



**DEPARTMENT OF THE ARMY
BOARD FOR CORRECTION OF MILITARY RECORDS
1901 SOUTH BELL STREET 2ND FLOOR
ARLINGTON, VA 22202-4508**

November 18, 2009

AR20090009857, O'Brien, Michael M.

Mr. Michael M. O'Brien
3000 Spout Run Parkway C-407
Arlington VA 22201

Dear Mr. O'Brien:

I regret to inform you that the Army Board for Correction of Military Records denied your application.

The Board considered your application under procedures established by the Secretary of the Army. I have enclosed a copy of the Board's Record of Proceedings. This decision explains the Board's reasons for denying your application.

This decision in your case is final. You may request reconsideration of this decision within one year by letter to the above address only if you can present new evidence or argument that was not considered by the Board when it denied your original application.

Sincerely,


Conrad V. Meyer
Director, Army Board for Correction
of Military Records

Enclosure

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: O'BRIEN, MICHAEL M.

BOARD DATE: 12 November 2009

DOCKET NUMBER: AR20090009857

THE BOARD CONSIDERED THE FOLLOWING EVIDENCE:

1. Application for correction of military records (with supporting documents provided, if any).
2. Military Personnel Records and advisory opinions (if any).

THE APPLICANT'S REQUEST, STATEMENT, AND EVIDENCE:

1. The applicant requests that item 18 (Remarks) on his DD Form 214 (Certificate of Release or Discharge from Active Duty) be corrected to show his service in the U.S. Military Academy (USMA) at West Point, New York.
2. The applicant states, in effect, that his DD Form 214 does not reflect the four years of active duty in the Army while serving as a cadet at West Point from 2 July 1973 to 8 June 1977. He contends that this needs to be shown on his DD Form 214 to accurately reflect his active military service to his country. He points out that Army Regulation 635-5 (Separation Documents), dated 15 September 2000, stipulates that his cadet service should be shown in item 18 on his DD Form 214.
3. The applicant provides a copy of his DD Form 214; a transcript from the USMA at West Point, New York; and a copy of Army Regulation 635-5, dated 15 September 2000, in support of his application.

CONSIDERATION OF EVIDENCE:

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 Army Board for Correction of Military Records (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. While it appears the applicant did not file within the time frame provided in the statute of limitations, the ABCMR has elected to conduct a

substantive review of this case and, only to the extent relief, if any, is granted, has determined it is in the interest of justice to excuse the applicant's failure to timely file. In all other respects, there are insufficient bases to waive the statute of limitations for timely filing.

2. The applicant provided an academic transcript which shows he entered the USMA at West Point, New York on 3 July 1973 and graduated on 8 June 1977 with a Bachelor of Science degree. He was commissioned as an Infantry branch officer in the Regular Army on 8 June 1977 and ordered to active duty. He was honorably discharged on 8 June 1982.

3. Item 18 of the applicant's DD Form 214 shows the entry "None."

4. Army Regulation 635-5 (Separation Documents) prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes standardized policy for the preparation of the DD Form 214. In pertinent part it states that the DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

5. Army Regulation 635-5, in effect at the time of the applicant's separation, stated that when a separatee is a cadet, enter "Item 12 includes service as a cadet, USMA, from (date of entrance in USMA) to date of separation."

6. Army Regulation 635-5, dated 15 September 2000, stated, in pertinent part, that for a Soldier who has cadet status, enter "BLOCK 12C INCLUDES SERVICE AS A USMA CADET FROM (date) to (date). SERVICE NOT CREDITABLE FOR ANY PURPOSE IN COMMISSIONED OFFICER STATUS" in item 18.

7. Title 10, U. S. Code, section 971(a) states that the period of service under an enlistment or period of obligated service while also performing service as a cadet may not be counted in computing, for any purpose, the length of service of an officer of an armed force. Section 971(b) states that in computing length of service for any purpose, service as a cadet or midshipman may not be credited to any commissioned officer of the Army.

