

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 25 June 2024

DOCKET NUMBER: AR20230002597

APPLICANT REQUESTS: Correction of his records to show he had sufficient time for receipt of a non-regular retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- Two copies of his NGB Form 22 (National Guard Bureau Report Of Separation and Record of Service)
- State Of California Office of the Adjutant General Orders 27-064
- Chronological Statement Of Retirement Points

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 he is requesting that his records reflect his true time in service as he is currently not eligible to collect his retirement due to an administrative error. According to his NGB Form 22 he has served 21 years, 4 months, and 25 days yet he is unable to collect his retirement. The veteran states that record reads 364 points for the year from 17 January 1976 through 14 January 1977 which should be counted as a good year. This entry should actually be 17 January 1976 through 16 January 1977 which would give him a good year towards retirement.
3. Attempts to obtain the applicant's service records from the National Archives Records Administration (NARA) failed to illicit a favorable response. NARA rereports that the applicant's records are charged out for the SMTS/VA Scanning Project. Information herein was obtained from documents provided by the applicant.
4. The available records do not include a full copy of the applicant's Chronological Statement of Retirement Points or a copy of his DD Form 214.

5. The applicant provided copies of the following:

a. Two copies of his NGB Form 22, dated 15 September 1997. The NGB Form 22 shows he was born in J___ 1957 and turned 60 in J___ 2017. He enlisted in the Army National Guard on 24 April 1986. It also shows:

- Separation in the grade of E-5
- Discharge from the ARNG and transfer to the USAR Control Group (Reinforcement)
- Date of enlistment of 24 April 1986
- Net service this period - 11 years, 4 months, and 23 days
- Prior Reserve service - 7 years and 4 days
- Prior Active Federal service - 2 years, 11 months, 28 days (amended to 2 years, 11 months, and 23 days)
- Total service for pay - 21 years, 4 months, and 25 days (amended to 21 years, 4 months, and 20 days)
- Total service for retired pay 9 years, 12 months, and 2 days (amended to 9 years, 11 months, and 23 days)
- Characterization of service of under honorable conditions (general)

b. A copy of the State Of California, Office of the Adjutant General Orders 27-064, dated 27 January 1998, discharged the applicant from the ARNG and transferring him to the USAR Control Group (Reinforcement) effective 15 September 1997, with a general, under honorable conditions discharge.

c. A partial Chronological Statement of Retirement Points dated 19 April 2023 that covers only his USAR period from 27 January 1998 through 24 April 2001.

d. The applicant's NGB Form 23B, ARNG Retirement Points Statement, dated 5 August 2021, shows he completed 19 years, 11 months, and 23 days of qualifying service towards non-regular retirement. His years were generally good (qualifying years with at least 50 retirement points) with the exception of Retirement Year 23 April 1996 to 22 April 1997 where he earned 46 points.

6. A copy of an ABCMR request for an advisory opinion from the Chief, Army National Guard Bureau, Army National Guard Readiness Center was obtained on 11 March 2024. It was recommended that the request be disapproved. The opinion states:

a. Upon coordination with the California Army National Guard (CAARNG), it was stated that they had reviewed and corrected the applicant's RPAM Statement multiple times over the past three years and all previous RSO's stated there are no further corrections that can be made on his RPAM statement until he provided additional supporting documents.

b. Additionally, his bad years are because of loss time on his DD Form 214 which cannot be adjusted because of not earning enough points. The applicant had failed to provide further supporting documents every time they requested them for his claims. The Army National Guard (ARNG) Retirement Services Branch states that after review, they determined that the Soldier's RPAS is correct. Unfortunately, he completed only 19 years ,11 months ,and 23 days toward an entitlement to non-regular retirement. The California Army National Guard concurred with this recommendation.

7. A copy of the advisory opinion was forwarded to the applicant with no response received.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The SM served in the ARNG from 23 April 1986 to 15 September 1997 and was transferred to the Retired Reserve. He did not complete 20 qualifying years of service. He completed 19 years, 11 months, and 23 days of qualifying service for non-regular pay at age 60. The SM turned 60 years of age on in January 2017.

a. According to the NGB, the CAARNG reviewed and corrected the applicant's RPAM Statement multiple times over the past three years and all previous RSO's stated there are no further corrections that can be made on his RPAM statement until he provided additional supporting documents. Additionally, his bad years are because of loss time on his DD Form 214 which cannot be adjusted because of not earning enough points. The applicant had failed to provide further supporting documents every time they requested them for his claims. The ARNG Retirement Services Branch states that after review, they determined that the Soldier's RPAS is correct. Unfortunately, he completed only 19 years ,11 months ,and 23 days toward an entitlement to non-regular retirement.

b. However, based on his overall honorable service, it seems apparent that if he had fully understood the retirement points system or if he had been counseled properly, he would not have neglected completing the appropriate number of qualifying years of service. Unfortunately, he was 4 retirement points short during Retirement Year 23 April 1996 to 22 April 1997 (the applicant received 33).

c. The applicant earned in excess of 50 retirement points during Retirement Year 23 April 1995 to 22 April 1996. From a pure equity standpoint, the Board determined there is no harm to the Army or the Soldier if 4 excess points were redistributed from his "good" year 23 April 1995 to 22 April 1996 (currently 78 points) to his Retirement Year 23 April 1996 to 22 April 1997, which would credit him with 50 retirement points for that year and would make him eligible for a 20 year non-regular retirement.

d. The law requires completion of 20 qualifying years of service in order to be eligible for non-regular retirement at age 60. A retirement point redistribution could result in at least 20 qualifying years of service, which could lead to placing him on the retired list on his 60th birthday.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- redistributing 4 of the applicant's excess RC retirement points from retirement year ending 23 April 1995 to 22 April 1996 to retirement year ending 23 April 1996 to 22 April 1997 to provide him with a full qualifying year of service for this retirement year
- placing him on the retired list effective his 60th birthdate with entitlement to back retired pay

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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. 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. 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 Army Board for Correction of Military Records (ABCMR). Paragraph 2-9 states that 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.
3. Army Regulation 600-8-7, para 7-18 b (2) states that In order to receive retired pay, Soldiers must have performed at least 20 years of qualifying service computed under 10 USC 12732.

//NOTHING FOLLOWS//