess leave may be authorized in emergencies provided that the aggregate of all leave granted (accrued + advance + excess) does not exceed 60 days and that accrued and advance leave is used before excess leave.
 - c. Accrued leave must be totally expended before using excess leave, except for procurement programs. (1) The amount of excess leave varies with each program. (2) Excess leave is authorized by regulations governing each category of personnel procurement. (3) Participants are not required to use accrued leave before placement in excess leave status. (4) If not used, accrued leave balances are retained until the Soldier resumes duty in a pay status. (a) ROTC graduates (see paragraph 5-12). (b) Soldiers awaiting punitive discharge (see chapter 6). (c) Soldiers pending administrative discharge (see chapter 6). (d) Soldiers being involuntarily separated.
 - d. Excess leave is normally not authorized at separation, except for involuntary excess leave awaiting punitive or administrative discharge (see chapter 6).
 - e. The DA Form 31 (Request and Authority for Leave) for excess leave must include this statement in block 17, "I understand that excess leave is without pay and

allowances, so I am not entitled to disability retirement or separation for disability incurred in an excess leave status except as provided in 10 USC 1201(c)." Counseling must include that excess leave is without pay and allowances, and leave does not accrue while the Soldier is in an excess leave status.

4. Title 31 USC, section 3702, also known as the barring act, 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, USC, 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.

//NOTHING FOLLOWS//