

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2025

DOCKET NUMBER: AR20240012657

APPLICANT REQUESTS: This case comes before the Army Board for Correction of Military Records (ABCMR) on a remand from the United States District Court for the Northern District of Georgia. The Court directs the ABCMR to reconsider its decision based on the existing administrative record, the allegations asserted by applicant in her complaint, the brief and exhibits that the applicant submitted in her initial application to the ABCMR, and any additional materials submitted by the applicant.

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

Court remand in lieu of DD Form 149 (Application for Correction of Military Record), with court order and documents filed with applicant's complaint.

FACTS:

1. On 18 April 2017, the applicant filed her initial ABCMR application. Through counsel, she stated the following:

- She and the deceased former service member (SM) were married in 1967 and were never separated or divorced
- Her husband had an exemplary record of service and, except for one nonjudicial punishment action in 1968, he had had no disciplinary actions taken against him; additionally, he earned several commendations
- On 9 December 1988, while stationed at Fort Lee, VA (now renamed Fort Gregg-Adams), the former SM failed to report for duty, and neither the family nor the Army could locate him; at the time of his disappearance, the former SM had completed 21 years of service and was retirement eligible
- The Army carried the former SM in an absent without leave (AWOL) status for 30 days, then, effective 10 January 1989, dropped him from Army rolls and listed him as a deserter; no one has heard from the former SM since he disappeared
- The applicant subsequently lost her home due to bankruptcy; she tried to apply for military benefits but was told she needed a death certificate
- To obtain a death certificate, she had to wait seven years from the date of her husband's disappearance; on 3 September 1996, a Probate Court declared the former SM dead

- After obtaining a death certificate, the applicant applied for military death benefits but was told she was not eligible because her husband had been listed as a deserter and the policy had supposedly expired
- The applicant applied to the ABCMR because she believed the administrative determination that her husband was a deserter was unjust and an error of law

2. Counsel argued the following:

- Desertion is a specific intent crime; the record showed no one ever heard the former SM express an intention to desert; in addition, no one was ever able to find him, he never disposed of his uniforms, he took no valued personal property with him, and he never contacted anyone in either his or his wife's family
- The evidence to declare the former SM a deserter was based on a report by (former SM's company commander) Captain (CPT) T__ B__
- CPT B__ claimed the applicant and the former SM had separated (which the applicant denies) and, when the unit checked the former SM's residence, the son appeared nervous and was packing to leave; both apparent disparities were explained in the statements made by the applicant and her son
- With regard to CPT B__'s opinion that the former SM had "mental problems," counsel notes the record is void of any documentation showing CPT B__ was a certified psychiatrist or psychologist
- "...there is nothing of record that would support an administrative classification of desertion, certainly nothing that can be argued and proven by substantive evidence...the presumption of death requires the Army to show that [former SM's] absence was not a result of death at the time of his disappearance"

3. The applicant provided the following:

- Documents from the former SM's service and medical records
- The court order declaring the former SM deceased, as of 3 September 1996
- A DD Form 1300 (Report of Casualty), issued, on 31 October 2012, by the U.S. Army Human Resources Command (HRC) Casualty and Mortuary Affairs Operations Center (CMAOC); the form indicated the former SM's date of death was 1 December 1995

4. On 4 March 2020, the Board agreed that the former SM's service record reflected a successful career, and that his career had taken a quick downward spiral when he was reported AWOL and then dropped from the units rolls (DFR).

- The company commander had acknowledged the former SM may have had a behavioral-health condition, and the Board agreed that condition mitigated the absence

- The Board determined there was sufficient evidence to remove the DFR status and correct the record to show the former SM was in a non-pay status through his expiration term of service
- The Board recommended removing DFR information from the former SM's service record; listing the former SM in a non-pay status from 1 December 1988 through 12 August 1989; and directing HRC to issue a DD Form 1596 (Transcript of Military Record) confirming an honorable separation

5. On 27 April 2021, the Deputy Assistant Secretary of the Army, Review Boards overturned the Board's recommendation and denied relief after finding the former SM's absence had involved misconduct, and that he had demonstrated an intent to remain away permanently.