DISCUSSION AND CONCLUSIONS:

1. The DD Form 214 is a "snapshot in time" and is a reflection of the applicant's record of active Army service at the time of his separation from active duty. When the applicant was released from active duty in 1982 he was no longer a cadet and did not have cadet status. The entry cited by the applicant in Army

Regulation, dated 15 September 2000, does not apply to him. Therefore, there is no basis for granting the applicant's request to amend item 18 on his DD Form 214.

2. The applicant's contention that his DD Form 214 does not reflect the four years of active duty in the Army while serving as a cadet at West Point from 2 July 1973 to 8 June 1977 was noted. However, his service as a cadet at West Point was not active duty. In accordance with Title 10, U. S Code, section 971(b), service as a cadet may not be credited to any commissioned officer for any purpose.

BOARD VOTE:

_____	_____	_____	GRANT FULL RELIEF
_____	_____	_____	GRANT PARTIAL RELIEF
_____	_____	_____	GRANT FORMAL HEARING
<u>AKA</u>	<u>DWS</u>	<u>DM</u>	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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.

Quita D. Ammons
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.

SUMMARY of CHANGE

AR 635-5
Separation Documents

This regulation has been streamlined to avoid duplication of data, and updated to reflect mandatory required data on the DD Form 214 throughout. Specifically, this revision--

- o Mandates that the DD Form 214 (Certificate of Release or Discharge from Active Duty) be issued for all void service (para 2-1a).
- o Requires mandatory information on the DD Form 214, item 18 (para 2-4h (18)).
- o Allows authentication of the DD Form 214 by a soldier in the grade of SSG or by an authorized contractor employee if assigned or the chief or acting chief of a transition center (para 2-4h(22)).
- o Authorizes the Chief, National Guard Bureau, the Deputy Assistant Secretary of the Army, and the Army Review Boards Agency to issue the DD Form 215 (Correction to DD Form, Certificate of Release or Discharge from Active Duty) or reissue the DD Form 214 (para 2-6d).
- o Adds the DD Form 2542 (Certificate of Appreciation For Service in the Armed Forces of the United States) (para 2-12).
- o Modifies Instructions for completing the DD Form 220 (Active Duty Report) (para 2-9).
- o Adds a management control evaluation checklist (app B).

1-9. Commanders of major Army commands

Commanders of major Army commands will—

- a. Monitor separation documents and provide policy direction/guidance to subordinate installation commanders.
- b. Coordinate actions with ODCSPER, PERSCOM, and related agencies to improve separation documents.

1-10. Commanders of installations, military communities, and mobilization stations

Commanders of installations, military communities, and mobilization stations will implement policies and procedures per this regulation when separation documents are issued.

1-11. Commanders/chiefs of transition centers (TCs)

Commanders or chiefs of TCs will—

a. Ensure all information on DD Form 214 and other separation documents is accurate. The DD Form 214 is of vital importance to the separating soldier and must be properly prepared according to prescribed guidance. No deviation is authorized.

b. Ensure that each soldier entitled to receive a DD Form 214 is counseled and understand the following:

(1) This is the most vital document he or she will receive from the Army, and it is imperative to safeguard this document carefully.

(2) The benefits a soldier may be eligible to receive as a result of military service will be based primarily on the DD Form 214.

(3) Civilian employment may be affected by the data on the form.

(4) Failing to obtain the original and copy number 4 of DD Form 214 at separation may cause a delay in their eligibility to receive certain benefits after separation.

(5) Copies of their completed DD Form 214 will not be available at the records repository at the Army Reserve Personnel Command (AR-PERSCOM) in St Louis, MO, for 90 days or more after separation.

(6) Any unauthorized change or alteration of the form will render it void.

c. Ensure that copy 1 given to the soldier when present on the separation date (or mailed to the soldier after the separation date, and after ascertaining the soldier is alive and well and the soldier's status is unchanged) or any copy given to an agency outside of DOD (excluding para d below) does not contain the following information:

(1) Authority for separation.

