

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 August 2025

DOCKET NUMBER: AR20240013271

APPLICANT REQUESTS: in effect:

- upgrade of his under honorable conditions (general) discharge
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 11 September 2024
- Counsel statement with retainer
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 6 August 2021

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 through counsel:
  - his related Freedom of Information Act requests have been delayed for over 18 months
  - he submitted his application for relief with a request for a 3 month delay until December 2024
3. A review of the applicant's service records show the following:
  - a. On 29 June 2015, the applicant completed an oath of allegiance for entry into the U.S. Military Academy (USMA) and was appointed in the rank of cadet. In connection with this oath, he understood and agreed to complete a course of instruction at the USMA. He further understood and agreed, in part:

(1) II(f), that if he voluntarily failed, or because of misconduct failed, to complete the period of active duty specified in paragraphs d or e, he would reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided him as the unserved portion of active duty bears to the total period of active duty he has agreed to serve;

(2) II(g), If he is obligated to reimburse the United States for the cost of his advanced education, any subsequent enlistment in an Armed Service would not relieve him of this debt; and

(3) II(h), Further, that if he was separated from the USMA for breach of this service agreement, as defined in paragraph Ig(4), under Statement of Policies, and the Army decides that he should not be ordered to active duty because such service would not be in the best interests of the Army, he shall be considered to have either voluntarily or because of misconduct failed to complete the period of active duty and may be required to reimburse the United States.

1g(4) Statement of Policies. "Breach of service Agreement" includes separation resulting from resignation, or any of the bases for separation action listed in Army Regulation 210-26 (United States Military Academy) Table 7-1, including all additions to Table 7-1, subsequent to the date of this agreement, or from any provision in Army Regulation 210-26 concerning the breach of service agreement and reimbursement of educational costs.

b. The facts and circumstances leading to his discharge from the USMA are not available for review.

c. On 6 August 2021, he was discharged from the USMA under the authority of Army Regulation 150-1 (U.S. Military Academy – Organization, Administration, and Operation), and Headquarters, Department of the Army (HQDA) Orders 245-0001, dated 2 September 2021, for misconduct. His service was characterized as under honorable conditions (general). He completed 6 years, 1 month, and 8 days of net active service this period.

d. On 27 February 2023, Orders issued by HQDA promoted him to private 2/E-2.

4. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

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 review based on law, policy and regulation. The applicant entered the USMA on 29 June 2015 and was discharged on 6 August 2021 with an under honorable conditions (general) characterization of service. The applicant's official records are void of documentation pertaining to his discharge from the USMA. The applicant does not provide any documentation contrary to his discharge from the USMA. As a result, there is no basis for granting the applicant's request.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

**X //SIGNED//**

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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 (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 ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity.

a. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 150-1 (U.S. Military Academy – Organization, Administration, and Operation), currently in effect, provides policy and procedures for the command and control of the United States Military Academy, the United States Military Academy Preparatory School, and the West Point Military Reservation.

a. Chapter 7. Other Grounds for Separation. This chapter provides policy and procedures for separation of Cadets who are pregnant at the time of admission; test positive for drugs or alcohol within 72 hours of admission; apply for conscientious objector status; extended unauthorized absence; lack of qualification for service; failure to maintain proper physical fitness or make satisfactory progress in a body composition program, inability to meet military training requirements; and academic military, physical, or character development program deficiency.

b. Chapter 8. Separation and Resignations. This chapter provides policy and procedures for separations and resignations of cadets. The Superintendent, USMA, is delegated the authority to separate from USMA. All separation actions forwarded to the Office of the Assistant Secretary of the Army (M&RA) for approval will include: a copy of the cadet's USMA service agreement; the cadet's previous enlistment contracts, if applicable; a copy of the cadet's academic transcript; the USMA G-8's calculation of the cost of advanced education assistance provided to the cadet; a record of appropriate notification of debt; the underlying separation action; the cadet's matters for consideration; a DD Form 2808 (Report of Medical Examination); a DD Form 2807-1

(Report of Medical History) and DD Form 2807–2 (Accessions Medical History Report); and a legal review.

c. Table 7. Separations deemed to be a breach of service contract. This table lists the nature of separation, standards, and procedures for separation of cadets. Paragraphs 6-9 through 6-19 of this regulation outline conditions for separation by reason of misconduct.

4. Army Regulation 210-26 (United States Military Academy) provides policy and procedures for the general governance and operation of the USMA.

a. Chapter 6. Uniform Code of Military Justice (UCMJ). The cadets at USMA are members of the Regular Army and subject to military law and the UCMJ. However, non-judicial punishment (Article 15) may not be imposed upon cadets.

b. Under this chapter, cadets may be separated for misconduct, including, but not limited to, abuse of alcoholic beverages, sexual misconduct, conduct unbecoming a cadet of the Regular Army, conspiracy among cadets, indebtedness, criminal conviction, hazing, other misconduct offenses.

c. Chapter 7. Breach of service agreement and reimbursement of educational costs. Cadets who resign from the Military Academy, or who are separated from the Academy under the procedures contained in table 7–1, will be deemed to have breached their service agreement. Cadets separated from the Military Academy under procedures other than those contained in table 7–1 may be deemed by the Superintendent to have breached their service agreement if the cadet's failure to meet the standards for continued attendance at USMA or for commissioning resulted from a willful act or omission. When the Superintendent recommends reimbursement of educational costs and the cadet disputes the validity of the debt, the Superintendent is authorized to appoint an investigating officer to hear evidence concerning the validity of the debt.

5. Public Law 96-357 states:

a. The Secretary concerned may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree to complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement.

b. That if such person, voluntarily or because of misconduct, fails to complete the period of active duty specified in the agreement, such person will reimburse the United States in an amount that bears the same ratio to the total cost of advanced education

provided such person as the unserved portion of active duty bears to the total period of active duty such person agreed to serve.

6. Title 10, U.S. Code, section 2005 states the Secretary concerned may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree that if such person does not complete the period of active duty specified in the agreement, or does not fulfill any term or condition prescribed, such person shall be subject to the repayment provisions of section 303a.

7. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's Army Military Human Resource Record (AMHRR).

a. Paragraph 7-2 (Policies and Standards) provides that 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 competent authority. Thereafter, the burden of proof rests with the individual concerned to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the AMHRR.

b. Only letters of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted folder of the AMHRR. Such documents may be appealed on the basis of proof that their intended purpose has been served and that their transfer would be in the best interest of the Army. The burden of proof rests with the recipient to provide substantial evidence that these conditions have been met.

//NOTHING FOLLOWS//