6. A review of the former SM's service record shows the following:

- On 11 November 1974, after completing prior active duty service in the Army of the United States, the former SM enlisted into the Regular Army for 3 years
- The Former SM continued his active duty service through multiple assignments both within the continental United States and overseas; effective 1 March 1986, the Army promoted him to sergeant first class (SFC)/E-7
- In or around March 1987, orders reassigned the former SM to Fort Lee as an instructor/writer
- On 1 December 1988, the former SM's unit reported him in a ordinary leave status; on 10 December 1988, when the former SM failed to return from leave, the unit changed his status to AWOL; effective 9 January 1989, the unit dropped the former SM from its rolls and reported him in a deserter status
- Also, on 9 January 1989, the former SM's company commander prepared a memorandum in which he summarized what information he had about the former SM's absence; he wrote:
 - Former SM was last seen by his son, on or about 7 December 1988
 - The former SM had been having marital problems; he and his wife (the applicant) had separated; on 14 December 1988, the applicant stated the former SM had been having emotional problems, and he had threatened himself and her; he additionally exhibited "bizarre behavior"
 - On or about 8 December 1988, the applicant said the former SM had called her while she was in Georgia, and he communicated suicidal gestures; she did not hear from him after that
 - The spouse (applicant) was last in the Fort Lee vicinity on 3 December 1988 to pick up their youngest son; she did not see the former SM at that time
 - On 12 December 1988, members of the unit visited the former SM's home and saw the former SM's son packing as if he was leaving town; on or about 17 December 1988, the son quit his job and returned to Georgia

- The phone number on the former SM's leave form belonged to a police unit near the former SM's home in Georgia; the commander called and asked the police chief to be on the alert for the former SM's car
- On 9 January 1989, the former SM's unit preferred court-martial charges against him for AWOL, leaving the end date blank; additionally, the unit completed a DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), providing detailed information about the former SM, the unit, and the dates of his absence
- On 10 August 2011, the U.S. Army Deserter Information Point issued a DD Form 616 (Report of Return of Absentee), which showed the Social Security Administration Office had reported that the former SM was deceased; HRC had validated the report
- The DD Form 616 further indicated the former SM had been returned to military control, as of 9 August 2011

7. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case as the result of a voluntary court remand to the Army Board of Correction of Military Records. Documentation reviewed included the applicant's voluntary court remand in Joseph D. Reaves, Plaintiff, v. The United States, Defendant, along with counsel's accompanying brief and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), Healthcare Artifact and Image Management Solution system (HAIMS), and/or the Interactive Personnel Electronic Records Management System (iPERMS).
2. This advisor has been asked to render an opinion on the whether the applicant's hypertension may have been a contributing cause to his death / disappearance in December 1988 after which he was never seen or heard from again.
3. Medical records from 31 August 1986 thru 28 November 1988 show the applicant had and was being treated for significant hypertension. It was eventually treated with triple drug therapy.
4. The applicant's pressure was often uncontrolled. When seen in emergency care for a nosebleed in June 1988, it measured 210/108.
5. Hypertension is a leading contributing factor to death in the United States, from strokes to heart attacks, renal failure to ruptured aneurysms. However, without more probative medical evidence, it would be only speculation at this time to say that his hypertension was a contributing factor to his death.

BEHAVIORAL HEALTH REVIEW:

1. The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the hard copy medical records from the deceased former service member's (FSM) military service. The Joint Legacy Viewer (JLV), which contains records from DoD and VA, and the Health Artifacts Image Solutions (HAIMS), and MedChart were reviewed, and there was no indication of any medical or mental health documentation. It should be noted that these systems were not in use at the time of his service. The applicant, the deceased FSM's wife, requests a removal of administrative classification of deserter and all documents associated to include those of absent without leave (AWOL) from service records of the deceased FSM.

2. The applicant's available military records were summarized in the ABCMR ROP. The FSM was inducted into the Army of the United States on 20 March 1968 and was honorably discharged on 19 March 1970. He enlisted in the Regular Army on 11 November 1974 and discharged on 1 October 1978 with an honorable characterization of service. The FSM reenlisted in the Regular Army on 2 October 1978 and was discharged on 22 September 1981, and he again reenlisted on 23 September 1981 with another reenlistment on 13 August 1985. The ROP discussed several awards and achievement of the rank of sergeant first class effective 15 February 1986. The FSM's duty status changed from present for duty to ordinary leave on 1 December 1988, and his status changed on 10 December 1988 from ordinary leave to AWOL. A Commander Report of Inquiry/Unauthorized Absence dated 10 December 1988 indicated "marital strife" as a possible contributing factor causing AWOL and "other: mental disorder." Mental instability was also noted. A document with the subject, "AWOL Status of SFC Baker," (signed by CPT Terrence Battle, Commander) dated 9 Jan 1989 showed the spouse reported the FSM had been having emotional problems and had threatened himself and her, and he had exhibited other bizarre behavior. It also indicated that on 8 Dec 1988, the FSM called her (she was in Georgia) and communicated "suicidal gestures" to her. She had not heard from him or seen him since, and it is noted that the FSM was last seen by his son on 7 December 1988. Additionally, this document discussed behavior of the FSM's older son, and that the military police at Fort Lee were notified of "the suspicious nature of the case." The phone number on the FSM's leave form was to a police department near his home of record in Athens, GA. The duty status of the FSM was changed from AWOL to DFR on 9 January 1989. A Report of Absentee form signed on 10 August 2011 showed that the FMS had been reported as deceased by the Social Security Administration, and there were no dates or location of death shown and were considered unknown as validated by Fort Knox, KY HRC-PERSIND. A letter from Prudential Group Life Insurance dated 1 November 2016 that the Army was unable to certify that SGLI coverage was in effect on the date of loss since Mr. Baker was placed in Deserter status in 1988, thus becoming ineligible for SGLI. Affidavits by

several friends and family members from 2017 provided no indication of report of any mental health symptoms or behaviors indicative of a mental health problem.

