

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230000428

APPLICANT REQUESTS: recalculation of his retirement service credit.

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

- DD Form 149 (Application for Correction of Military Record)
- NGB Form 22 (National Guard Bureau Report of Separation and Record of Service)
- Three (3) Army National Guard Current Annual Statements
- State of NC Office of The Adjutant General (OTAG) memorandum
- State of NC Joint Forces Headquarters (JFHQ) orders
- JFHQ-NC-J1 endorsement

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect:

a. In 2006 he was told that he had enough credit/years for retirement from the National Guard, so he got out. In 2018, he attempted to contact the Retirement Center in Raleigh; however, after several messages left and no response, he contacted his senator. He finally contacted the Retirement Center and was told to come in and get his ID card. He went in and was told that everything was good and that when he gets close to 60, come back in to sign up.

b. On 3 October 2022, he called to set up an appointment, which is when he was informed that he was not eligible as he only had 19 years and 11 months. He does not understand since he was told he was good in 2006 and 2018, but now he is not. Who would give up all those years and not retire? He went by what he was told and now the Retirement Center says he cannot retire. He does not know why there is an error in his

records when he was informed in 2006 that he can retire and was issued a 20-year letter, but then in 2022 tell him he is not eligible.

3. The applicant provides:

a. NGB Form 22 reflects he was honorably discharged on 15 February 2006 from the North Carolina Army National Guard and as a Reserve of the Army, under the provisions of NGR 600-200, paragraph 8-26i, expiration of term of service – no obligation. He served 10 years, 1 month, and 11 days of net service this period; 1 year, 10 months, and 16 days of prior Reserve Component Service; 8 years, 11 months, and 28 days of prior active federal service; and, a total of 20 years, 11 months, and 25 days of total service for pay and retired pay.

b. Three (3) Army National Guard Current Annual Statements reflect the following:

(1) Date prepared 8 March 2006, he had 4029 active duty points, 4621 total career points, 4606 total points for retirement pay and 20 years, 11 months, and 25 days of creditable service for retired pay.

(2) Date prepared 29 March 2006, he had 4029 active duty points, 4621 total career points, 4606 total points for retirement pay and 20 years, 11 months, and 25 days of creditable service for retired pay.

(3) Date prepared 3 October 2022, he had 3999 active duty points, 4591 total career points, 4576 total points for retirement pay and 19 years, 11 months, and 25 days of creditable service for retired pay.

(4) State of NC Office of The Adjutant General memorandum dated 29 March 2006, Subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), reflects he was notified of, having completed the required years of service, his eligibility for retired pay upon application at age 60 in accordance with provisions of the Title 10, U.S. Code, Chapter 1223.

(5) State of NC Joint Forces Headquarters (JFHQ) orders 101-818, dated 11 April 2006, reflects he was honorably discharged from the Army National Guard, effective 15 February 2006.

(6) JFHQ-NC-J1 endorsement, suspense dated 30 June 2006, reflects the NGB Form 23D, Notification of Eligibility for Retired Pay at Age 60, was forwarded for preparation in accordance with OTAGNC Pam 600-1883. The SBP Checklist was also enclosed to assist in the completion of the SBP packet.

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

a. He enlisted in the Regular Army on 7 September 1983 for four (4) years. He reenlisted for an additional four (4) years on 5 June 1987.

b. On 16 February 1993, he enlisted in the Army National Guard for three (3) years.

c. He extended his 16 February 1993 enlistment as follows:

- 2 January 1996, three (3) year extension, new expiration of term of service (ETS) of 15 February 1999
- 6 December 1998, three (3) year extension, new ETS of 15 February 2002
- 18 November 2001, three (3) year extension, new ETS of 15 February 2005

d. As previously stated in paragraph 3a, the applicant was honorably discharged on 15 February 2006 from the NCARNG and as a Reserve of the Army, under the provisions of NGR 600-200, paragraph 8-26i, ETS – no obligation.

5. National Guard Bureau advisory opinion, digitally signed 8 August 2023, recommends approval, correction of his records to show 20 years of creditable service towards a non-regular retirement, the applicant's discharge order be corrected accordingly and reflect transfer to the Retired Reserve. Further stating:

a. Soldier reports that he was previously notified of his retirement eligibility from the National Guard. However, following his discharge, he was informed about his ineligibility due to having only 19 years and 11 months of service. Soldier contends that his election for discharge from service was based on the confidence that he had reached 20 years of qualifying service for a non-regular retirement. Therefore, he requests his records to be corrected and reflect as such in order to be eligible for retirement pay.

