

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 August 2023

DOCKET NUMBER: AR20230001376

APPLICANT REQUESTS:

- payment of Concurrent Retired Disability Pay (CRDP)
- in effect, issuance of a 20-year notice of eligibility letter for non-regular retirement

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 248-1008 Retirement Orders
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- National Guard Bureau (NGB) Form 23B (Army National Guard (ARNG) Retirement Points History Statement)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, he is requesting CRDP for the 26 years of continued service from 17 January 1983 to his physical disability retirement, effective 3 December 2014. He served over 20 years with the ARNG and then the U.S. Army and did not receive a 20-year notice of eligibility for retired pay during his active duty service.
3. CRDP is a program managed through the Veterans Affairs (VA) in concert with the Defense Finance and Accounting Service. The member may be entitled to CRDP with 20 qualifying years of service for retirement, and who has a disability rating of 50 percent or greater as rated by the VA. Entitlement to CRDP is not under the purview of the Board and will not be considered by the Board. The Board will consider the applicant's request to be issued a notification of eligibility letter for non-regular retirement.

4. The applicant's service record contains the following documents for the Board's consideration:

a. DD Form 214, for the period ending 10 May 1991, which shows the applicant was a member of the Regular Army and entered active duty on 12 August 1983. He completed 7 years, 8 month, and 29 days of active duty service. He was honorably discharged for expiration term of service.

b. NGB Form 22 (Report of Separation and Record of Service) shows the applicant entered the ARNG on 23 September 1993 and was honorably discharged on 27 April 1995. He completed 1 year, 7 months, and 5 days of net service with 6 months and 25 days of prior Reserve Component service and 7 years, 8 months, and 29 days of prior active federal service. His total service for pay was 9 years, 10 months, and 29 days. NGB Form 22a (NGB Correction to NGB Form 22) corrected the NGB Form 22 by added in item 23 (Authority and Reason) "discharge for enlistment, immediate reenlistment."

c. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) dated 28 April 1995 shows the applicant enlisted in the U.S. Army Reserve (USAR) for a period of 4 years.

d. Orders Number C-09-832415, published by the USAR Personnel Command, dated 15 September 1998, voluntarily reassigned the applicant from USAR Control Group (Reinforcement) to a USAR unit, effective 12 September 1998.

e. Orders Number 169-40, published by the U.S. Army, 89th Regional Support Command, dated 18 June 1999, honorably discharged the applicant from the USAR, effective 18 June 1999.

f. NGB Form 22 shows the applicant entered the ARNG on 7 March 2006 and was honorably discharged on 25 June 2008 for enlistment in another component of the U.S. Armed Forces. He completed 2 years, 3 months, and 19 days of net service with 6 years and 2 months of prior Reserve Component service and 7 years, 8 months, and 29 days of prior active federal service. He had 16 years, 2 months, and 18 days total service for pay and 13 years, 2 months, and 18 days total service for retired pay.

g. NGB Form 23B (ARNG Retirement Points History Statement), dated 16 October 2008 shows the applicant had the following periods of service:

- 17 January 1983 through 11 August 1983, delayed entry program
- 12 August 1983 through 10 May 1991, Regular Army
- 11 May 1991 through 22 September 1993, non-military civilian break
- 23 September 1993 through 27 April 1995, ARNG

- 28 April 1995 through 17 September 1996, USAR Troop Program Unit (TPU)
- 18 September 1996 through 11 September 1998, USAR Control Group (Reinforcement)
- 12 September 1998 through 27 April 1999, USAR TPU
- 28 April 1999 through 6 March 2006, non-military civilian break
- 7 March 2006 through 2 May 2007, ARNG
- 3 May 2007 through 5 April 2008, ARNG Mobilized Service
- 6 April 2008 through 25 June 2008, ARNG
- Creditable service for retired pay 13 years, 2 months, and 18 days

h. DD Form 4 dated 26 June 2008 shows the applicant enlisted in the Regular Army for a period of 6 years.

