

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20240005074

APPLICANT REQUESTS: correction of his record to show he retired under the Temporary Early Retirement Authority (TERA).

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

- DD Form 149 (Application for Correction of Military Record)
- Enlisted Special Review Board (ESRB) Record of Proceedings with supporting documents
- Enlisted Record Brief
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 he believes he was a victim of injustice. He served in the United States Army for 17 years, 1 month, and 22 days, and deployed in combat operations four times. When combat operations stopped, he was selected for a drawdown and released involuntarily without retirement. He feels the time he put in was wasted. He was expecting a retirement for his service, but it was not offered to him. His leadership didn't help him because they said, "That's how it is."
 - a. Upon conducting research, he found out the Army was offering TERA for Soldiers affected by the drawdown. TERA was offered from 2012 to 2019 and he was discharged on 31 October 2016. He is asking the Board to upgrade his status to "retired" instead of his regular separation. His record will show he earned the retirement.
 - b. He didn't have any bad counseling. He excelled on all his missions without supervision, conducting numerous combat convoy operations, and he almost got hit by

indirect fire that caused a traumatic brain injury and partial memory loss. He missed a lot of time with his family, missing birthdays and holidays. He asks for what he deserves, and he knows he earned it. He believes in the Army's motto "We take care of our own." That's what he did for all of his Soldiers and hopefully it will happen for him, too.

3. On 9 September 1999, the applicant enlisted in the Regular Army. After completing initial entry training, he held military occupational specialty 91H (Track Vehicle Repairer). He continued his service through reenlistments, and he was promoted to the rank/grade of staff sergeant (SSG)/E-6 effective 1 March 2006.
4. Noncommissioned Officer Evaluation Reports (NCOERs) the applicant received while serving in the rank of SSG show that from June 2005 through 31 May 2009 he was consistently rated as "among the best" with no rated areas marked as needing improvement. From 1 June 2009 through 8 February 2011, he was rated as "fully capable" with no rated areas marked as needing improvement.
5. His NCOER for the period 11 February 2011 through 1 November 2011 shows in Part IV (Values/NCO Responsibilities), block c (Physical Fitness and Military Bearing), his rater marked the block for "needs improvement (some)." The rater noted the applicant failed to meet height and weight standards. All other rated areas were marked as "excellence" or "success." His overall rating for the period was "fully capable."
6. His NCOERs for the period 2 November 2011 through 1 November 2013 show he was rated as "among the best" with no rated areas marked as needing improvement.
7. His NCOER for the period 2 November 2013 through 1 November 2014 shows in Part IV, block c, he was again rated as "needs improvement (some)." His rater noted this was the applicant's second time on the Army Body Composition Program within the last 36 months and he failed to maintain progress while off the program. His rater also noted the applicant demonstrated physical and mental toughness to complete his duties despite his failure in meeting height and weight standards.
8. The final NCOER in his record covered the period 2 November 2014 through 1 November 2015. He was rated as "fully capable" with no rated areas marked as needing improvement.
9. On 18 October 2016, an ESRB convened to consider the applicant's appeal of his NCOER for the period 2 November 2013 through 1 November 2014. The applicant stated that on 26 September 2014, his primary care manager identified him to not be medically cleared to participate in the Army Body Composition Program. The applicant argued that a temporary underlying medical condition caused weight gain and prevented weight loss. The ESRB found insufficient evidence to support the applicant's

contention that a medical condition was the basis for negative comments on the contested NCOER and determined no relief was warranted. (*The ESRB proceedings and the applicant's supporting evidence submitted to the ESRB are available in their entirety for the Board's review.*)

10. On 31 October 2016, the applicant was honorably discharged after completing 17 years, 1 month, and 22 days of active duty service, which included 6 years, 8 months, and 27 days of foreign service. He completed a tour of duty in Afghanistan, two tours of duty in Iraq, and a tour of duty in Kosovo. His awards included the Army Commendation Medal (6th Award), the Army Achievement Medal (3rd Award), the Army Good Conduct Medal (4th Award), the Military Outstanding Volunteer Service Medal, and the Combat Action Badge.

11. The applicant's DD Form 214 shows the authority for his discharge was Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 4, and the reason for his discharge was "non-retention on active duty."

Note: The authority for discharge by reason of "non-retention on active duty" is not contained in Army Regulation 635-200, chapter 4. This authority is found in Army Regulation 635-200, chapter 19 (Qualitative Management Program).

12. Army Regulation 635-200, chapter 19, provides that noncommissioned officers whose performance, conduct, and/or potential for advancement do not meet Army standards, as determined by the approved recommendations of Headquarters, Department of the Army, centralized selection boards responsible for Qualitative Management Program screening, will be denied continued service.

13. The Fiscal Year 2012 National Defense Authorization Act, Public Law 112-81, enacted 31 December 2011, authorized the military services to offer early retirement to service members who have completed at least 15 years of active service. This was a discretionary authority and not an entitlement. The Army elected to use this limited program as part of a comprehensive force management strategy to shape the force. Service members eligible for TERA must have submitted a request through their chain of command by 15 January 2018 for early retirement consideration. The authority to approve TERA was terminated on 28 February 2018.

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 requested program being a discretionary authority and not an entitlement, as well as the lack of evidence the applicant attempted to apply for the program at the time of its offering and was denied, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military record.

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//
 X _____
 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, 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. Army Regulation 635-200, chapter 19, provides that noncommissioned officers whose performance, conduct, and/or potential for advancement do not meet Army standards, as determined by the approved recommendations of Headquarters, Department of the Army, centralized selection boards responsible for Qualitative Management Program screening, will be denied continued service. This program does not apply to Soldiers with an approved retirement application. The Qualitative Management Program is designed to:

- a. Enhance the quality of the career enlisted force.
- b. Selectively retain the best qualified Soldiers.
- c. Deny continued service to nonproductive Soldiers.
- d. Encourage Soldiers to maintain their eligibility for further service.

3. The Fiscal Year 2012 National Defense Authorization Act, Public Law 112-81, enacted 31 December 2011, authorized the military services to offer early retirement to service members who have completed at least 15 years of active service. This was a discretionary authority and not an entitlement. The Army elected to use this limited program as part of a comprehensive force management strategy to shape the force. Service members eligible for TERA must have submitted a request through their chain of command by 15 January 2018 for early retirement consideration. The authority to approve TERA was terminated on 28 February 2018.

//NOTHING FOLLOWS//