b. Soldier formerly served in the North Carolina Army National Guard (NCARNG). He began his military service in the active component on 10 June 1983. Following a short civilian break, he joined the National Guard where he served continuously until his honorable discharge on 15 February 2006. According to orders # 101-818 dated 11 April 2006, Soldier was discharged in accordance with National Guard Reserve (NGR) 600-200, Para 8-26i (ETS No Obligation). Similarly, his NGB 22, Record of Separation and Record of Service, indicates the same authority and reason as well as his total service for retired pay as 20 years, 11 months, and 25 days. On 29 March 2006, Soldier was issued a Notification of Eligibility (NOE) for Retired Pay at Age 60 (Twenty Year Letter). Concurrently, his NGB 23B also dated 29 March 2006 reflects a total of 20 years, 11 months, and 25 days of creditable service for retired pay. On the other hand, his new NGB 23B prepared on 3 October 2022 shows Soldier's total years of service as 19 years, 11 months, and 25 days.

c. Title 10 U.S. Code (USC) Section 12738 provides limitations on revocation of retired pay.

(1) Pursuant to Section 12738(a) after a person is granted retired pay under this chapter, or is notified in accordance with section 12731(d) of this title that the person has completed the years of service required for eligibility for retired pay under this chapter, the person's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed as required by section 12731(a)(2) of this title, unless it resulted directly from the fraud or misrepresentation of the person.

(2) Additionally, in accordance with (IAW) Section 12738(b) the number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination and when such a correction is made the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date the person is granted retired pay.

d. It appears that Soldier's records of service (NGB 22 & NGB 23A) at the time of his discharge erroneously reported his total service for retired pay to be 20 years, 11 months, and 25 days. This allowed the issuance of Soldier's 20 Year Letter. Based on the above provisions, Soldier's notification of eligibility for retired pay may not be revoked or denied though it was issued in error. Nevertheless, his total years of service may be adjusted to correct any error for retired pay purposes.

e. After consultation with NCARNG about this matter, it provided a comprehensive memorandum detailing the timeline of events and facts surrounding the issue, and thus leading to Soldier's erroneous discharge. The State opined that a miscommunication between its personnel sections (RPAM & OPM) led to the miscalculation of Soldier's service time and erroneous issuance of NOE for retirement pay. The State further noted that there is no evidence of deceit or misconduct for Soldier was separated with the belief he completed 20 years of service. Therefore, it recommends that Soldier be entitled to retirement pay and benefits and that his years of service be adjusted to 19 years 11 months and 25 days. Additionally, it recommends that Soldier's separation orders and NGB 22 be corrected and reflect transfer to the Retired Reserves.

f. While it is apparent that Soldier did not have 20 years of service at the time of his discharge, he was however separated with that assumption, which his election for a discharge was based upon. It follows that Soldier acted in good faith and had no intent of deceit or misconduct. Had the Soldier not been misinformed about his retirement eligibility, he likely would have stayed in until reaching his 20-year service requirement.

6. The applicant was notified of the advisory opinion provided by the National Guard Bureau. He was afforded the opportunity to submit comments on the advisory opinion and the applicant concurred.

7. Department of Defense Instruction 1215.07, dated 24 January 2013, establishes policy, assign responsibilities, prescribe procedures, and establish requirements for the crediting of active and reserve service for non-regular retirement in accordance with chapter 1223 of Title 10, United States Code (U.S.C.).

8. Army Regulation 135-180 (Army National Guard and Army Reserve – Retirement for Non-Regular Service), prescribes policies and procedures governing non-regular retirement.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The Board concurs with the opinion of the advisory official. The applicant's records should be corrected to show 20 years of creditable service towards a non-regular retirement and his discharge order should be corrected accordingly and reflect transfer to the Retired Reserve.

REFERENCES:

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 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.

2. Department of Defense Instruction 1215.07, dated 24 January 2013, establishes policy, assign responsibilities, prescribe procedures, and establish requirements for the crediting of active and reserve service for non-regular retirement in accordance with chapter 1223 of Title 10, United States Code (U.S.C.).

3. Army Regulation 135-180 (Army National Guard and Army Reserve – Retirement for Non-Regular Service), prescribes policies and procedures governing non-regular retirement.

a. Paragraph 2-1a provides the eligibility age for retired pay, an individual must have attained the minimum age prescribed by law, which is 60.

b. Paragraph 2-2 states, to be eligible for retired pay at or after the age specified in paragraph 2-1, an individual need not have military status at the time of application, but must have completed one of the following:

- A minimum of 20 creditable years of qualifying service computed under 10 USC 12731(f)
- At least 15 and less than 20 years of qualifying service, computed under 10 USC 12732, if the individual is to be separated because the Soldier has been determined unfit for continued Selected Reserve service, and none of the conditions in 10 USC 12731b(b) exist

//NOTHING FOLLOWS//