

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006233

APPLICANT REQUESTS: reconsideration for his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period 29 February 1996 through 7 October 2005 to be expunged from his Official Military Personnel File.

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

- DD Form 149 (Application for Correction of Military Record)
- State of N.C., Dismissal Notice of Reinstatement, 28 August 2001
- DD Form 214, period ending 7 October 2005

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 Docket Number AR2010016010, on 7 December 2010.

2. The applicant states the DD Form 214 for the period 29 February 1996 through 7 October 2005 was created in error. He was not in the service during these dates. He attached the Dismissal Notice from Wake County N.C. District Court, dated 28 October 2001. During the period that the DD Form 214 covered he was working at the Wake County Sheriff's Office as a Law Enforcement Officer.

3. The applicant provides State of N.C., Dismissal Notice of Reinstatement, 28 August 2001, that shows the box "other" was checked and states "misunderstanding and supposed to be inactive". The attached report shows no convictions, sentence or probation.

4. Review of the applicant's record shows:

a. The applicant enlisted in the Regular Army in Raleigh, North Carolina on 4 January 1989.

b. He was honorably released from active duty on 14 December 1992. His DD Form 214 shows he completed 3 years, 11 months and 11 days of net active service this period.

c. On 17 February 1994, the applicant enlisted in the N.C. Army National Guard (NCARNG). He was honorably discharged on 28 February 1996 for the purpose of enlisting in the Regular Army. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 2 years, and 12 days of net service this period.

d. The applicant's DD Form 4/1 (Enlistment/Reenlistment Document) shows on 29 February 1996, he enlisted in the Regular Army, in Raleigh, N.C, for a period of 3 years.

e. Two- DA Form 4187's (Personnel Action) shows his duty status as follows:

- from present for duty, to absent without leave (AWOL), on 7 August 1998
- from AWOL, to dropped from rolls (DFR), on 8 September 1998

f. On 31 March 1999, the applicant was discharged from the NCARNG, and issued an uncharacterized character of service due to a defective enlistment agreement. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 2 years, 3 months, and 11 days of net service this period.

g. On 7 November 2000, the applicant enlisted in the NCARNG.

h. He was returned to military control on 27 August 2001.

i. His duty status changed from present for duty, to AWOL/DFR, on 30 August 2001. The DA Form 4187 further shows that the applicant failed to proceed to Fort Knox, KY and is DFR.

j. On 31 October 2003, the applicant was discharged from the NCARNG with a general under honorable conditions character of service, due to unsatisfactory participation. His NGB Form 22 shows he completed 2 years, 11 months, and 24 days of net service this period.

k. On 24 June 2004 the applicant was apprehended by civil authorities in Wake County Raleigh, N.C. and transferred to Fort Knox, KY.

l. His record is void of the applicant's duty status change from present for duty to AWOL; however, on 20 September 2004 the applicant was apprehended by civil authorities in Wake County Raleigh, N.C. and transferred to Fort Knox, KY.

m. On 23 September 2004, his duty status changed from present for duty to AWOL. He remained absent until he was apprehended by civil authorities in Raleigh, N.C. on 12 September 2005.

n. A DD Form 458 (Charge Sheet) shows charges were preferred against the applicant for one specification of being absent without leave (AWOL) from on or about 23 September 2004, until on or about 12 September 2005.

o. On 7 October 2005, while on excess leave, the applicant was discharged with an under other than honorable conditions character of service, Chapter 10, in lieu of trial by court-martial. His DD Form 214 shows he completed 2 years, 6 months and 10 days of net active service this period. His DD Form 214 also shows the following:

- item 12a (Date entered AD this period) - 29 February 1996
- item 12b (Separation Date this period) - 7 October 2005
- item 18 (Remarks) – shows in part, excess leave (creditable for allowances purposes except pay and allowances) 21 days 20050917-20051007; under 10 USC 972 19980807-20010826, 20010830-20040919, 20040923-20050911

p. On 26 October 2005, the applicant enlisted in the Regular Army in Raleigh, N.C. for a period of 4 years and 17 weeks.

