

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240004638

APPLICANT REQUESTS:

- reconsideration of a previous request, to remove an noncommissioned officer evaluation report (NCOER) for the period 1 June 2008 thru 31 May 2009
- As a new request:
  - regular retirement
  - back pay and allowances

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

- DD Form 149 (Application for Correction of Military Record)
- Email from MV \_\_, Military and Veterans Affairs Outreach (Congressional), 16 April 2016
- Self-Authored Statement
- Two Applicant Letters
- Noncommissioned Officer Evaluation Report (NCOER)
- Memorandum, Subject: Army Directive
- Memorandum, Subject: Enlisted Personnel Service Program (QSP)
- Memorandum, Subject: Letter of Intent
- Permanent Order, 14 November 2012
- DA Form 4187 (Personnel Action)
- Medical Document
- DA Form 4856 (Developmental Counseling)
- Enlisted Record Brief (ERB)
- Final Pay Worksheet
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Previous DD Form 149
- AR20170009349 (Record of Proceedings)
- DA Form 2656 (Data for Payment of Retired Personnel)
- Release of Information Form

FACTS:

1. The applicant states:

a. He requests the proper retirement entitlement for his erroneous discharge from active duty and correction of the injustice due to the prejudice he endured while fighting to continue his military service eligibility. The correction should be made due to the fact he submitted an appeal, and the board misinterpreted his initial request. There are multiple discrepancies within the Board's decision letter. He deals with the stress of feeling he was under-achieving as a Soldier. If he maintained service, a promotion was in the foreseeable future and the correction should be made due to financial struggles, maintaining a living for his family and employment. The time related to gather the needed information, caused lots of stress to locate and organize to resubmit.

b. The email, from MV\_\_\_, Military and Veterans Affairs Outreach (congressional), 16 April 2016 shows the applicant seeks to submit a new application for reconsideration. Overall, he has new evidence, and the original request was incorrectly framed/interpreted by the Board. The applicant requested retirement from the military, however, in its ruling the Board incorrectly inferred that the applicant was seeking medical retirement. Due to injuries that the Board elevated as the nexus for his request for military retirement. He was not requesting a change of record to be medically retired. Rather, he was requesting regular retirement due to the overarching environment and coding of his record which prohibited his re-enlistment. This negatively impacted his ability to continue service and realize full retirement years from the Army. This latter element is what the applicant is currently and historically seeking the Board to rule on.

c. In his self-authored letter, he states, in effect, the previous application shows there was no bar to reenlist in his service.

d. In another letter he states there were some complications and maybe an unfair practice. He intended to re-enlist prior to the time of his release. He made attempts to re-enlist to continue service until he felt like retiring past 20 years. Unfortunately, due to the downsizing (RIF), he met one criterion which had some discrepancies to the issues on why he was forced to ETS.

(1) A NCOER from 2009 rating period, had a bullet remark that should not have been there. After serving 16 years and three months, he was not given the opportunity to retire, any Soldier who served the required years should have had that right and do so.

(2) After getting to his unit at Fort Carson, CO, he went to see about re-enlisting in April 2012. He was informed, weeks later, that he met the qualification for the downsizing. He then inquired about an appeal to reenlist. He gathered the information required close to June or July. (The Retention NCO had some family matters to take care of...Company, Battalion and Brigade Commanders from Afghanistan). Once it was received at the Division Commander level, the applicant was unable and denied the

ability to exercise the open-door policy with the Division Command Sergeant Major (CSM). He had a predetermined mindset. He stated an inappropriate remark to the applicant, "this is the Army, not welfare."

e. The applicant's letter shows, to the best of his ability, that he tried to understand. As a result of his discharge, he has endured grief and emotional stress, and has suffered with his abrupt ETS. He worked very hard to the best Soldier/NCO and throughout his 16 years of service.

