

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 September 2023

DOCKET NUMBER: AR20230002829

APPLICANT REQUESTS: through Counsel, in effect,

- transfer to the Retired Reserve effective 1 May 2003 in lieu of effective 8 May 2023, and
- amendment of his DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 1 May 2003, as follows:
 - remove reference to honorable discharge from active duty due to physical condition, not a disability under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) paragraph 5-17, and
 - to reflect, in effect, release from active duty for an unspecified reason and separation authority with transfer to the Retired Reserve or alternately, transfer to his U.S. Army Reserve (USAR) unit for further transfer to the Retired Reserve

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's brief
- 99th Regional Support Command Orders M-03-032-037, 1 February 2003
- DA Form 4700 (Medical Record – Supplemental Medical Data), 26 March 2003
- North Atlantic Regional Medical Command doctor's letter, 26 March 2003
- DA Form 3349 (Physical Profile), 26 March 2003
- DA Forms 4187 (Personnel Action), 10 and 29 April 2003
- Staff Judge Advocate email correspondence, 28 April 2003
- Headquarters, U.S. Army Fort Dix Orders 121-0006, 1 May 2003
- U.S. Army Reserve Personnel Command (ARPERCEN) memorandum, 18 June 2003
- Army Board for Correction of Military Records (ABCMR) letter, 5 August 2004
- U.S. Army Human Resources Command (AHRC) Form 249-2-E (Chronological Statement of Retirement Points), 1 September 2005

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. Counsel states:

a. The applicant thereby submits this application to set aside his discharge from the U.S. Army Reserve (USAR), instead transferring him to the Retired Reserve. This is the applicant's second petition to the Board. However, the first request was returned without action, as the Board found there was no action required as the applicant was going to receive retirement and had his twenty year letter. (See ABCMR case number AR2003098762) As such, this petition is the applicant's first request before the Board challenging his separation, and requesting his discharge from 2003 be set aside. The applicant realizes he is outside the statutory time window for filing for relief but asks this Board to waive the untimely filing in the interest of justice. The injustice and implications of an improper discharge vice transfer to Retired Reserve were not realized until he attended a required U.S. Army Reserve (USAR) pre-retirement Retirement Services Office (RSO) event on 8 May 2021, regarding his eligibility to start receiving retired pay in 2023. As such, he did not become aware of the issue affecting his retired pay until 2021. A waiver for a lack of timeliness is in the interest of justice, and within this Board's authority to exercise on the applicant's behalf.

b. The applicant enlisted into the United States Air Force (USAF) on 31 August 1981 at the age of 18. He served just under four years on active duty with the USAF. In 1986, he joined an Air Force Reserve unit, and served there until August 1996, when he then joined the Air National Guard (ANG). After serving three years in the ANG, he made his final switch to the USAR, where he served until 30 November 2003, completing 21 years of service. (See attached chronological statement of retired points)

c. On 24 April 2000, the applicant transferred from the Indiana Air Guard 122nd Fighter Wing to the USAR. He planned to serve there until late 2002, when he had his 20 good years and could retire. When he joined the USAR, his expiration term of service (ETS) date was 24 April 2003, though he was eligible for retirement before that date. As he was approaching his 20 year mark, he realized that all of his time and points earned serving in the USAF (Active Duty, Reserve, and ANG) had not properly transferred over. The applicant's local unit administrator was attempting to resolve the issue, but assistance was very slow and time passed.

