

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 April 2025

DOCKET NUMBER: AR20240008052

APPLICANT REQUESTS: pay and allowances for 51 days of lost time shown on his DD Form 214 (Report of Separation from Active Duty) ending on 4 December 1974.

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

- DD Form 149 (Application for Correction of Military Record)
- Commander's letter dated 20 May 1974, wherein, the commander responded to the applicant's mother and stated,
 - the applicant was suspected of being involved in an incident that occurred on 16 March 1974, however, the investigation conducted revealed that he was not involved; therefore, the applicant is not "in trouble," and he is not pending any disciplinary action
- DD Form 214 ending on 4 December 1974, which shows the applicant had 51 days of lost time and was paid for 7 days of accrued leave; he completed 1 year and 10 months net active service this period and was transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training)

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 was wrongfully incarcerated for 51 days while stationed in Germany
- During that time, he did not receive any pay
- He is requesting he be paid the amount that was not paid for those 51 days
- He has enclosed his DD Form 214 and a letter from his Company Commander written on 20 May 1974, stating that he was not in trouble and was not pending any disciplinary action

- He was wrongfully accused of an action he did not commit and was put in prison for 51 days, losing all pay and allowances for that time frame; he should get that money
- He did not know he could file a correction of records to get his money back when he first noticed the error in 1974

3. A review of the applicant's military record shows:

- He enlisted in the Regular Army for 2 years on 15 December 1972
- DA Form 20 (Enlisted Qualification Record) shows he served in Germany from on or about 5 May 1973 to 4 December 1974 and the highest rank he held was specialist four (SP4)
- On 12 April 1973, DA Form 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice) shows the applicant accepted Non-Judicial Punishment (NJP) for being derelict in the performance of his duty in that he was found sleeping on his post; his punishment consisted of forfeiture of pay (suspended until 25 April 1973), restriction, and extra duty; he did not appeal
- On 20 November 1973, the applicant accepted NJP for being absent from his place of duty from on or about 1000-1130 hours on 6 November 1973; his punishment consisted of extra duty, restriction, forfeiture of pay for 1 month, and reduction to the rank/grade of private one/E-1 (suspended for 30 days); he did not appeal
- On 12 November 1974, Special Orders Number 316 shows the applicant was appointed/promoted to the rank of SP4, effective 1 November 1974
- On 4 December 1974, he was honorably released from active duty and was transferred to the USAR Control Group (Annual Training); he completed 1 year and 10 months net active service this period; his DD Form 214 shows in:
 - Item 21 (Time Lost) – 51 Days
 - Item 22 (Days Accrued Leave Paid) – 7 Days
 - Item 27 (Remarks) – "Country of Last Oversea Service: Germany"; "Time Lost: 51 Days Title 10"
- On 22 November 1978, Orders Number 11-1125184 shows the applicant was honorably discharged from the Standby Reserve, effective 14 December 1978
- On 28 September 1984, Orders Number D-09-047965 shows the applicant was honorably discharge from the USAR Ready, in the rank/grade of private first class/E-3, effective 1 October 1984

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to deny relief based upon the lack of information as to what dates are covered in the 51 days of lost time. However, based upon the available documentation, specifically the letter from the applicant's commander, corroborating the applicant's statement, the Board concluded that by a preponderance of the evidence, there was sufficient evidence of an error or injustice warranting correction to the applicant's record by removing the lost time and paying the applicant for the period of restored lost time.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:XXX	:	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:XXX	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by reissuing the applicant's DD Form 214 by removing all reference to lost time by:

- (block 18a) deleting current entry and replacing with "01 11 20"
- (block 21) deleting current entry and replacing with "NONE"
- (block 27) removing "Time Lost: 51 DAYS TITLE 10"
- paying the applicant the appropriate pay and allowances for the 51 days of lost time

//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 (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 Army Board for Correction of Military Records (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 635-5 (Personnel Separations – Separation Documents) prescribes the separation documents that will be furnished each individual who is separated from the Army. The instructions for item 21 state, this information is required by other Federal agencies and will include time lost under Title 10, U.S. Code, section 972 -

Members: effect of time lost, (paragraph 2-3, AR 635-200) and time in an excess leave status for the preceding 2 years only.

4. Title 10, USC, section 972 – Members: effect of time lost, provides that:

a. An enlisted member of an armed force who — (1) deserts; (2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority; (3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or (4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct; is liable, after his return to full duty, to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted.

b. The Secretary concerned shall waive liability for a period of confinement in connection with a trial or exclusion of a period of confinement in connection with a trial, in a case upon the occurrence of any of the following events:

(1) For each charge — (a) the charge is dismissed before or during trial in a final disposition of the charge; or (b) the trial results in an acquittal of the charge.

(2) For each charge resulting in a conviction in such trial — (a) the conviction is set aside in a final disposition of such charge, other than in a grant of clemency; or (b) a judgment of acquittal or a dismissal is entered upon a reversal of the conviction on appeal.

5. Title 31, U.S. Code, 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, U.S. Code, 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//