2. The applicant provides:

a. Memorandum, Subject: Army directive 2012-2013, 2 February 2012, states "As the Army faced significant force reductions, it is imperative that we retain the highest quality Soldiers to preserve the high quality of the All-volunteer Force, meet mandated end strength levels, and support Army Force structure requirements. We will use the drawdown as an opportunity to shape our Army by ensuring that we retain only our very best Soldiers".

b. "Soldiers in the grade of staff sergeant and above not serving on an indefinite reenlistment contract will be considered unqualified for reenlistment if their Official Military Personnel File contains one of the following:

- Relief For Cause NCOER
- "No" listed in Part IV (Army Values/Attributes/Skills/actions) of an NCOER
- a senior rating of 4 (fair) or 5 (poor) in Part V (Overall Performance and Potential) of an NCOER
- Service School Academic Evaluation Report (DA Form 1059) indicates a failure in an NCO Education System course"

c. Memorandum, Subject: Enlisted Qualitative Service Program (QSP), March 2012 states, in pertinent part, "[This] applies to the Active Component (AC) and the Active Guard/Reserve of the U.S. Army Reserve (USAR). The QSP is a performance-based, force shaping process designed to identify NCOs for involuntary separation from active duty...".

d. Memorandum, Subject: Letter of Intent for Reenlistment 19 June 2012 states, the applicant "has full intentions of reenlisting. He is currently in the process of requesting a required waiver to complete his reenlistment. As soon as the waiver process is completed, the applicant has full intentions of reenlisting under the indefinite reenlistment program".

e. Permanent Order, 14 November 2012 shows announcement of award of the Army Good Conduct Medal (5<sup>th</sup> Award) for the period of service from 14 December

2009 to 14 December 2012 for exemplary behavior, efficiency, and fidelity in active Federal military service.

f. DA Form 4187 (Personnel Action), 16 November 2012 shows:

(1) Soldier requests an exception to policy to extend inside of the 90-day reenlistment window.

(2) On 10 September 2012, the applicant was denied a waiver to reenlist with a 4 block and "no" under Army Values on an NCOER.

(3) The applicant is currently having the NCOER in question reviewed for potential removal from his records by the Army Board of Reviews.

(4) The applicant is requesting a three-month extension to allow the Board sufficient time to review his case.

g. A medical document, 3 December 2012 shows the applicant was planned for surgery of his right shoulder in February/March 2013.

h. His battalion commander recommended approval and his brigade commander recommended disapproval.

i. The applicant received counseling regarding expiration term of service counseling on 12 December 2012. The applicant was counseled on the fact that he must finish clearing in order to properly ETS on 17 December 2012.

j. DA Form 2556 shows his transfer date as 17 December 2012 and his rank as staff sergeant(SSG)/E-6. He received separation pay in the amount of \$34,509.15.

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

a. He enlisted in the Regular Army on 10 September 1996.

b. On 31 March 2006, he received a developmental counseling statement for substandard performance and disobeying a lawful order. ADD THE COUNSELING STATEMENT TO SUPPORTING DOCS.

c. On 16 May 2006, the applicant received nonjudicial punishment for failing to obey a lawful order from a noncommissioned officer on 10 April 2006 and for, with intent to deceive, made an official statement, which he knew was totally false. He was found guilty and received a reduction to the pay grade of E5 and an oral reprimand. His nonjudicial punishment was directed to be filed in his restricted file.

d. He served through multiple reenlistments or extensions in a variety of assignments. He was later promoted back to SSG/E-6 on 1 February 2008 by Permanent Order 029-03, 29 JANUARY 2008.

e. He was issued an annual NCOER for his duties as an instructor/writer in the Bradley Fighting Vehicle System Maintainer Course. The report was for the period 1 June 2008 through 31 May 2009. His rater was a sergeant first class (SFC) instructor/writer, his Senior Rater was an SFC training management NCO, and his reviewer was a YC02 (GS-12) training specialist supervisor. The NCOER shows in:

(1) Part III(f) (Duty Description - Counseling Dates):

- Initial - 1 August 2008
- Later - 28 November 2008
- Later - 27 February 2009
- Later - 26 May 2009