(2) Narrative reason for separation.

(3) Separation program designator code.

(4) Reentry eligibility code.

d. Provide the narrative reason for separation to the Department of Veterans Affairs, Department of Labor, and State Directors of Veterans Affairs.

e. Provide copy 4 (original) of the DD Form 214 to soldier before he or she departs on permissive temporary duty/transition leave. However, advise soldier that copy 4 does not become an official document until after their separation date. Copy 4 contains the following information:

(1) Authority for separation.

(2) Narrative reason for separation.

(3) Reentry eligibility code.

(4) Separation program designator code.

Chapter 2

Preparing and Distributing Separation Documents

Section I

DD Form 214 (Certificate of Release or Discharge from Active Duty)

2-1. Preparing the DD Form 214

The DD Form 214 is a summary of a soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a soldier's service.

a. Except as provided in paragraph b below, a DD Form 214 will be prepared for each soldier as indicated:

(1) Active Army soldiers on termination of active duty by reason of administrative separation (including separation by reason of retirement or expiration term of service (ETS)), physical disability separation, or punitive discharge under the Uniform Code of Military Justice.

(2) Reserve component (RC) soldiers completing 90 days or more of continuous active duty for training (ADT),

(3) "SOLDIER COMPLETED PERIOD FOR WHICH ORDERED TO ACTIVE DUTY FOR PURPOSE OF POST-SERVICE BENEFITS AND ENTITLEMENTS."

(g) For a soldier who has DEP time, enter "BLOCK 6- PERIOD OF DEP (inclusive periods of DEP time)."

(h) For a soldier who has his or her period of service extended (as evidenced by the extension reading "for the best interest of the service"), enter "EXTENSION OF SERVICE WAS AT THE REQUEST AND FOR THE CONVENIENCE OF THE GOVERNMENT."

(i) For a soldier retained past ETS, enter "RETAINED IN SERVICE (specify number of days) FOR CONVENIENCE OF THE GOVERNMENT PER (authority for retention)."

(j) For an enlisted soldier or warrant officer retired after completing 30 or more years of active military service, specify the grade (indicated on the retirement order) to which soldier will be advanced on the retired list per 10 USC 3964. Enter "RETIRED LIST GRADE" (specify appropriate grade).

(k) Dual compency retirement grade. For an enlisted soldier retired for a disability in a commissioned or warrant officer grade, enter "USAR RETIREMENT GRADE" (specify appropriate grade and pay grade). For an enlisted soldier discharged to retire as a commissioned or warrant officer, enter "DISCHARGED FROM ENLISTED STATUS IN THE RETIRED GRADE"(specify grade), "AND PLACED ON THE RETIRED LIST AS INDICATED IN THE RETIREMENT ORDER."

(l) For a soldier receiving separation/readjustment or non-disability severance pay (as indicated by the finance office), enter type of pay and amount.

(m) For a soldier who have excess leave status, enter "EXCESS LEAVE (CREDITABLE FOR ALL PURPOSES EXCEPT PAY AND ALLOWANCES)" —(specify days and period of time).

(n) For a soldier who received enlistment/reenlistment bonus, enter "TYPE OF BONUS, AMOUNT, AND WHEN ISSUED."

(o) For discharged ALIEN DESERTERS, enter their place of birth.

(p) For a soldier who has CADET STATUS, enter "BLOCK 12C INCLUDES SERVICE AS A USMA CADET FROM (date) TO (date). SERVICE NOT CREDITABLE FOR ANY PURPOSE IN COMMISSIONED OFFICER STATUS."

(q) When a soldier is separated with a TEMPORARY RECORD, enter "SEPARATED FROM SERVICE ON TEMPORARY RECORD AND SOLDIER'S AFFIDAVIT. A DD FORM 215 WILL BE ISSUED TO PROVIDE MISSING INFORMATION OR TO CORRECT ANY INFORMATION."

