STATE OF CALIFORNIA
OFFICE OF THE COMMANDING GENERAL
STATE MILITARY FORCES - MILITARY DEPARTMENT
2829 Watt Avenue - P.O. Box 214405
Sacramento, California 95821

CAL ARNG Regulation
No. 640-2

7 February 1980

Personnel Records and Identification of Individuals
BOARD FOR CORRECTION OF MILITARY RECORDS

Section		Paragraphs
I.	GENERAL	1 - 2
II.	ESTABLISHMENT, FUNCTIONS, AND JURISDICTION OF THE BOARD	3 - 4
III.	APPLICATION FOR CORRECTION	5 - 9
IV.	ENTITLEMENT TO HEARING	10 - 14
V.	HEARING	15 - 17
VI.	ACTION ON APPLICATION	18 - 21
VII.	MISCELLANEOUS	22 - 24

SECTION I. GENERAL

1. PURPOSE. These regulations establish procedures for making application, and the consideration of applications, for correction of military records by the Commanding General acting through the Board for Correction of Military Records (hereinafter referred to as the Board). Any references to gender whether in the masculine or feminine is equally that of either gender.

2. AUTHORITY. Section 474 of the Military and Veterans Code provides that the Commanding General, under procedures established by him and approved by the Governor, and acting through the Board, may correct any military record of a California National Guardsman when he considers it necessary to correct an error or remove an injustice.

SECTION II. ESTABLISHMENT, FUNCTIONS, AND JURISDICTION OF THE BOARD

3. ESTABLISHMENT AND COMPOSITION. a. Pursuant to foregoing authority, the Board is established in the office of the Commanding General.

b. The Board will consist of military members of the California National Guard, active or retired, in such number, but not less than three, as may be appointed by the Commanding General. Three members present will constitute a quorum of the Board. The Commanding General will designate one member as the Chairman. In the event of absence, an Acting Chairman chosen by the Board will act as Chairman for all purposes.

4. The function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or an injustice and to make appropriate recommendations to the Commanding General. Only errors, ommissions or injustices resulting from actions of the California Army National Guard are subject to the jurisdiction of this Board.

This regulation supersedes CAL ARNGR 640-2, dated 19 February 1968.

SECTION III. APPLICATION FOR CORRECTION

5. GENERAL REQUIREMENTS. a. The application may but need not be submitted on a form provided by the Commanding General. All applications will be addressed to the Board.

b. Except as provided in "c" below, the application shall be signed by the person requesting corrective action with respect to his record and will either by sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim.

c. When the record in question is that of a person who is incapable of making application himself, or whose whereabouts are unknown, or when such person is deceased, for the purpose of bringing the matter before the Board the application may be made (except where compliance with the provisions of the law with respect to time limitations for filing an application may require otherwise) by such person as the Board shall determine to be competent and suitable and to have a proper interest therein, including but not limited to, a spouse, a parent, or relative. Such proof of suitability and proper interest will be submitted as may be required by the Board.

6. TIME LIMIT FOR FILING APPLICATION. A claimant, his heir, or legal representative must file the application for correction of a record with the Commanding General within three years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the claimant, his heir, or legal representative files an application more than three years after he discovers the error or injustice, he must include in his application his reasons why the Board should find it is in the interest of justice to excuse the failure to file application within the time prescribed above.

7. EXHAUSTION OF OTHER REMEDIES. No application will be considered until the applicant has exhausted all effective administrative remedies afforded him by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant.

8. OTHER PROCEEDINGS NOT STAYED. The application to the Board for correction of a record will not operate as a stay of any proceedings being taken with respect to the person involved.

9. REVIEW OF APPLICATION. Each application and the available records pertinent to the corrective action requested will be reviewed to determine whether to authorize a hearing or to deny the application without a hearing. The Board will make this determination in all cases except those in which the application has been denied administratively for the reason that the applicant has not exhausted all other effective administrative remedies available to him, or for the reason that the applicant did not file application within three years after he discovered the alleged error or injustice and did not submit any reason why the Board should find it to be in the interest of justice to excuse his failure to file the application within the prescribed three years. In connection with any application which it considers, the Board may recommend to the Commanding General that the records be corrected, as requested by the applicant, without a hearing. The Board may deny an application if it determines that insufficient evidence has been presented to indicate probable material error or injustice, that the applicant has not exhausted other effective administrative or legal remedies available to him, that effective relief cannot be granted, or that the applicant did not file his application within three years after he discovered the alleged error or injustice and that insufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file within the prescribed three years. If the application is denied, the applicant will be advised of the denial and that he is privileged to submit new and material evidence for consideration.

SECTION IV. ENTITLEMENT TO HEARING

10. GENERAL. In each case in whcih a hearing is authorized, the applicant will be entitled to appear before the Board either in person or by counsel of his own selection or in person with counsel.

11. NOTICE. a. In each case in which a hearing is authorized, the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least 30 days prior to the date of hearing, except that an earlier date may be set where the applicant waives his right to such notice in writing.

b. Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he may intend to call in his behalf. Cases in which the applicant notifies the Board that he does not desire to be present at the hearing, will be considered in accordance with paragraph 16b.

12. COUNSEL. As used in these regulations, the term "counsel" will be construed to include members in good standing of the Federal bar or the bar of any State, accredited representatives of vererans' organizations recognized by the Administrator of Veterans' Affairs under Section 3402 of Title 38, United States Code, and such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

13. WITNESSES. The applicant will be permitted to present witnesses in his behalf at hearings before the Board. It will be the responsibility of the applicant to notify his witnesses and to arrange for their appearance at the time and place set for hearing.