d. On 1 February 2003, while still waiting to have his points corrected, the applicant

received orders to active duty in support of Operation Enduring Freedom. He was assigned to another USAR unit that was understaffed, and ordered to report to Fort Dix, NJ, two days later. (See attached mobilization orders) As part of the mobilization, the applicant had a medical deployment physical. During this time, it was recommended that he not deploy, due to a life threatening allergy to bee stings. Instead, the allergy treatment record recommended that he needed to start venom immunotherapy. (See attached medical record from Allergy/Immunology Service dated 26 March 2003) Normal treatment was allergy shot therapy, in order to decrease the risk of life threatening reactions. The medical team stated that they were not able to send the applicant overseas with venom, due to challenges downrange. In addition, the medical team did not feel that the epi-pen would be effective in the warm environment overseas, causing an immediate risk to the applicant. (See attached letter from Allergy team at Walter Reed dated 26 March 2003) There was nothing stating the applicant should be referred to IDES processing or that he should be separated for his medical condition . He received a physical profile at this time, stating that he was not to deploy anywhere with extreme temperatures; can have no duty increased risk of exposure to bees; and must carry an epi-pen at all times. (See attached Physical Profile)

e. After this information was received by the 733rd Transportation Company command team, the applicant was first transferred from Alpha Company to Charlie Company. (See attached orders from A to C co.) 19 days later, he was transferred from Charlie Company to the Bravo Company, effective 29 April 2003. (See attached orders from C to B co.) One day later, the applicant is told he was "discharged" from active duty and the USAR. On 30 April 2003, he was told that he was approved for discharge under Army Regulation 635-200, chapter 5, paragraph 5-17, for his medical condition, and not being transferred to the Individual Ready Reserve (IRR). He was told to go to the Soldier Readiness Processing (SRP) site, and on 1 May 2003, the applicant received orders stating he was being discharged from the USAR. (See discharge orders)

f. The applicant was not sent back to his unit or given the option to transfer to the Retired Reserves. In fact, he wasn't given any options at all. The applicant was told he was being discharged, and one day later, it occurred. He was separated under Army Regulation 635-200, chapter 5, paragraph 5-17, which reads as follows (1 November 2000 version), 5-17. Other designated physical or mental conditions:

(1) Commanders specified in paragraph 1-19 may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation)) and excluding conditions appropriate for separation processing under paragraph 5-11 or 5-13 that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to the following:

- Chronic airsickness.
- Chronic seasickness.
- Enuresis.
- Sleepwalking.
- Dyslexia.
- Severe nightmares.
- Claustrophobia.
- Other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

(2) When a commander determines that a Soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation in accordance with Army Regulation 40-501 (Standards of Medical Fitness). Command-directed mental status evaluations will comply with paragraph 1-32e. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

(3) Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. (See para 1-16.)

(4) Nothing in this paragraph precludes separation of a Soldier having a condition as described in paragraph 5-17a under any other provision of this regulation.

(5) Prior to involuntary separation under this paragraph, the notification procedure in chapter 2, section I; or the administrative board procedure in chapter 2, section II, will be utilized.

(6) For characterization or description of service, see paragraph 5-1.

(7) Commanders specified in paragraph 1-19 are authorized to order separation Under this paragraph. See paragraph 1-11 for additional instructions for Army National Guard of the United States (ARNGUS) and USAR soldiers. The criteria in chapter 1, section VII, will govern whether the soldier will be released from active duty or active duty training (ADT) with transfer to the IRR, or discharged.

g. As stated above, the applicant was told he was being discharged the day before it happened. It appears that as the applicant was no longer deployable, the unit wanted to clear him through medical as soon as possible. This last sentence is supported by an email from Captain (CPT) F_____ and Lieutenant Colonel (LTC) M_____ dated 28 April

2003. (See attached email from CPT F_____ dated 28 April 2003) This paragraph was not the appropriate method of doing so and has had great financial implications for the applicant as a result of its inappropriate use. Even arguing that it was appropriate to discharge the applicant under paragraph 5-17, the Army failed to follow the procedural safeguards in the regulation.

h. Paragraph 5-17c requires the Soldier to be formally counseled concerning deficiencies, giving "ample opportunity" to overcome those deficiencies as reflected in appropriate counseling or personnel records. The applicant was not counseled once, regarding his bee sting allergy deficiency, nor provided an ample opportunity to overcome the deficiency. He could have been placed on a temporary profile, with an opportunity to start receiving immunotherapy shots. This did not occur. In addition, under paragraph e, prior to initiating involuntary separation under this paragraph, the notification procedure in chapter 2, section I; or the administrative board procedure in chapter 2, section II, is to be used. At a minimum, the commander is to notify the Soldier in writing that his/her separation has been recommended per this regulation. The applicant was not counseled nor notified of his separation prior to being told he was being discharged.