3. A review of the available medical documentation revealed the applicant was seen by military medical providers on several occasions related to hypertension. There was no indication of any mental health symptoms reported by the FSM and no history of mental health diagnoses.

4. The applicant requested that Army Board for the Correction of Military Records (ABCMR) correct her deceased spouse's military record to show he was not AWOL and not classified as a deserter. There are no mental health records, and the medical records do not indicate any mental health symptoms. There is documentation from the FSM's commander, which indicated, per the FSM's spouse, that the couple was experiencing some marital difficulties, and the wife reported that the FSM had expressed suicidal and homicidal ideation in the days prior to his AWOL. The FSM was last seen on 7 December 1988 by his son, and he was last spoken to by his wife on 8 December 1988. His leave status was changed on 10 December 1988 from ordinary leave to AWOL, and he was dropped from the rolls on 9 January 1989. In conclusion, there is insufficient evidence, beyond report by the FSM's spouse, that he was experiencing any mental health related problems or symptoms, and although she reported he had communicated suicidal ideation, there is insufficient evidence that the FSM had a history of engaging in suicidal behavior.

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. Based upon the applicant's record failing to have any misconduct prior to his AWOL offense and the lack of clear evidence showing the FSM's leadership conducted an inquiry into the disappearance of the FSM prior to he being declared deceased by the court system, the Board concluded there was insufficient evidence to show the applicant willingly went AWOL and/or deserted his unit. Therefore, the Board recommended:

- (1) removing any "dropped from rolls" indicators in FSM's record;
- (2) showing that FSM was in non-pay status during his absence;
- (3) providing a transcript of military record showing FSM's characterization of service as honorable and
- (4) amending the record to reflect the applicant applied for available benefits immediately after the FSM was declared deceased.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	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:

- removing any “dropped from rolls” indicators in FSM’s record;
- showing that FSM was in non-pay status during his absence;
- providing a transcript of military record showing FSM’s characterization of service as honorable and
- amending the record to reflect the applicant applied for available benefits immediately after the FSM was declared deceased.

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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) 630-10 (Personnel Absences – Absence without Leave (AWOL) and Desertion (DFR)), in effect at the time, provided guidance for determining absent without leave (AWOL) or desertion status; gave instructions for starting apprehension efforts; and described administrative actions for members returning to military control.

a. Paragraph 2-2 (When a Person is AWOL). A Soldier will be reported as AWOL when they:

- Absent themselves without authority and remain absent for more than 24 hours
- Fail to report to their proper duty station as ordered

b. Paragraph 2-3 (AWOL from a Unit of Assignment). The unit commander of an AWOL member will report the absence and take the below-listed actions:

- Conduct an immediate inquiry to determine the member's whereabouts and possible reasons for the absence
- Notify the local provost marshal or law enforcement staff officer within 48 hours of the member's absence
- Record the results of the inquiry on DA Form-4384 (Commander's Report of Inquiry/Unauthorized Absence)
- Notify the AWOL Soldier's next of kin

c. Paragraph 3-2 (Absentees Dropped from the Rolls (DFR) as deserters).

(1) An absentee will be DFR of a unit in these cases:

- When the member has been absent without authority for 30 consecutive days
- Upon reasonable belief that the absentee quit his or her unit with the intent to remain permanently absent; a member's expressed intent is not enough evidence to warrant dropping him/her from unit rolls

2. Title 31 (Money and Finance), U.S. Code, section 3702 (Authority to Settle Claims) states:

a. If an individual brings a claim against the Government for monetary relief, the Government is only obligated to pay the individual 6 years in arrears from the date of approval of the claim.

b. In the case of *Pride versus the United States*, the court held that a Board for Correction of Military Records (BCMR) is not bound by the barring act. The BCMR decision creates a new entitlement to payment, and the 6-year statute begins again. Payment is automatic and not discretionary when a BCMR decision creates an entitlement.

3. Manual for Courts-Martial (MCM), Part IV (Punitive Articles), currently in effect, states, in regard to:

- Article 85 (Desertion) – The elements of the crime of Desertion are (1) going or remaining absent from the unit or place of duty; (2) without authority; (3) with the intent to remain away permanently; and (4) remaining absent until the date alleged
- Article 86 (Absence without leave (AWOL)) – The elements of the crime AWOL are (1) absenting oneself from or failing to go to the assigned place of duty; (2) without authority; and (3) and that the absence was for a certain period of time

//NOTHING FOLLOWS//