

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 October 2023

DOCKET NUMBER: AR20220007943

APPLICANT REQUESTS: reconsideration of his previous requests for retroactive retirement under temporary early retirement authority (TERA) instead of separation under the special separation benefit (SSB) or alternatively, reimbursement of SSB recouped from him.

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

- DD Form 149 (Application for Correction of Military Record), 31 July 2022
- Self-authored statement, 31 July 2022
- Military Entrance Processing Command (MEPCOM) message, May 1994 containing MILPER Message Number 94-200
- Headquarters (HQ), III Corps and Fort Hood, Separation Orders 115-0253, 25 April 1995
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 30 August 1995
- Veterans Administration (VA) Rating Decision, 31 December 2009
- DD Form 215 (Correction to DD Form 215), 11 May 2011
- DD Forms 149 from prior cases, 2010 and 2013
- Veterans Administration (VA) file data, undated
- extract, AR20140010493, 19 March 2015
- ARBA letter, 20 March 2015
- US Army Human Resources Command (AHRC) Advisory Opinion, 13 June 2018
- Applicant letter, 13 June 2018 (Response to AHRC Advisory Opinion)
- letter, Applicant, 27 July 2022 (Letter to Secretary of the Army)
- ARBA letter, 8 September 2022
- VA letter, 16 September 2022 (Commissary Privileges)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20100012005, 25 January 2011; AR20110004802, 29 November 2011; AR20230013610, 17 April 2014; AR20140010493, 19 March 2015; AR20160015319, 18 January 2019; and

2. The applicant states, in effect:

a. He served for more than 21 years and was denied his military retirement compensation. He was a sergeant first class/E-7 who served over 18 years on active duty with 3 years and 8 months in the Inactive Ready Reserve.

b. He is entitled to his retirement compensation and Veterans Administration benefits. He was not properly informed of his retirement options.

c. He was eligible for early retirement under the TERA program at the time but was informed that he was not eligible for this program. He elected to retire under the SSB program which was a very bad decision in hindsight.

d. He was willing to live with that decision until the Veterans Administration recouped his SSB compensation. The Veterans Administration has already recouped his SSB compensation.

e. He questions why one can retire with 15 years but another cannot retire with 18 years active service and 3 years and 8 months inactive service.

3. The applicant provided copies of:

a. His DD Form 149 application and self-authored statement outlined above.

b. MEPCOM message, May 1994 containing MILPER Message Number 94-200 (FY05 Enlisted Early Retirement Program) (Previously submitted and considered by the Board)

c. Headquarters (HQ), III Corps and Fort Hood, Separation Orders 115-0253, 25 April 1995 (Previously submitted and considered by the Board).

d. DD Form 214, 30 August 1995 (Previously submitted and considered by the Board).

e. An undated AHRC webpage containing applicant information (New evidence).

f. DD Forms 149, 21 February 2010 and 24 June 2013 (Previously submitted and considered by the Board).

g. Extract of ABCMR Case Number AR20140010493, 19 March 2015, page 1 (Previously submitted and considered by the Board).

h. ARBA Exhaust Letter, 20 March 2015.

i. Previous self-authored statement, 18 November 2016 (Previously submitted and considered by the Board).

j. AHRC Advisory Opinion, 13 June 2018 (Previously submitted and considered by the Board).

k. Applicant letter to the Secretary of Defense, 27 July 2022 (New evidence). This letter reads, in effect:

(1) He served 18 years, 1 month, and 18 days of active duty service when he retired on 30 August 1995. He served 3 years of Individual Ready Reserve service, completed on 29 August 1998. In return he was awarded the SSB compensation to exit active duty early which, the Veterans Affairs has taken back unjustly there by nullifying a completed contract between he and the United States Government. He earned his VA entitlements after completion of his first consecutive 29 months of Honorable Active duty Service. That requirement was completed after his first period of Honorable Service ending on 14 January 1980. Federal Law now authorizes both military retired pay and VA compensation.

(2) He had a very personal reason for wanting to retire early. He didn't want to cash in 18 years of service for what amounted to a little over 3 years of base pay at the time. He was willing to accept and live with this bad decision until his SSB retirement compensation was recouped. Beginning on January 1, 2007, to October 1, 2009, the VA withheld 100% of disability compensation despite the fact that he had not been able to do sustained work since 2005. He thought that the Army and the VA would look at this and apply common sense. The Army should have already retired him out of fairness and justice. It has said it is a VA problem and we have no control over the VA. It's not the VA that failed him it was the U.S. Army. The Army does have control over when soldiers leave and enter the military service. But it failed him when it came to his not being able to retire under the authority of MILPER Message 94-200 authorizing him to apply as a 63H4O for the Temporary Early Retirement Program. He did apply but was told by the battalion PAC that his MOS and Grade wasn't eligible. He knows now that wasn't right or correct.