i. DA Form 199 (Informal Physical Evaluation Board Proceedings), dated 15 August 2014 shows the board found the applicant physically unfit and recommended a disability rating of 30 percent and that he be permanently retired for disability. The applicant concurred with the formal hearing of his case and did not request reconsideration of his VA ratings.

j. Orders Number 248-1008, published by Headquarters, U.S. Army Garrison, Fort Drum, dated 5 September 2014, released the applicant from assignment and duty because of physical disability under the provisions of Title 10, USC, section 1201. His effective date of retirement was 3 December 2014, and he was placed on the retired list on 4 December 2014 with a disability rating of 30 percent. His disability retirement was based on 15 years, 3 months, and 10 days and for basic pay he had accumulated 26 years, 11 months, and 21 days.

k. DD Form 214, for the period ending 3 December 2014 honorably retired the applicant by reason of disability, permanent (enhanced). He completed 6 years, 5 months, and 8 days of net active duty service with 8 years, 10 months, and 2 days of total prior active service and 11 years, 8 months, and 11 days of prior inactive service.

5. The applicant provides an NGB Form 23B, dated 17 November 2022, which contains the same information as the NGB Form 23B contained in his service record.

6. The applicant's service record is void of issuance of a notification of eligibility letter for non-regular retirement.

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. Based upon the program requirements stating 20 qualifying years of service are required at the information reflected on the applicant's retirement order reflecting the applicant only had 15 years, 3 months, 10 days of qualifying service, the Board concluded the applicant was not qualified for the requested relief. Therefore, the Board recommended denying the application.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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 for correction of the records of the individual concerned.



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. Title 10, USC, 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. According to the Defense Finance and Accounting Service, CRDP allows military retirees to receive both military retired pay and VA compensation. This was prohibited until the CRDP program began on 1 January 2004. You must be eligible for retired pay to qualify for CRDP. If you were placed on a disability retirement, but would be eligible for military retired pay in the absence of the disability, you may be entitled to receive CRDP if:
  - a. You are a regular retiree with a VA disability rating of 50 percent or greater.
  - b. You are a reserve retiree with 20 qualifying years of service, who has a VA disability rating of 50 percent or greater and who has reached retirement age.
  - c. You are retired under Temporary Early Retirement Act and have a VA disability rating of 50 percent or greater.
  - d. You are a disability retiree who earned entitlement to retired pay under any provision of law other than solely by disability, and you have a VA disability rating of 50 percent or greater. You might become eligible for CRDP at the time you would have become eligible for retired pay.
  - e. CRDP allows military retirees to receive both military retired pay and VA compensation. The member may be entitled to CRDP if that member is a regular retiree. This Board does not determine entitlement to CRDP. An audit of the members account requires researching pay information from both Defense Finance and Accounting Service and VA.
3. By law (Title 38, USC, section 511), VA decisions and/or actions, including entitlements, benefits, and other actions are not within the purview of this Board and questions or concerns regarding entitlements and/or appeals should be referred to that Agency.
4. Army Regulation 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing non-regular retirement. Paragraph 2–4. Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter), under Title 10, USC, section 12731a Reserve Component (RC) Soldiers who completes the eligibility requirements in

section I will be notified in writing within 1 year after completion of the required service in accordance with AR 140–185. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued by the U.S. Army Human Resources Command (HRC) for all U.S. Army Reserve Soldiers except for those who are within 2 years of qualifying for an active duty retirement and can remain on active duty to complete the required service. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format determined by HRC.

5. Title 10, USC, section 1201 (Regulars and members on active duty for more than 30 days: retirement) states, upon a determination by the Secretary concerned that a member described in subsection (c) (in this case a member of a regular component of the armed forces entitled to basic pay) is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in subsection (c)(3), the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b) (based on accepted medical principles, the disability is of a permanent nature and stable).

//NOTHING FOLLOWS//