

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 November 2023

DOCKET NUMBER: AR20230000694

APPLICANT REQUESTS: reconsideration of his previous request for correction of Block 23 (Type of Separation) of his DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 1 May 2016 to show "Retired Reserve" vice "Discharged."

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

Reconsideration Letter

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 Dockets Number:

- AR20170009511, on 15 May 2019
- AR20190011042 on 18 May 2021

2. The applicant states back in May 2016, he went to Fort McCoy, WI, to start his processing out of the Army. While he was there, he spoke to a civilian employee. During their discussion, he showed the employee his 20-Year letter from the U.S. Army Human Resources Command (HRC). They also discussed at the time that he wanted to file a Congressional Inquiry to be allowed to reenter Full Active Duty. The civilian employee proceeded to instruct him on what he needed to do. Once they were done talking, the lady handed him his DD Form 214. It wasn't until after turn-in, that he noticed it stated Separated instead of Retired Reserves. He then contacted the ed the same civilian employee, and she instructed him to continue with the appeal to be allowed to him to return to full Active Duty instead of first sending a memo for correction. He is aware of the Army Regulations that are set forth, but he was not aware of the corrections step that needed to take place within the time frame. As soon as he learned of the corrections needed, he started the process. As of 6 November 2021, he was determined 100% unemployable by the Department of Veterans Affairs. He is trying to apply for Tricare for Life due to his medical status, but he is being told that he needed his retirement ID. He has contacted DEERS and he is not in the DEERS system because of his current separation status.

3. Review of the applicant's service records shows:

a. The applicant was born on XX [REDACTED]. He will turn 60 years of age in [REDACTED] 2027. He enlisted in the U.S. Army Reserve (USAR) on 17 June 1988. He served through multiple reenlistments and attained the rank/grade of staff sergeant (SSG)/E-6.

b. He entered active duty in the Active Guard Reserve (AGR) program on 25 January 2004.

c. On 13 March 2014, the U.S. Army Human Resources Command issued him a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter). The letter informed him that he had completed the required years of qualifying Reserve service and is eligible for retired pay on application at age 60 in accordance with Title 10, U.S. Code, Chapter 1223.

d. During October 2010, he received a derogatory change of rater NCO Evaluation Report (NCOER) covering 8 months of rated time from 21 September 2009 through 16 May 2010. It shows he "Need Improvement" in the areas of Competence and Responsibility and Accountability. His overall rating was "Marginal", and his potential rating was 4/Fair.

e. He was considered by a Qualitative Management Program (QMP) board that selected him for non-retention on active duty.

f. Accordingly, on 23 February 2016, HRC published Orders D-02-690085 honorably discharging the applicant from the AGR/USAR effective 1 May 2016. He was authorized/entitled to half separation pay per Title 10, U.S. Code, section 1174." The order credited him with 13 years, 2 months, 27 days of continuous active federal service on 1 May 2016, and a total of 26 years and 6 months of total service for basic pay on 1 May 2016.

g. He was honorably discharged from active duty on 1 May 2016 in accordance with chapter 4 (voided and reissued as chapter 19) of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separation) due to "Non Retention on Active Duty." His DD Form 214 shows he completed 12 years, 3 months, and 7 days of active service. Block 23 (Type of Separation) of his DD Form 214 shows "Discharge." He was assigned Separation Code JGH.

h. On 9 June 2016 (ABCMR Docket Number AR20160007438), in response to his petition to remove the contested NCO Evaluation Report, the Board denied his request after it determined there is insufficient evidence to show the contested NCOER contains any administrative or substantive deficiencies or that it was not prepared in compliance with applicable regulations and policies. The applicant has not shown evaluations

rendered by the rating officials represented anything other than their objective judgment and considered opinions at the time they prepared the NCOER or that they exercised faulty judgment in evaluating him as they did.

i. On 9 November 2017, the Army Discharge Review Board reviewed his discharge and determined he was properly and equitably discharged. The ADRB denied his request to change the reason for his separation. The ADRB did, however, change the authority for discharge from chapter 4 to chapter 19 of AR 635-200.

k. On 15 May 2019 (ABCMR Docket AR20170009511), the Board considered his request for:

- reconsideration to remove the NCOER covering the period 20090921 thru 20100516
- a change to the reentry eligibility (RE) code from RE-4 to RE-1
- reinstatement into the AGR Program
- back pay for time lost as a result of being released in error
- promoted to sergeant first class (SFC)/E-7 due to his promotion packet being pulled for the Qualitative Management Program (QMP) board

(1) After reviewing the application and all supporting documents, the Board determined that relief was not warranted. Based upon the documentary evidence presented by the applicant and found within the military service record, the Board found insufficient evidence of an error or injustice which would warrant a correction of the applicant's record.

(2) After reviewing the facts and circumstances, the Board found that all due process protections were afforded the applicant and that the processing of both the NCOER and the QMP was done within regulatory guidelines and standards. For that reason, the Board recommended that denying the requested relief was appropriate personal appearance before the Board

l. On 18 May 2021 (ABCMR Docket AR20190011042) the Board considered his request for correction of Block 23 (Type of Separation) of his DD Form 214 ending on 1 May 2016 to show "Retired Reserve" vice "Discharged."

