

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DANIEL M. SANDOVAL,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF
THE ARMY; ARMY BOARD
CORRECTION OF MILITARY
RECORDS,

Defendants-Appellees.

No. 17-36027

D.C. No. 3:17-cv-05034-RBL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Daniel M. Sandoval appeals pro se from the district court's summary judgment in his action challenging the Army Board for Correction of Military Records's ("ABCMR") denial of Sandoval's application for correction of his

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

military record. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's decision on cross-motions for summary judgment. *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011). We affirm.

The district court properly granted summary judgment for defendants because Sandoval failed to raise a genuine dispute of material fact as to whether the ABCMR's decision to deny his application was arbitrary, capricious, or not supported by substantial evidence. *See* 5 U.S.C. § 706(2); *Guerrero v. Stone*, 970 F.2d 626, 628 (9th Cir. 1992) (setting forth standard governing judicial review of ABCMR decisions).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Sandoval's motion to supplement the record (Docket Entry No. 14) is denied.

AFFIRMED.