i. Why does this matter? It matters because the applicant was improperly discharged from active duty and not transferred back to his unit. His discharge meant that he did not have the option to apply to remain in the Retired Reserve until he was able to receive retired pay. In his first petition to the ABCMR, they told him that the fact that he was "discharged instead of being transferred to the Retired Reserve does not impact your eligibility for retired pay upon reaching age 60." This is accurate, but it does not consider the impact on retired pay when you are discharged vice transferred to the Retired Reserve.

j. The applicant was discharged in 2003 and received his 20-year letter in June 2003. (See attached notification of eligibility for retired pay at age 60) The difference between being discharged versus transfer to the Retired Reserve can be seen in Army Regulation 135-180 (Retirement for Non-Regular Service) Paragraph 4-6 describes the computation of retired pay for members who enter service after 7 September 1980, which applies to the applicant. It states for a member who entered service after 7 September 1980:

(1) The retired pay base is an average of the highest 36 months of pay as Prescribed in DODFMR 7000.14-R, Volume 78, Chapter 3.

(2) In the case of a Reserve Component member, this is the total amount of basic pay to which the member was entitled during the member's high 36 months or to which the member would have been entitled if the member had served on active duty during the entire period of the member or former member's high 36 months.

(3) Only months during which the individual was a member of a uniformed Service may be used.

(4) Monthly basic pay amounts, starting with the highest rate of pay, are added together until the total number of months equals 36 months.

(5) Divide the total pay derived from the sum of months by 36, and round to the nearest cents to obtain the retired pay base applicable to the member.

(6) Any lost time the member had is not to be included in the computation.

(7) This average base pay is multiplied 2 1/2 percent times the years of service credited and any fraction thereof, on the basis of 360 days per year to determine retired pay amount.

(8) A member who is transferred to the Retired Reserve will have their high 36 months of pay based on the basic pay rate for their grade in effect the 36 months prior to their retirement date.

(9) A member who is discharged and separated from military service after becoming eligible for non-regular retired pay will have their high 36 months of pay based on the basic pay rate for their grade in effect the 36 months prior to their discharge from military service.

k. The relevant provisions are sub-paragraphs 8 and 9 above, in bold for emphasis. As you can see, the basic pay rate is either the 36 months prior to the retirement date, or prior to the discharge date. The applicant was discharged in 2003, and is eligible for retirement in May 2023. The basic pay rate for an E-6 with over 20 years of service in 2003 was \$2,709.60. The basic pay rate for an E-6 with over 20 years of service in 2023 is \$4,616. While not being an exact calculation, due to cost of living adjustments, this is at a minimum, a loss of \$1,906.40 per month over the life of his retirement. As you can see, the difference matters whether he was discharged or transferred to the Retired Reserve.

l. According to the Army G-1 Mobilization and Deployment Reference, paragraph 5-4, "A Soldier with a pre-existing medical condition identified within the first 25-days that renders the individual non-deployable may be released from active duty (REFRAD) immediately." This includes both temporary and permanent conditions that do not meet medical retention standards. Once the Soldier is released back to their unit, the Soldier's Command is directed to ensure that the Soldier receives appropriate medical care and follow-up upon return to home station. The guidance states that "care should result in either Return to Duty status or Medical Evaluation Board (MEB)/Physical Evaluation Board (PEB) processing within 6-months. The guidance goes on to state that

"Soldiers with medical conditions that render them non-deployable (pre-existing or otherwise), who are retained on active duty for more than 30 days, must be retained on active duty for appropriate medical processing." As the applicant's condition was not documented until after he had been on active duty for 30 days, this was the appropriate provision that should have been followed.