(1) After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and regulatory guidance. Based on the documentation available for review, the Board found insufficient evidence that the applicant qualifies for retirement from the U.S. Army. Regular Army and the Army Reserve operate under differing authorities and procedural variances do not necessarily reflect an error or injustice. The applicant's DD214 for the period ending 1

May 2016 correctly reflects his last period of continuous active duty upon completion of which he was honorably discharged.

(2) The Board also noted the applicant’s application for voluntary retirement from the USAR and a memorandum from the Human Resource Command, “SUBJECT: Notification of Eligibility for Retired Pay at non-Regular Retirement (20-Year Letter)” notifying him that he has completed the required years of qualifying Reserve service and is eligible for retired pay upon application at the age of sixty. In the absence of documentation by which the Board can determine that the applicant qualified for retirement from the Army, there is no basis upon which to grant the request.

4. By regulation (AR 635-200), paragraph 12–4 (Twenty-year retirement law (10 USC 3914), (a) A Soldier who has completed 20 but less than 30 years of active federal service in the U.S. Armed Forces may be retired at his or her request. The Soldier must have completed all required service obligations at the time of retirement.

5. By regulation (AR 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. For Block 23, Type of Separation, for an enlisted Soldier, enter the appropriate term listed below:

- REFRAD (Release from Active Duty) Discharge
- Retirement REFRAD and order to active duty in another status
- Release from ADT Release from custody and control of the Army.
- Release from ADT and discharge from the Reserve of the Army and return to the ARNG.

6. By regulation (AR 635-5-1), Separation Code JGH is the appropriate code to discharge an enlisted Soldier who was not selected for retention.

7. Retired Reserve is a term used to refer to non-regular retirement. Members who accumulate 20 or more years of qualifying service are eligible for reserve retirement when they reach age 60 or, in some cases, a lesser qualifying age.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant was born in 1967 and will turn 60 years of age in 2027. He was issued a 20-Year letter and will be eligible for retired pay upon

application at age 60. He entered active duty in the AGR program in January 2004. During this period of active duty, he received a derogatory NCOER which triggered his consideration by a Qualitative Management Program (QMP) board that selected him for non-retention on active duty. He was discharged accordingly from the AGR/USAR effective 1 May 2016 with 13 years, 2 months, and 27 days of active service. He was authorized/entitled to half separation pay per Title 10, U.S. Code, section 1174. Based on the documentation available for review and the applicant's contention in his request for reconsideration, the Board again found insufficient evidence that the applicant qualifies for retirement from the U.S. Army. The Regular Army and the Army Reserve operate under differing authorities and procedural variances do not necessarily reflect an error or injustice. The applicant's DD Form 214 for the period ending 1 May 2016 correctly reflects his last period of continuous active duty upon completion of which he was honorably discharged.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| : | : | : | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| ■ | ■ | ■ | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Dockets Number AR20170009511, on 15 May 2019 and AR20190011042 on 18 May 2021.

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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 635-8 (Separation Processing and Documents) prescribes the separation documents that must be prepared for Soldiers upon retirement, discharge, or release from active duty service or control of the Active Army. It established standardized policy for preparing and distributing the DD Form 214. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The instruction for Block 23, Type of Separation, is to enter the appropriate term listed below (For enlisted personnel)

- REFRAD.
- Discharge.
- Retirement.
- REFRAD and order to active duty in another status.
- Release from ADT.
- Release from custody and control of the Army.
- Release from ADT and discharge from the Reserve of the Army and return to the ARNG.

2. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 12 sets policies and procedures for voluntary retirement of Soldiers because of length of service and governs the retirement of Soldiers (Active Army, ARNG, and USAR) who are retiring in their enlisted status. Paragraph 12-4 Twenty-year retirement law (10 USC 3914) states a Soldier who has completed 20 but less than 30 years of Active Federal Service in the U.S. Armed Forces may be retired at his or her request. The Soldier must have completed all required service obligations at the time of retirement.

b. Chapter 5 applies to separation for the convenience of the Government. Paragraph 5–15. Early release of Reserve Component personnel serving AGR tours under 10 USC 12301(d), USAR or ARNG AGR Soldiers serving tours under 10 USC 12301(d) may be released from active duty for the convenience of the Government, prior to completion of their AGR tour under the following circumstances:

(1) AGR Soldiers may be voluntarily released from active duty, at their request, when such release is fully justified and determined to be in the best interest of the Army.

This provision does not apply to USAR AGR Soldiers denied continued service under the Qualitative Management Program (QMP). However, those Soldiers may request voluntary discharge/release from active duty (REFRAD) in accordance with paragraph 19–13.

(2) AGR Soldiers serving on an initial tour as recruiters (that is, are on an initial AGR tour having entered the AGR program for the purpose of recruiting) may be involuntarily released from active duty when a determination has been made that they are unqualified, ineffective, or unsuitable for continued recruiting duty, and that early release is in the best interest of the Government.

c. Chapter 19 covers the QMP program. NCOs whose performance, conduct, and/or potential for advancement do not meet Army standards, as determined by the approved recommendations of HQDA centralized selection boards responsible for QMP screening, will be denied continued service. The QMP is not intended as a substitute, and does not relieve commanders of the responsibility, for initiation of separation proceedings under other provisions of this regulation when required or appropriate.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. Separation Code JGH is the appropriate code to discharge an enlisted Soldier who was not selected for retention.

//NOTHING FOLLOWS//