(2) Part IV (Army Values/Attributes/Skills/Actions), section a (Army Values), the rater placed an "X" in the "Yes" blocks of Loyalty, Duty, Selfless-Service, and Personal Courage. The rater placed an "X" in the "No" blocks of Respect/Equal Opportunity (EO)/Equal Employment Opportunity (EEO), Honor, and Integrity. The rater entered the following comments:

- "received a Commander's Report of Disciplinary as [sic] Administrative Action for spousal abuse"
- "accomplished all missions"
- "treated all Soldiers and peers with respect"

d. Part IV (Values/NCO Responsibilities), section b (Competence), the rater placed an "X" in the "Success" block;

e. Part IV, section c (Physical Fitness & Military Bearing), the rater placed an "X" in the "Excellence" block;

f. Part IV, section d (Leadership), the rater placed an "X" in the "Success" block;

g. Part IV, section e (Training), the rater placed an "X" in the "Success" block;

h. Part IV, f (Responsibility & Accountability), the rater placed an "X" in the "Needs Much Improvement" block and entered the following comments:

- "received a Commander's Report of Disciplinary or Administrative Action for spousal abuse; required to attend the Violence Management Program for men"

- "maintained the serviceability and accountability of training aids, general mechanics tools, and Test Management and Diagnostic Equipment valued at over \$2 million"

i. Part V (Overall Performance and Potential), sections a and b (Rater), the rater placed an "X" in the "Marginal" block. The rater commented that the applicant could best serve the Army at his current grade or next higher grade as a Maintenance Shop Foreman, Instructor, or Recovery NCO;

j. Part V, section c (Senior Rater - Overall Performance) and in Part V, section d (SR - Overall Potential), the Senior Rater gave a rating of "Fair" and placed an "X" in the "4" block for the applicant's overall performance and a rating of "Fair" and placed an "X" in the "4" block for the applicant's overall potential for promotion and/or service in positions of greater responsibility; and

k. Part V, section e (Senior Rater Bullet Comments), the Senior Rater entered the following comments:

- "select for promotion after peers"
- "send to SLC [Senior Leaders Course] when slots are available"
- "performed well on duty with minimal supervision; lacks the ability to perform duties respectively as a Soldier while off duty"
- "this NCO is not ready for more responsibility at this time; retain at current rank"

l. The NCOER was digitally signed by his rater and the senior rater on 19 June 2009. It was signed by the reviewer and the applicant on 22 June 2009. The reviewer marked the "Concur with rater and senior rater evaluations" block.

m. He was honorably discharged on 17 December 2012 in the rank of SSG/E-6. His DD form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Active-Duty Enlisted Administrative Separations), Chapter 4, due to non-retention on active duty with separation code JGH (non-retention on active duty) and reentry code 3. He completed 16 years, 3 months, and 8 days net active service. Item 18 (Remarks) shows he received separation pay in the amount of \$34,509.15. He served in Iraq from 12 March 2004 to 15 March 2005 and from 23 October 2006 to 6 January 2008.

4. In a prior request to the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210018537, boarded on 27 January 2013, the Board considered and denied his application, in which he requested the removal of his NCOER for the period June 2008 through May 2009 from his Army Military Human Resource Record

(AMHRR) and/or its transfer to the restricted fiche and deletion of the following inappropriate remarks annotated on this report: “received a Commander's Report of Disciplinary as [sic] Administrative Action for spousal abuse received a Report of Disciplinary or Administrative Action for spousal abuse”.

5. On 5 August 2020, in ABCMR Docket Number AR20170009349, the applicant requested, in effect a medical retirement, in lieu of a discharge. After reviewing the application and all supporting documents, the Board determined relief was not warranted. Based upon the documentation available and the findings and recommendations of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the narrative reason for separation. His request was denied.

6. By regulation, AR 635-200 sets forth the basic authority for the separation of enlisted personnel. A Soldier will be separated upon expiration of enlistment or fulfillment of service obligation. A Soldier would also be separated if not selected for retention on active duty.

7. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) Chapter 19–2. – NCOs whose performance, conduct, and/or potential for advancement did not meet Army standards, as determined by the approved recommendations of HQDA centralized selection boards responsible for QMP screening, would be denied continued service. The QMP was not intended as a substitute, and did not relieve commanders of the responsibility, for initiation of separation proceedings under other provisions of this regulation when required or appropriate.

#### 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 available documentation, the Board made the following findings and recommendations related to the requested relief:

- Removal of NCOER: DENY. Based upon a lack of appropriate justification for such action, the Board concluded there was insufficient evidence of an error or injustice warranting such action.
- Regular Retirement: DENY. Based upon the available evidence showing the applicant did not complete 20 years of qualified military service at the time of separation.
- Back pay and allowances: DENY. Based upon the above findings, there is insufficient evidence warranting such action.

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 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.

//SIGNED//  
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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. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) Chapter 12 (Retirement for Length of Service) sets policies and procedures for voluntary retirement of Soldiers because of length of service and governs the retirement of Soldiers (Active Army, Army National Guard, and USAR) who are retiring in their enlisted status.

a. Paragraph 12-3(c) years of service for retirement are computed by adding all active Federal service in the Armed Forces. Soldiers must complete at least 20 years of active Federal service by the requested retirement date.

b. Paragraph 12-26 (Periods not creditable for retirement) service in a Reserve component not on active duty, active duty for training, and other full-time training duty.

c. Chapter 4 Separation for Expiration of Service Obligation policy states a Soldier will be separated upon expiration of enlistment or fulfillment of service obligation. 4-2. Discharge or release from active duty upon termination of enlistment and other periods of active duty or active duty for training:

(1) The periods of military service required of all Army Soldiers will be in accordance with applicable laws. Periods for which enlistment is authorized are in NGR 600-200, AR 140-111, and AR 601-210. Periods for which Soldiers are ordered to AD are prescribed by law.

(2) A Soldier enlisted or ordered to AD normally will be discharged or released from AD on the date he/she completes the period for which enlisted or ordered to AD.

d. Paragraph 16-4a – Non-retention on active duty Soldiers denied or ineligible for continued active duty service could be separated, upon request. The service of soldiers separated under this paragraph would be characterized as honorable.

e. Paragraph 19 (Quantitative Management Program (QMP) – The policies and procedures for voluntary and involuntary separation, for the convenience of the Government, of Regular Army Noncommissioned Officers (NCOs) serving in an Active Guard Reserve status, under the QMP. The service of a soldier discharged under this chapter would be characterized as honorable.

f. Paragraph 19-2. – NCOs whose performance, conduct, and/or potential for advancement did not meet Army standards, as determined by the approved recommendations of HQDA centralized selection boards responsible for QMP screening, would be denied continued service. The QMP was not intended as a substitute, and did not relieve commanders of the responsibility, for initiation of separation proceedings under other provisions of this regulation when required or appropriate.

g. Paragraph (Notification memorandum) – Soldiers selected for denial of continued service under the QMP are notified by individually addressed memorandums.

h. Paragraph 19-11 (Appeal provisions) – A Soldier denied continued service under the QMP could appeal the determination and request retention on active duty on the basis of improved performance and/or presence of material error in the soldier's record when reviewed by the selection board. A Soldier could submit only one appeal, and requests for reconsideration of denied appeals were not authorized. The Soldier could submit any relevant material in support of the appeal.