m. DA Pamphlet 40-502 (Medical Readiness Procedures) describes the procedures for assigning temporary and permanent profiles to Soldiers for conditions that limit their individual readiness. While the applicant's profile did not check the block whether it was temporary or permanent, it can logically be inferred that the profile was meant to be temporary until he was able to build an immunity through the immunotherapy treatment program recommended by allergists.

n. As long as a profile is temporary, the Soldier is given time and space to complete treatments and work towards removing obstacles to improve their individual level of medical readiness. As the applicant was on active duty for more than 30 days, he should have received "appropriate medical processing" which was either determining if his profile was permanent, and therefore determining if he met retention standards, or if it was temporary, proceeding with appropriate medical treatments in order to have the restrictions eventually removed.

o. According to Army Regulation 40-501 paragraph 3-35 (General and miscellaneous conditions and defects) the only time a "stinging insect allergy" is service disqualifying, is as follows: The causes for referral to the Disability Evaluation System (DES) are as follows: a. Stinging insect allergy. A Soldier, who has been determined by an allergist to have a stinging insect allergy to fire ant, wasp, honeybee, yellow jacket, or hornets, but who would not benefit from venom immunotherapy (VIT) will be referred to the DES. When a Soldier elects to receive recommended VIT, the Soldier may be exempt from the DES referral by an allergist. See DA Pamphlet 40-502 for instructions on profiling. Allergists will annually review the Soldier for progress to resolution or worsening of conditioning and adjust profiling action consistent with annual review. If the Soldier is unable to maintain appropriate VIT injection intervals, the allergist will refer the Soldier to the DES.

p. As the Allergy clinic recommended venom immunotherapy, his stinging insect allergy was not service disqualifying. The applicant should have been afforded the opportunity to remain on active duty to complete his immunotherapy treatment, as is mandated by regulation. Instead, he was separated under an inappropriate section of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), impacting his opportunity to both receive medical treatment on active duty, and, denying him the opportunity to retire into the Retired Reserve.

q. In light of the above, the applicant respectfully asks that this Board set aside his

discharge under Army Regulation 635-200, chapter 5-17, and instead, transfer him to the Retired Reserve for completing his term of service. The applicant had completed his last enlistment period while mobilized, and was eligible to retire before receiving mobilization orders. His bee sting allergy and its consequences were an unexpected event that prevented the applicant from deploying. The way this unexpected event was handled by the Army was improper, and as a result, the applicant is requesting this Board correct this injustice which affects thousands of dollars in retired pay for him over years to come.

3. After honorable enlisted service in the USAF from 4 September 1981 through 31 May 1985, the applicant was transferred to the USAF Reserve (USAFR) and remained in that capacity until his enlistment in the Air National Guard on 4 May 1996.

4. A Standard Form 88 (Report of Medical Examination) shows the applicant underwent medical examination on 21 April 2000, while a member of the Air National Guard, for the purpose of enlistment in the USAR. The applicant was initially found not qualified for USAR service with a physical profile rating of "3" in factor E (Eyes), but ultimately received a medical waiver for enlistment.

5. The applicant enlisted in the USAR on 24 April 2000, for a period of 3 years.

6. 99th Regional Support Command Orders M-03-032-037, dated 1 February 2003, ordered the applicant to active duty as a member of his USAR unit in support of Operation Enduring Freedom effective 3 February 2003 with reporting to Fort Dix, NJ..

7. DA Form 4700, dated 26 March 2003, shows the recommendation for the applicant was to start on venom immunotherapy and had a history of being high risk for anaphylaxis. He was stung by bee at the age of 13 with immediate onset of difficulty breathing. The applicant underwent bee venom allergy testing on the date of the form.

