

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 August 2025

DOCKET NUMBER: AR20240013243

APPLICANT REQUESTS:

- Adjust the date of separation to reflect 20-years of creditable service
- Back pay and allowances from the date released from civil confinement and the adjusted discharge date for 20-years of creditable service

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 23 November 1990
- DA Form 3286 (Statement of Enlistment), 23 November 1990
- DD Form 1966 (Record of Military Processing Armed Forces of the United States, 23 November 1990
- DD Form 2366 (Veteran's Educational Assistance Active of 1984 (New GI Bill)
- Headquarters (HQs), U. S. Army Infantry Center Orders Number 227-25, 26 November 1991
- HQs, 3rd Brigade, 82nd Airborne Division Certificate of Achievement the applicant was recognized for his dedication to mission accomplishment during the period of 29 September through 4 October 1991
- DA Form 4980-18 (Army Achievement Medal Certificate) shows the applicant was recognized for outstanding achievement during 1 January through 31 March 1993
- DA Form 3340-R (Request for Regular Army Reenlistment or Extension) shows on 30 December 1993 the applicant requested to reenlist in the RA and his commander approved the request
- DD Form 4, 30 December 1993
- DA Form 3286, 30 December 1993
- DA Form 1059 (Service School Academic Evaluation Report), 8 November 1994
- 82nd Personnel Services Battalion Orders Number 208-9, 17 November 1994
- DA Form 2166-7 (Noncommissioned Officer (NCO) Evaluation Report) for rating period 1 November 1994 through 30 October 1995 shows his rater and senior rater rated his performance as fully capable and successful

- DA Form 3340 shows the applicant requested to reenlisted on 29 April 1996 and his commander approved his request
- DD Form 4, 30 April 1996
- DA Form 3286, 30 April 1996
- DA Form 4789 (Statement of Entitlement to Selective Reenlistment Bonus (SRB)) shows the applicant was receiving a SRB for 4-years of service obligation
- DA Form 2166-7 for rating period of 1 November 1995 through 30 June 1996 shows his rater and senior rater rated his performance as fully capable and successful
- Standard Form 312 (Classified Information Non-Disclosure Agreement), 3 September 1996
- DA Form 4980-18 shows the applicant was recognized for his outstanding service during the period of 1 December 1996 through 30 April 1997
- HQs, 89th Military Police Brigade Orders Number 099-1, 9 April 1997
- DA Form 2166-7 for the rating period of 1 July 1996 through 30 June 1997 shows the applicant's rater commented his off-duty performance resulted in a warrant being issued for his arrest for rape, however, his duty performance was fully capable and successful
- HQs, Fort Hood General Court-martial Orders Number 19, 27 October 1997
- TX Department of Criminal Justice (TDCJ) TDCJ Number 00848062 shows the applicant was convicted on 31 March 1998 and sentenced to 10-years confinement, he was taken into custody on 24 November 1998 and was discharged on 28 March 2008
- DA Form 2166-7 for rating period 1 July 1997 through 30 June 1998 shows the applicant's rater commented his office duty conduct resulted in his arrest for carnal knowledge, his duty performance was marginal and successful with poor potential
- HQs, III Corps and Fort Hood Orders Number HO-053-0487A1 and HO-053-0487A2 shows the original orders were amended for the applicant to deploy in a temporary change of station status
- Letter from Constituent Service Liaison, 1 November 2023 requesting the Legislative Liaison to verify the applicant's military status and provide appropriate back pay and allowances and/or explanation why he was not in a pay status
- U.S. Army Court of Criminal Appeal letter, 4 December 2023 informing the U. S. Representative stating:
 - The applicant was found not guilty by a general court-martial on 4 September 1997
 - No sentence was announced and no punitive discharge came as a result of the court-martial
 - The court had no information regarding his civilian prosecution and confinement

- Nor any documents concerning any subsequent discharged from active duty
- E-mail from Pentagon Congressional Liaison, 5 December 2023 stating it appeared the applicant was not out-processed after his incarceration
- Congression Representative letter, 6 December 2023 stating he was providing the Army's response regarding the applicant's DD Form 214 and directed his attention to the e-mail from the Pentagon Congressional Liaison when applying for correction of his military records
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 March 2008
- U.S. Army Human Resources Command letter, 2 April 2024 stating the applicant's DD Form 214 to the U. S. Representative and provided the address to request his medical records
- DA Form 2-1 (Personnel Qualification Record)
- Document Index for the applicant's request for correction of his record and back pay
- Social Security Card