2. Army Regulation 623-3 (Evaluation Reporting System), in effect at the time, prescribed the policies for completing evaluation reports that support the Evaluation

Reporting System. It stated evaluation reports accepted for inclusion in the official record of a Soldier were presumed to be administratively correct, been prepared by the proper rating officials, and represent the considered opinion and objective judgment of rating officials at the time of preparation. To justify deletion or amendment of a report, the appellant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration or that action is warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rest with the appellant. The regulation stated in:

a. Paragraph 1-9 – Army evaluation reports were assessments on how well the rated Soldier met duty requirements and adhered to the professional standards of the Army officer. Performance would be evaluated by observing action, demonstrated behavior, and results from the point of view of the values, leadership framework and responsibilities identified on the evaluation forms, and counseling forms. Potential evaluations would be performance-based assessments of the rated officers of the same grade to perform in positions of greater responsibility and/or higher grades.

b. Paragraph 3-34 – Any report with negative comments in Parts Vb, Vc, VI, or VIIc would be referred to the rated officer by the SR for acknowledgment and comment before it is sent to Headquarters, Department of the Army.

c. Evaluation reports accepted for inclusion in the official record of a Soldier are presumed to be administratively correct, been prepared by the proper rating officials, and represent the considered opinion and objective judgment of rating officials at the time of preparation. To justify deletion or amendment of a report, the appellant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration or that action is warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the appellant.

3. Army Regulation 623-3 establishes the policies and procedures for the preparation and submission of NCOER's for corporals through command sergeants major.

a. Paragraph 1-18 states the Evaluation Reporting System (ERS) encompasses the means and methods needed for developing people and leaders. An effective ERS involves the execution of leadership, the establishment of a rating relationship with personal interaction, the conduct of developmental counseling and reviews, and the determination of critical assessments. The Army routinely reviews the ERS to ensure that it remains relevant and in support of its goals.

b. Paragraph 3-18 states appropriate bullet comments are required for NCOER's.

c. Paragraph 3-19 states no reference will be made to an incomplete investigation (formal or informal) concerning a Soldier. If the rated Soldier is absolved, comments about the incident will not be included in the evaluation. This restriction is intended to prevent unverified derogatory information from being included in evaluation reports. It will also prevent unjustly prejudicial information from being permanently included in a Soldier's AHMRR such as:

- (1) charges that are later dropped
- (2) charges or incidents of which the rated Soldier may later be absolved.

d. Paragraph 3-19(2)d states any verified derogatory information may be entered on an evaluation report. This is true whether the rated Soldier is under investigation, flagged, or awaiting trial. While the fact that a rated Soldier is under investigation or on trial may not be mentioned in an evaluation until the investigation or trial is completed, this does not preclude the rating chain's reference to verified derogatory information.

e. Paragraph 4-6 states alleged error, injustices, and illegalities in a rated Soldier's evaluation report may be brought to the commander's attention by the rated individual. If the commander finds no fault with the evaluation, then the Commander's Inquiry is filed locally and a copy is given to the rated individual.

f. Paragraph 4-7 states evaluation reports accepted for inclusion in the official record of a Soldier are presumed to be administratively correct, to have been prepared by the proper rating officials, and to represent the considered opinion and objective judgment of rating officials at the time of preparation. To justify deletion or amendment of a report, the appellant must produce evidence that establishes clearly and convincingly that the presumption of regularity should not be applied to the report under consideration or that action is warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. The burden of proof rests with the appellant.

4. Army Regulation 37-104-4 (Military Pay and Allowances Policy) states, only the Director, DFAS-IN may make settlement actions affecting the military pay accounts of Soldiers as a result of correction of records by the ABCMR per provisions of AR 15-185.

5. Department of Defense Financial Management Regulation (DODFMR), Volume 7A, section 350301 (Separation Pay (Non-Disability)) states full payment of non-disability separation pay is authorized to Service members of the Regular and Reserve

Components who have been involuntarily separated from active duty and have met each of the following four conditions:

- the member is on active duty or full-time National Guard duty and has completed at least 6 years, but less than 20 years, of active service
- the member's separation must be characterized as "honorable"
- a member who is separated involuntarily, through either the denial of reenlistment or the denial of continuation on active duty or full-time National Guard duty, must if a Reserve commissioned officer, be separated, or transferred to the Retired Reserve under Title 10, USC, sections 573 or 861

//NOTHING FOLLOWS//