(3) He begs for justice. He really doesn't understand why it is so difficult to see the injustice in the recouping of his Special Separation Benefit (SSB), awarded as Early Retirement Incentive Compensation. It was an incentive to leave active duty 1 year and 8 months early to help the Army to meet its mandated draw down goals.

(4) His orders do not inform him that his SSB will be recouped if he receives compensation or medical care from the Veteran Administration for service connected

disabilities. Neither is there any other document where he acknowledged he was notified of this. As it turns out he was eligible for the Early retirement Program but wrongly informed. He was entitled to this information the same as any other service member that received it.

(5) He followed his orders and completed his agreement. He is entitled to VA medical benefits and compensation when applicable. The HRC and ABCMR haven't shown that they can fairly correct this. The HRC must correct this mistake. This recoupment took place 15 years after he left active duty. He believes that the HRC should retire him Under the TERA in effect at the time he left active duty.

l. ARBA letter, 8 September 2022, in which upon review of the applicant's request, it was determined he provided matters not previously considered by the Board. As a result, a new case was opened by the ABCMR for consideration of his request.

m. VA letter, 16 September 2022 (granting commissary privileges) (New evidence).

4. A review of the applicant's service records shows:

a. On 13 July 1977, he enlisted in the Regular Army. He completed Basic Combat Training, he completed Advanced Individual Training, and he was awarded military occupational specialty 63H (Track Vehicle Repair).

b. On 1 June 1990, he was promoted to sergeant first class, following multiple reenlistments.

c. He served in Southwest Asia during the Persian Gulf War from 16 January 1991 to 28 February 1991.

d. Orders 115-0253, issued by Headquarters (HQ) III Corps, Fort Hood, 25 April 1995, show approval of his separation under the SSB. These orders also show his SSB/Voluntary Separation Incentive (VSI) Reserve commitment ended on 30 August 1998, and noted, in part, in the event he became eligible for retired pay, his VSI/SSB would be recouped.

e. On 8 June 1995, he enlisted in the US Army Reserve (USAR) for 3 years.

f. A DA Form 4688/1-E (Certificate and Acknowledgement of Service Requirements for Individuals Enlisting or Reenlisting in the Individual Ready Reserve (IRR)), completed on the same date, shows:

- he was enlisting as a prior service member with no remaining statutory military service obligation

- he affirmed this enlistment could require his participation in the Ready Reserve for the entire period of his USAR enlistment
- his time in the IRR would count toward computation of time-in-grade and time-in-service for promotion consideration and longevity for pay purposes
- to qualify for pay purposes, he had to serve on active duty for training or be a member of a Selected Reserve troop program unit (TPU) and attend unit training
- he could qualify for retirement benefits at age 60 if he earned 20 qualifying years of Federal service and was a member of the Reserve Component for at least 8 years
- he could seek transfer to a TPU if a vacancy existed

g. A DA Form 3286-32-R (Addendum to Certificate and Acknowledgement of Service Requirement for Enlistment under the Dual Component Enlistment Option), 8 June 1995, shows he understood:

- the Dual Component Enlistment Option required him to be within 89 days of "terminal leave" for the purpose of ETS (expiration term of service)
- he agreed to be assigned to ARPERCEN, USAR Control Group (Reinforcement), St. Louis, MO

h. An endorsement to his Transition Orders 115-0253, issued by III Corps, 8 June 1995, shows he had enlisted and was assigned to ARPERCEN, USAR Control Group (Reinforcement). He was not required to report to his unit of assignment within 30 days of discharge from active duty.

i. On 30 August 1995, he was honorably discharged by reason of Early Release Program-Special Separation Benefit and transferred to control of the USAR Control Group (Reinforcement). His DD Form 214 shows he completed 18 years, 1 month, and 18 days of net active service and 8 months and 2 days of total prior inactive service. Block 18 (Remarks) shows he received an SSB of \$70,951.18.

j. On 22 September 1995, he was assigned to a Troop Program Unit (TPU).

k. On 18 July 1996, HQ, 75th Division (Exercise) issued Orders 200-05, reassigning him to the USAR Control Group (Reinforcement) by reason of IRR no show, effective the same date.

l. The U.S. Army Human Resources Command (HRC) Soldier Management System website shows the applicant was involuntarily discharged from the USAR, effective 29 August 1998.

m. A DA Form 5016 (Chronological Statement of Retirement Points) shows he accumulated 60 USAR membership points (15 points annually) for the period 11 November 1994 through 10 November 1998.

5. In ABCMR Docket Number AR20100012005, 25 January 2011 shows he stated, in effect, he had accepted the SSB not realizing the VA would recoup the bonus following treatment and a grant of service-connected disability compensation. The Board found he had voluntarily requested SSB and denied his request.

6. In ABCMR Docket Number AR20110004802, 29 November 2011, he stated, in effect, while he voluntarily accepted SSB, the VA took it back; this was unjust; he described his disabilities. The Board indicated he served 18 years on active duty when he chose SSB and he was not eligible for disability retirement.