FACTS:

1. The applicant states:

- He was found not guilty by a military court-martial
- The Army prosecutor coordinated with the local district attorney to prosecute him again
- He plead guilty because he was told he would get probation, but the judge wanted to make an example of him
- He was convicted in a Texas court and sentenced to 10-years confinement
- The separation date listed on his DD Form 214 is incorrect which was published in 2024, it is the date he was released from civilian confinement
- He was never properly discharged from active duty, the Army forgot about him
- He requests a new DD Form 214 to show his correct dates of service, discharge and pay
- He also requests back pay for the period of service from the date he was released from civilian confinement to the date he would have attained 20-years of creditable service and compensated for that time since the Army did not properly discharge him
- He should have been allowed to keep serving

2. A review of the applicant's service record shows:

- On 23 November 1990, he enlisted in the U.S. Army Reserve (USAR) Delayed Entry/Enlistment Program (DEP)
- He was discharged from the USAR DEP and enlisted in the Regular Army (RA) on 2 July 1991 for 3-years of service
- On 30 December 1993, he reenlisted in the RA for 3-years with the reenlistment option of 95B (Military Police) course training
- On 10 November 1994, he was promoted to the rank of sergeant with the same date of rank by Orders Number 208-9, 17 November 1994
- On 30 April 1996, he reenlisted in the RA for 4-years
- On 1 May 1997, he was assigned to the Law Enforcement Activity, 89 Military Police Brigade, Fort Hood, TX (formerly Fort Cavazos)

- On 27 October 1997, he was arraigned at Fort Hood, TX by General Court-Martial Order Number 19 for:
 - Charge I: plead not guilty and he was found not guilty for:
 - Two specifications of commit carnal knowledge with two different females
 - Charge II: plead not guilty and he was found not guilty for:
 - Two specifications of wrongfully had sexual intercourse with two different females
 - Additional Charge I: plead not guilty and was found not guilty for one specification to commit carnal knowledge with a female
 - Additional Charge II: plead not guilty and was found not guilty for one specification of wrongfully had sexual intercourse with a female
 - On 4 September 1997, the findings were announced

- On 28 March 2008, he was assigned to the U.S. Army Transition point for transition processing
- U.S. Army Human Resources Command (AHRC), Memorandum, 29 March 2024, Subject: DD Form 214 (Certificate of Release or Discharge from Active Duty) Sergeant (SGT) H-, A- (the applicant) states:
 - He was found not guilty in court-martial proceedings
 - He was prosecuted by civil authorities and found guilty and sentenced to 10-years
 - The Army never administratively separated him for the civil conviction
 - Once release from confinement on 27 March 2008, he began requesting a DD Form 214
 - Normally, the Veteran would be informed to return to military control to be processed for absent without leave (AWOL), the underlying misconduct which led to civil conviction or complete the remaining time on their contract to make up lost time

- In his case, none of these actions would be appropriate
 - It is not reasonable to consider him AWOL, when he reasonably should expect a DD Form 214 while serving his sentence
 - It is also not reasonable to expect him to return to be processed for the underlying misconduct given the Army already tried him under court-martial proceedings
 - It is also not reasonable to return him to the Army to serve the remainder of his contract given his age is beyond the statutory limit of 55
 - In the best interest of the Veteran and the Army, the decision was to separate him for completion of his contract
- On 2 April 2024, U.S. AHRC published the DD Form 214 which honorably discharged him on 28 March 2008, the DD Form 214 shows in:
 - Item 4a (Grade, Rate or Rank): SGT
 - Item 4b (Pay Grade): E5
 - Item 12a (Date Entered Active Duty This Period): 2 July 1991
 - Item 12b (Separation Date This Period): 28 March 2008
 - Item 12c (Net Active Service This Period): 6-years, 9-months and 21-days
 - Item 28 (Narrative Reason for Separation): Completion of Required Active Service
 - Item 29 (Dates of Time Lost During This Period): 21 April 1998 through 28 March 2008 under Title 10 United States Code, section 972