q. A Criminal Investigation Report of Investigation, 7 December 2005, shows in part that the applicant was charged with larceny of government funds, pay and allowance fraud, fraudulent enlistment, and false official statement. This investigation was initiated upon notification from the military personnel office, at Fort Lee, VA, that the applicant fraudulently enlisted in the U.S. Army.

r. On 31 January 2006, the applicant's commander notified him that he was initiating action to discharge him from the service under the provisions of Army Regulation 635-200, Chapter 7 for fraudulent enlistment due to his failure to reveal that had been discharged under other than honorable conditions under the provisions of Army Regulation 635-200, Chapter 10.

s. On 9 February 2006, after consulting with counsel, he waived all of his rights and elected not to submit a statement in his own behalf.

t. The appropriate commander approved the recommendation for discharge on 13 February 2006 and directed that his discharge be uncharacterized.

u. On 17 February 2006, the applicant was discharged under the provisions of Army Regulation 635-200, Chapter 7 for fraudulent entry and his service was

uncharacterized. His DD Form 214 shows he completed 3 months, and 22 days of net active service this period.

v. On 23 February 2007, the Army Discharge Review Board (ADRB) in AR20060005357 reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason of his discharge.

w. On 7 December 2010, in ABCMR Docket Number AR2010016010, the Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

5. By regulation (AR 635-8), When a DD Form 214 has been prepared and distributed, and subsequently determined that it was prepared in error, the responsible transition center will void the DD Form 214 by memorandum. Distribute this memorandum to all addressees that received the erroneously prepared DD Form 214, advising them of the error and requesting the voided DD Form 214 be destroyed and removed from the Soldier's AMHRR.

6. By regulation (AR 600-8-104), once an official document has been properly filed in the AMHRR, it is presumed to be administratively correct, and to have been filed pursuant to an objective decision by a competent authority. The recipient has the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part.

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. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence to support the applicant's contention expunge his DD Form 214 for the period ending 7 October 2005 from his Official Military Personnel File (OMPF). The Board acknowledged the applicant's assertions that the DD Form 214 was created in error and that he was not in military service during the dates reflected. He further claims that he attempted to terminate his enlistment and was repeatedly arrested for desertion while employed as a law enforcement officer in Wake County, North Carolina.

2. However, the applicant's record clearly shows that he voluntarily enlisted in the Regular Army on 29 February 1996 and was subsequently subject to multiple periods of unauthorized absence, culminating in his discharge under Chapter 10, Army Regulation 635-200, in lieu of trial by court-martial. Furthermore, the applicant's DD Form 214 accurately reflects his service, including periods of AWOL and excess leave, and is supported by personnel actions, charge sheets, and duty status changes documented in his file. The Board agreed the applicant provided no credible evidence of error or injustice, nor has he submitted documentation sufficient to warrant clemency. The applicant's prior appeals to both the Army Discharge Review Board and the Army Board for Correction of Military Records were denied, affirming the propriety and equity of the discharge and associated records. Based on this, the Board found no basis to reserves the previous Board determination that would alter or remove the DD Form 214 from the applicant's OMPF. Therefore, relief is denied.

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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR2010016010, on 7 December 2010.

X //SIGNED//

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 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. 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.
3. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. When a DD Form 214 has been prepared and distributed, and

subsequently determined that it was prepared in error, the responsible transition center will void the DD Form 214 by memorandum. Distribute this memorandum to all addressees that received the erroneously prepared DD Form 214, advising them of the error and requesting the voided DD Form 214 be destroyed and removed from the Soldier's AMHRR.

4. Army Regulation 600-8-104 (Army Military Human Resource Records Management) states that the OMPF is defined as permanent documentation within the AMHRR that documents facts related to a Soldier during the course of his or her entire Army career, from time of accession into the Army until final separation, discharge, or retirement. The purpose of the OMPF is to preserve permanent documents pertaining to enlistment, appointment, duty stations, assignments, training, qualifications, performance, awards, medals, disciplinary actions, insurance, emergency data, separation, retirement, casualty, and any other personnel actions. Once properly filed in the AMHRR the document will not be removed from the record unless directed by selected authorities such as the ABCMR, Army Discharge Review Board, Department of the Army Suitability Evaluation Board, and Army Special Review Board.

//NOTHING FOLLOWS//