7. In ABCMR Docket Number AR20120000522, 2 February 2012, his request to be retired under TERA was administratively closed because he had already requested a reconsideration with the ABCMR.

8. In ABCMR Docket Number AR20130013610, 17 April 2014, he stated his chain of command misinformed him that he did not qualify for TERA. The Board found no evidence he applied for TERA or that he was misinformed.

9. In ABCMR Docket Number AR20140010493, 19 March 2015, the Board determined he had not provided sufficient evidence to grant the request for retirement under TERA because there was no evidence in his record showing he applied for it.

10. On 13 June 2018, AHRC provided ARBA an advisory opinion. It reads, in part:

a. The applicant's records reflect his selection for a voluntary separation for Separation Benefit (SSB). (Applicant) may have been eligible for TERA. There is no record of his request for TERA. (The Applicant) indicated, in a previous ARBA claim, he was informed by his chain of command that he was being considered for involuntary separation as his reason for selecting SSB. If (the Applicant) was being considered for involuntary separation under another provision, or under consideration for UCMJ offenses, he would have been ineligible for TERA based on Army Policy in 1995.

b. We do not believe administrative relief is possible.

11. In ABCMR Docket Number AR20160015319, 8 January 2019, the applicant requested further reconsideration of retirement under TERA and correction of his records to show he completed his USAR IRR assignment. The Board denied this request as he did not demonstrate existence of an error or injustice or that he completed his IRR commitment.

12. In ABCMR Docket Number AR20190008971, 18 November 2021, the applicant stated he found out his military occupational specialty and rank qualified for downsizing 23 years later and provided a MILPER Message showing Soldier on permanent change of station orders must be notified of the change, but he was not notified. The Board found the evidence did not demonstrate the existence of a probable error.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's contentions, the military record, regulatory guidance and TERA eligibility requirements. The Board noted that the applicant held an approved MOS within the period of service as prescribed by TERA, and met all eligibility requirements for TERA. The Board further determined that the applicant was not properly informed of his retirement benefits in order to make informed decision regarding his retirement options. After careful review of the terms and conditions of TERA, the Board agreed that relief was warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20190008971, dated 18 November 2021. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show that that he qualified for the Temporary Early Retirement Authority and is eligible for retired pay, the exact amount of which to be determined by DFAS.

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

2. The National Defense Authorization Act (NOAA) for Fiscal Year (FY) 1992 authorized two voluntary incentive programs to facilitate the Army's reduction in force, Post-Gulf War. All Army Activities (ALARACT) message, dated 20 December 1991, Subject: Voluntary Incentive Programs to Support Army Drawdown, announced the SSB and VSI as strength reduction separation incentives.

a. The SSB was a lump sum incentive, equal to 15 percent of a Soldier's annual basic pay and multiplied by his years of service. Those Soldiers who accepted an SSB were required to enter into a written agreement to service in the Ready Reserve for not less than 3 years. In addition, Soldiers who subsequently qualified for retired pay had to have the SSB recouped by deducting a proportionate amount each month from retired pay. SSB recipients were eligible for certain benefits, to include access to the commissary and exchange.

b. The VSI entailed an annual annuity payment equal to 2.5 percent of the Soldier's annual basic pay, multiplied by his years of service. It was paid for twice the number of years the Soldier had served. As with the SSB, Soldiers had to enlist into the Ready Reserve for the entire period during which they received the VSI payments. As the SSB, the VSI was recouped in the event the Soldier became eligible for retired pay.

3. Congress enacted TERA as part of the National Defense Authorization Act of Fiscal Year 1993; it has been incorporated into Title 10 (Armed Forces) under section 12731a (Temporary Special Retirement Qualification Authority). The intent of this provision was to assist in the military drawdown of forces by permitting selected military members to retire early when they had between 15 and 20 years of service. The Secretary of the Army could designate the ranks and military specialties that were eligible to apply. Retirement under this program was not a right; rather, the Army approved requests on an individual basis and according to the needs of the service. The TERA program ended in September 2001.

4. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations. Paragraph 16-8 (Reduction in Authorized Strength) states Soldiers could be discharged from active duty prior to their ETS when specifically authorized due to budgetary or authorization limitations.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, listed each SPD with its associated authority and narrative reason for separation. The regulation showed SPD "KCB" applied to voluntary discharges; the authority was Army Regulation 635-200, paragraph 16-8; and the narrative reason for separation was "Early Release Program - Special Separation Benefit." The entry for SPD "KCB" also referenced note 2, which required the use of this SPD when a Headquarters, Department of the Army or other directive announced voluntary early separation programs with monetary incentives.

6. MILPER message 93-164, 20 April 1993, Subject: FY93 Early Retirement Program, and MILPER message 94-200, 12 May 1994, Subject: FY95 Enlisted Early Retirement Program, detailed requirements, as well as the grades and MOS that were eligible for TERA. MILPER message 94-200 specifically identified MOS 63H at the grade of SFC as being eligible for TERA.

//NOTHING FOLLOWS//