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

- Adjust the date of separation to reflect 20-years of creditable service: Deny. The Board noted that the applicant enlisted in the Army in July 1991 and served on active duty until he was court-martialed in September 1997. Applicant was acquitted in that court-martial and continued serving. Prosecutors in the state of Texas pursued the same offenses, and Applicant was convicted in state court and sentenced to 10 years of confinement; he entered civilian custody on 24 November 1998. Applicant pled guilty but states he only did so because he believed he would receive probation. Applicant completed his sentence of confinement and was released on 28 March 2008. He was never discharged or outprocessed from the Army, and did not have a DD214. He was later issued a DD Form 214 in April 2024. The DD214 reflected that he entered active duty on 2 July 1991 and was separated on 28 March 2008, with only 7 years of active

service due to the 10-year period of confinement not counting towards his total period of service. The Board noted the DD Form 214 issued to the applicant reflects that he was discharged for completion of required active service with Honorable characterization. The period of civilian confinement from 21 April 1998 to 27 March 2008 was removed from the total service as "time lost". His most recent reenlistment before his conviction was on 30 April 1996 for a term of just four years, and at that time, the applicant had less than five years of service. There is nothing in his record to indicate he would have served beyond that term of enlistment, and nothing to justify constructive service for the over 13 years he would have needed to reach 20 years of qualifying service. Therefore, the Board determined there was insufficient evidence to warrant to grant his request and denied relief.

- Back pay and allowances from the date released from civil confinement: Deny. The Board noted that the applicant enlisted in the Army in July 1991 and served on active duty until he was court-martialed in September 1997. Applicant was acquitted in that court-martial and continued serving. Prosecutors in the state of Texas pursued the same offenses, and Applicant was convicted in state court and sentenced to 10 years of confinement; he entered civilian custody on 24 November 1998. Applicant pled guilty but states he only did so because he believed he would receive probation. Applicant completed his sentence of confinement and was released on 28 March 2008. He was never discharged or outprocessed from the Army, and did not have a DD214. He was later issued a DD Form 214 in April 2024. The DD214 reflected that he entered active duty on 2 July 1991 and was separated on 28 March 2008, with only 7 years of active service due to the 10-year period of confinement not counting towards his total period of service. The Board noted the DD Form 214 issued to the applicant reflects that he was discharged for completion of required active service with Honorable characterization. The period of civilian confinement from 21 April 1998 to 27 March 2008 was removed from the total service as "time lost". His most recent reenlistment before his conviction was on 30 April 1996 for a term of just four years, and at that time, the applicant had less than five years of service. There is nothing in his record to indicate he would have served beyond that term of enlistment, and nothing to justify constructive service for the over 13 years he would have needed to reach 20 years of qualifying service. Therefore, the Board determined there was insufficient evidence to warrant to grant his request and denied relief
- Adjust discharge date for 20-years of creditable service. Deny. The Board noted that the applicant enlisted in the Army in July 1991 and served on active duty until he was court-martialed in September 1997. Applicant was acquitted in that court-martial and continued serving. Prosecutors in the state of Texas pursued the same offenses, and Applicant was convicted in state court and sentenced to 10 years of confinement; he entered civilian custody on 24 November 1998.

Applicant pled guilty but states he only did so because he believed he would receive probation. Applicant completed his sentence of confinement and was released on 28 March 2008. He was never discharged or outprocessed from the Army, and did not have a DD214. He was later issued a DD Form 214 in April 2024. The DD214 reflected that he entered active duty on 2 July 1991 and was separated on 28 March 2008, with only 7 years of active service due to the 10-year period of confinement not counting towards his total period of service. The Board noted the DD Form 214 issued to the applicant reflects that he was discharged for completion of required active service with Honorable characterization. The period of civilian confinement from 21 April 1998 to 27 March 2008 was removed from the total service as “time lost”. His most recent reenlistment before his conviction was on 30 April 1996 for a term of just four years, and at that time, the applicant had less than five years of service. There is nothing in his record to indicate he would have served beyond that term of enlistment, and nothing to justify constructive service for the over 13 years he would have needed to reach 20 years of qualifying service. Therefore, the Board determined there was insufficient evidence to warrant to grant his request and denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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.