(r) When a DD Form 214 is administratively issued/reissued, enter (on all copies) "DD FORM 214 ADMINISTRATIVELY ISSUED/REISSUED ON (date)." However, do not make this entry if the appellate authority, Executive Order, or HQDA directive directs otherwise.

(s) For a soldier who has their SERVICE CHARACTERIZATION upgraded, enter (on copies 2 through 8) "SERVICE CHARACTERIZATION UPGRADED ON (date) FOLLOWING APPLICATION DATED (date)."

(t) For a soldier with PRISONER OF WAR (POW) DOCUMENTATION (whether or not eligible for award of POW medal), enter "PRISONER OF WAR, (unit of assignment/country) (date of capture and release date)."

(u) After the last entry in the block, enter "//NOTHING FOLLOWS" or "//SEE ATTACHED CONTINUATION SHEET."

(19) MAILING ADDRESS AFTER SEPARATION and NEAREST RELATIVE will be provided by the soldier.

(a) This address must be a permanent address. Civilian penal institutions will not be accepted.

(b) Advise a soldier that the name and address of a relative should be someone who will know their location and address at all times. When a relative is not available, use a close friend. When the person is at the same address as 19a, enter "(NAME) and ADDRESS SAME AS BLOCK 19a."

(20) REQUEST FOR FORWARDING COPY 6. Advise a soldier that this copy will be forwarded, if requested, to the State Veteran Affairs Office (indicated by the soldier) for eligibility determination of state benefits. Enter "X" in appropriate block, and indicate State abbreviation when "YES" is marked.

(21) SIGNATURE OF SOLDIER BEING SEPARATED. Signature indicates a soldier has reviewed the form and accept the information as being correct to the best of their knowledge. Request soldier sign the original in ink using a ballpoint pen, ensuring signature goes through on all copies. When soldier is not available (discharged in absentia or physically unable), enter "SOLDIER NOT AVAILABLE TO SIGN." When soldier refuses to sign, enter "SOLDIER REFUSED TO SIGN."

(22) OFFICIAL AUTHORIZED TO SIGN. This signature indicates the information in the certificate is as correct as the records permit; that a quality control check has been made; and that the separation is valid and authorized by the approval authority. Only a commissioned or warrant officer may authenticate DD Form 214; however, when the chief or acting chief of the TC is a SSG, GS-07, or higher, or authorized contractor employee, that individual may sign. Signature authority may NOT be delegated. Signature must be legible on all copies, and may necessitate signing again on the other copies.

(23) TYPE OF SEPARATION. Enter the appropriate term listed below:

a. Release from active duty.

Title 10, United States Code

§ 3075. Regular Army: composition

(a) The Regular Army is the component of the Army that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Army.

(b) The Regular Army includes—

(1) the officers and enlisted members of the Regular Army;

(2) the professors, director of admissions, and cadets of the United States Military Academy; and

(3) the retired officers and enlisted members of the Regular Army.



DEPARTMENT OF THE ARMY
ARMY REVIEW BOARDS AGENCY
1901 SOUTH BELL STREET, 2ND FLOOR
ARLINGTON, VA 22202-4508

June 10, 2009

Case Management Division
Case Number AR20090009857

Mr. Michael M O'Brien
3000 Spout Run Parkway
C-407
Arlington VA 22201

Dear Mr. O'Brien:

We acknowledge receipt of your application, DD Form 149, Application for Correction of Military Records, or DD Form 293, Application for Review of Discharge from the Armed Forces of the United States, dated June 9, 2009. Your application has been assigned the case number shown above.

The various Army Review Boards review cases in the order in which they are received. Due to the number of applications on hand and the complexity of many cases, it may be as long as twelve months before you receive notification of the decision on your application.

If your address changes during this time, please notify us at the address above. Reference your case number and provide your new address so we may maintain contact with you.

Thank you for your patience as we obtain your records and consider your application.

Sincerely,

A handwritten signature in black ink that reads "Walter Avery".

Walter Avery
Chief, Case Management Division