14. ACCESS TO RECORDS. a. The applicant will have access to such official records as are deemed necessary to an adequate presentation of his case. It will be the responsibility of the applicant to procure such evidence not contained in the official records of the Military Department as he desires to present in support of his case.

b. Classified or privileged matter will not be disclosed or made available without express finding of the Chairman that such disclosure is required in the case and is not detrimental to the public interest. Such disclosure must be in accordance with law and departmental regulations concerning the security of classified material. When appropriate the applicant may be supplied only with a summary or extract of classified matter.

SECTION V. HEARING

15. CONVENING OF BOARD. The Board will be convened at the call of the Chairman and will recess or adjourn at his order.

16. CONDUCT OF HEARING. a. The hearing will be conducted by the Chairman, and will be subject to his rulings so as to insure a full and fair hearing. The Board will not be limited by legal rules of evidence but will maintain reasonable bounds of competency, relevancy, and materiality.

b. If the applicant, after being duly notified, has indicated to the Board that he does not desire to be present or to be represented by counsel at the hearing, the Board will consider the

case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such application, any brief submitted by or in behalf of the applicant, and all available pertinent records.

c. If the applicant, after being duly notified, has indicated to the Board that he will be present or be represented by counsel at the hearing, and without good cause and timely notice to the Board, he or his representative fails to appear at the time and place set for the hearing, the Board may consider the case in accordance with "b" above, or will make such other disposition of the case as is indicated under the circumstances.

d. All testimony before the Board will be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded either verbatim or by summary as the Board determines.

17. CONTINUANCE. The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

SECTION VI. ACTION ON APPLICATION

18. ACTION BY THE BOARD. a. Deliberations, Findings, Conclusions, and Recommendations.

(1) Only members of the Board will be present during the deliberations of the Board.

(2) Whenever, during the course of its review of the case, it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(3) Following a hearing, the Board will make written findings, conclusions, and recommendations. A majority vote of the members present on any matter before the Board will constitute the action of the Board and will be so recorded.

(4) Where the Board deems it necessary to submit comments or recommendations to the Commanding General as to matters arising from but not directly related to the issues of any case, such comments and recommendations will be the subject of separate communication.

b. Minority Report. In case of a disagreement between members of the Board a minority report may be submitted, either as to the findings, conclusions, or the recommendations or to all, including the reasons therefor.

c. Record of Proceedings. When the Board has completed its proceedings, a record thereof will be prepared. Such record will indicate whether or not a quorum was present at the hearing and at the Board's deliberations. The record will include the application for relief, a transcript of any testimony, affidavits, papers, and documents considered by the Board, briefs and written arguments filed in the case, the findings, conclusions and recommendations of the Board, and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record so prepared will be certified by the Chairman or his designee as being true and complete.

d. Withdrawal. The Board may permit an applicant to withdraw his application without prejudice at any time before its proceedings are forwarded to the Commanding General.

19. ACTION BY THE COMMANDING GENERAL. The record proceedings of the Board will be forwarded to the Commanding General who will direct such action in each case as he determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary.

20. STAFF ACTION. a. Upon final action by the Commanding General the complete record in each case will be returned to the Board.

b. Upon receipt of the record of proceedings after final action by the Commanding General, the Board will communicate the decision to the applicant and counsel, if any.

c. When all necessary administrative action has been completed the applicant will be informed of such action by the Commanding General.

d. Written notice specifying the action taken and the date thereof will be transmitted to the Chairman of the Board.

e. The record of the decision of the Commanding General will not be filed in the military records of the subject of the application where the effect of such action would be to nullify the relief granted.

f. After action by the Commanding General on the record, the applicant or his counsel is entitled, upon request, to inspect the record of proceedings and to receive a copy of the Board's findings, conclusions, and recommendations, unless the Chairman considers that granting the request would be detrimental to the public interest.

21. Reconsideration. After final adjudication further hearing before the Board will be granted only upon presentation by the applicant of newly discovered relevant evidence not previously considered by the Board and then only upon recommendation of the Board and approval by the Commanding General.

SECTION VII. MISCELLANEOUS

22. STAFF ASSISTANCE. At the request of the Board, the Commanding General will assemble the original or certified copies of all available military records pertinent to the relief requested. Such records and all supporting papers will be transmitted to the Board.

23. EXPENSES. No expenses of any nature whatsoever voluntarily incurred by the applicant, his counsel, his witnesses, or by any other person in his behalf will be paid by the State of California.

24. CHANGES IN PROCEDURES. The Board may initiate recommendations for such changes in procedures as established herein as may be considered necessary for the proper functioning of the Board. Such changes will be subject to the approval of the Commanding General and the Governor.

CAL ARNGR 640-2

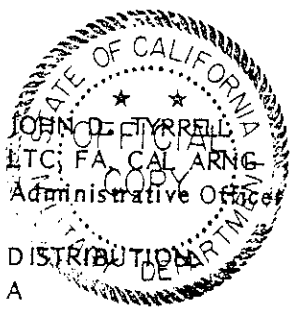
7 February 1980

(CAPA-EPMS)

BY ORDER OF THE GOVERNOR:

OFFICIAL:

FRANK J. SCHOBER, JR.
Major General
Commanding



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