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. Title 10 U.S. Code, section 972 (Members: effect of time lost), (a) (Enlisted Members Required To Make Up Time Lost) - an enlisted member of an armed force who:

- Deserts;
- Is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;
- 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
- 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.

(c) (Waiver of Recoupment of Time Lost for Confinement) - the Secretary concerned shall waive liability for a period of confinement in connection with a trial under subsection (a) (3) in a case upon the occurrence of any of the following events:

For each charge:

- The charge is dismissed before or during trial in a final disposition of the charge; or
- The trial results in an acquittal of the charge

For each charge resulting in a conviction in such trial:

- The conviction is set aside in a final disposition of such charge, other than in a grant of clemency; or
- A judgment of acquittal or a dismissal is entered upon a reversal of the conviction on appeal

3. Army Regulation (AR) 635-8 (Personnel Separations – Separation Processing and Documents), prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents.

a. Paragraph 1-10 (Commanding General, U.S. Army Human Resources Command), The CG, HRC will: d. Issue separation documents under the provisions of this regulation.

b. Paragraph 3-3 (Designation and organization of transition activities), a. Except as indicated in paragraphs b through d, the following commanders will centralize transition processing at the installation level: Commanders of Army installations, joint bases, mobilization stations, and HQDA agencies exercising command over units. b. Commanders of the U.S. Disciplinary Barracks and U.S. Army Correctional Activities may conduct transition processing for those Soldiers confined in their facilities.

c. Paragraph 5-6 (Rules for completing the DD Form 214, I Block 12 (Record of Service), (2) Block 12b: (Separation Date This Period), List the Soldier's transition date. This date may not be the contractual date if the Soldier was separated early, voluntarily extends, is extended to make up lost time, or is retained on active duty for the convenience of the Government. (3) Block 12c: (Net Active Service This Period), Amount of service this period, computed by subtracting block 12a from 12b. Lost time under Title 10 USC, section 972 and non-creditable time after ETS, if any, are deducted. Lost time will be listed in block 29; other non-creditable time will be identified in block 18. If Soldier was released from active duty because of voided enlistment, enter "00 00 00." cc. Block 29: (Dates of Time Lost During This Period), Verify that time lost as indicated by the Defense Finance and Accounting Service has been subtracted from "Net Active Service This Period" (block 12c) if lost time was not "made good." If the ETS was adjusted as a result of lost time the Soldier served until ETS, the lost time was "made good." Lost time under 10 USC 972 is not creditable service for pay, retirement, or veterans' benefits. However, the Army preserves a record (even after time is made up) to explain which service between "Date Entered Active Duty This Period" (block 12a) and "Separation Date This Period" (block 12b) is creditable service. Time lost after ETS is nonchargeable time under Title 10 USC, section 972, but it must also be reported to ensure it is not counted in computation of total creditable service for benefits. For enlisted Soldiers, show inclusive periods of time lost to be made good under Title 10 USC, section 972, and periods of nonchargeable time after ETS.

4. AR 630-10 (Absence Without Leave, Desertion and Administrative of Personnel Involved in Civilian Court Proceedings), provides policies and procedures for:

- Reporting unauthorized absentees and deserters
- Administering of absent without leave (AWOL) personnel and deserters
- Returning absentees and deserters to military control
- Surrendering of military personnel to civilian law enforcement authorities

Paragraph 7-4 (Civilian proceedings), a. Bond. As part of the surrender process, the unit commander provides the Soldier a written letter of instruction. If the terms of the bond preclude the Soldier from leaving the jurisdiction of the court, the appropriate commander requests instructions from the CG, AHRC. No assurances or guarantees will be made to civilian authorities that the Army will or can guarantee the presence of a Soldier for trial. B (Disposition of Charges), (2) Conviction, in the event of conviction, appropriate notification is made to the CG, AHRC. CG, AHRC notifies the special court-martial convening authority of the conviction and requests that separation active be initiated per AR 635-200.

//NOTHING FOLLOWS//