

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DANIEL M. SANDOVAL,

Plaintiff,

v.

DEPARTMENT OF THE ARMY,

Defendant.

CASE NO. C17-5034RBL

ORDER

THIS MATTER is before the Court on Plaintiff Daniel Sandoval’s Motion for Summary Judgment [Dkt. #15] and on the Defendant Army Board for the Correction of Military Records (ABCMR)’s Cross Motion for Summary Judgment [Dkt. #17] Sandoval also asks the Court to strike [Dkt. #21] ABCMR’s Reply [Dkt. #19], calling it an unauthorized Surreply. That motion is DENIED.

The case involves an appeal of an administrative decision to discharge Sandoval from the U.S. Army Reserve. The Court’s review is on the record.

Sandoval entered the Army in July 2001, and he committed to stay in for eight years. He was soon transferred to the Washington Army National Guard. He was ordered to attend Officer Basic Course (OBC) training in 2005, but the orders were revoked because Sandoval failed his

1 physical fitness test. In February 2006, he was discharged from the National Guard into the  
2 Army Reserve (USAR), for failing to complete a branch or basic entry qualification course. Two  
3 months later, he was again ordered to attend OBC, starting in April. He was removed from the  
4 course for failing to pass height/weight standards. He was then evaluated for “officer  
5 elimination” for unsatisfactory performance. He appeared before the administrative separation  
6 board in March 2007. In January 2008, the board recommended that he be retained despite his  
7 substandard performance, and that he be trained instead in a specialty that suited his abilities.  
8 However, Sandoval was not eligible for OBC training while he was under administrative  
9 consideration for separation.

10         Meanwhile, the promotion board separately considered Sandoval for promotion to  
11 Captain. It did so in November 2006 (before the administrative separation review began), and  
12 again in November 2007, while that review was pending. Both times, Sandoval was not  
13 promoted because he did not meet the required educational standards.

14         In March 2008, the Army informed Sandoval he would be discharged because he had  
15 twice been denied promotion. He was discharged effective January 31, 2009.

16         Sandoval appealed to the ABCMR. He complained that he could not get the educational  
17 training he needed for promotion because he was denied OBC training, due to the pending  
18 administrative separation action (based on his performance). He asked to be allowed to attend  
19 OBC. The ABCMR sought and obtained an advisory opinion on this request, and the opinion  
20 recommended denial, because not only had Sandoval been passed over for promotion twice due  
21 to educational deficiencies, he was also facing an administrative separation for performance  
22 deficiencies. The ABCMR denied Sandoval’s appeal, and he sued.

1 Sandoval is *pro se*. He vaguely claims that the ABCMR violated his “constitutional  
2 rights,” and that the bases for his discharge were “fraudulent.” He seeks summary judgment on  
3 these claims. He argues first that his Mandatory Service Obligation (eight years) did not expire  
4 until July 18, 2009, and that that he could not be discharged before that obligation was met. He  
5 also claims that he could not have been legally discharged prior to March 2, 2009, because the  
6 Army “retained” him as of March 3, 2008; he claims that that retention lasted at least one year,  
7 no exceptions.

8 ABCMR’s argues, persuasively, that a discharge before the expiration of a soldier’s  
9 mandatory service obligation is not a violation of his rights—the obligation is binding on the  
10 soldier, but not the Army:

11 The statutory MSO can be terminated by the Army prior to its fulfillment.  
12 Separation due to discharge, dismissal or being dropped from the rolls of the  
13 Army terminates a soldier’s statutory obligation.

14 AR 135-91(2-1)(b) (2005). Sandoval does not address the merits of this position, or its common  
15 sense conclusion.

16 On the substance, ABCMR argues that its conclusion that Sandoval’s training  
17 opportunities were not wrongfully withheld were not arbitrary or otherwise actionable as a  
18 matter of law. It emphasizes that the standard of review for administrative appeals requires  
19 Sandoval to demonstrate that the ABCMR’s decision was “arbitrary, capricious, an abuse of  
20 discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). It argues that the  
21 ABCMR’s decision is entitled to “substantial deference” and that the validity of its resolution is  
22 “presumed.” *Center for Biological Diversity v. Kempthorne*, 588 F.3d 701, 707 (9th Cir. 2009)  
23 This Court must evaluate only the legality of the decision, and cannot second guess or otherwise  
24

1 substitute its judgement for that of the agency. *See Alcoa v Bonneville Power Admin.*, 698 F.3d  
2 774, 788 (9th Cir, 2012).

3 The ABCMR determined and explained that Sandoval's discharge for being twice passed  
4 over for promotion was not inequitable (despite his inability to attend OBC at the end of his  
5 tenure, and its refusal to permit yet another attempt was not arbitrary or capricious:

6 Based on the fact that the applicant had not completed his military education by  
7 the convening date of the November 2007 promotion selection board, he was not  
8 qualified for promotion. The requirement for completion of the OBC is a long-  
9 standing requirement for promotion to CPT and he had the responsibility to  
10 ensure that he was physically fit prior to attending OBC. He provided insufficient  
11 justification to show why he should be reinstated in the USAR.

12 Rec 0007.

13 Despite his vehement and sincere claim that the decision was wrong, Sandoval has not  
14 established that the discharge decision was arbitrary. The ABCMR's decision is entitled to  
15 substantial deference, and even if this Court would have given him another chance, it is not in a  
16 position to second guess the lawful decision that was made. There is no evidence of "fraud" in  
17 any of the decisions, and the record does not establish that there is any basis for reversing the  
18 ABCMR's decision.

19 Sandoval's Motion for Summary Judgment on his claim that his discharge was arbitrary  
20 is DENIED. The ABCMR's Motion for Summary Judgment on its claim that the decision was

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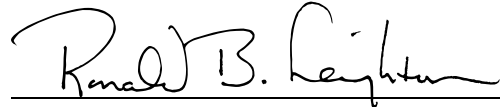
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1 proper is GRANTED. Sandoval's appeal is DENIED and his claims are DISMISSED. The  
2 ABCMR's decision is AFFIRMED.

3 IT IS SO ORDERED.

4 Dated this 11<sup>th</sup> day of September, 2017.

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8 Ronald B. Leighton  
United States District Judge