8. A letter from CPT A____, North Atlantic Regional Medical Command doctor/fellow, allergy/immunology, dated 26 March 2003 shows the following:

a. He evaluated the applicant in the Allergy Clinic at Walter Reed Army Medical Center for a history of a life threatening allergic reaction to a bee sting in the past. Skin testing to bee venoms confirmed this allergy. Based on the history of a severe reaction to prior stings and positive tests, the applicant should be initiated on shots to decrease his risk of further life threatening reactions when stung.

b. Due to current deployment issues, they were not able to send the applicant on deployment with venom to receive injections safely. Although some Soldiers may be able to deploy safely with epi-pens the doctor was also concerned about the efficacy of these epi-pens in a warm environment. Because the nature and severity of the

applicant's reactions, it would be a great risk to his health and safety to send him to an environment that may prevent him from receiving immediate and efficacious treatment. It is therefore, strongly recommended that the applicant not deploy to the Middle East.

9. A DA Form 3349 shows the applicant was given a physical profile rating of "2" in factor P (Physical capacity or stamina) on 26 March 2003, due to a bee allergy. Assignment limitations shows the applicant is not to deploy anywhere with extreme temperatures; cannot have any duty with increased risk of exposure to bees; must carry epi-pen at all times.

10. Multiple DA Forms 4187 show the applicant was twice reassigned within companies at Fort Dix, NJ, in April 2003.

11. An email from a Staff Judge Advocate at Fort Dix, NJ, dated 28 April 2003, shows on the date of the email, the installation commander took action to discharge the applicant under the provisions of Army Regulation 635-200, paragraph 5-17 for a medical disorder. A follow-up email from presumably the applicant's company commander on the same date, shows they should get the applicant cleared through medical then submit a personnel action to transfer him to B Company.

12. The discharge packet pertaining to the applicant's discharge under the provisions of Army Regulation 635-200, paragraph 5-17, is not in his available records for review.

13. Headquarters, U.S. Army Fort Dix Orders 121-0006, dated 1 May 2003, reassigned the applicant to the U.S. Army Transition Activity Fort Dix, NJ, for discharge from the USAR effective 1 May 2003.

14. A DD Form 214 shows the applicant was honorably discharged at Fort Dix, NJ, on 1 May 2003, under the provisions of Army Regulation 635-200, paragraph 5-17, due to a physical condition, not a disability. He was credited with 2 months and 29 days of net active service this period; 3 years, 8 months, and 27 days of total prior active service; and 17 years, 8 months, and 5 days of total prior inactive service.

15. An ARPERCEN memorandum, dated 18 June 2003, notified the applicant of his eligibility for retired pay at age 60.

16. A letter from the ABCMR, dated 5 August 2004, was in response to his 7 July 2003 application to the ABCMR wherein he requested transfer to the Retired Reserve. It shows the following:

a. The applicant was informed the separation document provided by him in support of his application indicates that his discharge was the result of a physical condition which did not amount to a disability. Transfer to the Retired Reserve would have

required a voluntary action on your part and would not have been automatic merely because he had received his "20-year letter."

b. The fact that he was discharged instead of being transferred to the Retired Reserve does not impact his eligibility for retired pay upon reaching age 60. As indicated in his "20-year letter," his eligibility for retired pay may not be denied or revoked unless it is resulted directly from fraud or misrepresentation on his part. To receive retirement pay at age 60, he must simply submit an application well prior to the date he reaches 59 1/2 years of age.

c. The fact that he was discharged and not transferred to the Retired Reserve is not, in and of itself, evidence that any error or injustice has occurred. In the absence of such evidence, there is no action required by the Board and his application was being returned without action.

17. There is no evidence of record the applicant ever requested transfer to the Retired Reserve while still a member of the USAR.

17. AHRC Form 249-2-E, dated 1 September 2005, shows the applicant completed 21 years and 2 days of qualifying service for retirement. Of note, the applicant was credited with the following points, which show his continued affiliation with the USAR subsequent to his 1 May 2003 discharge orders and DD Form 214:

- 24 Inactive Duty Points, 15 Membership Points, and 91 Active Duty Points, between 31 August 2002 and 30 August 2003
- 0 Inactive Duty Points, 4 Membership Points, and 0 Active Duty Points between 31 August 2003 and 30 November 2003

19. A review of the AHRC Soldier Management System (SMS) shows the following:

a. The applicant's date of birth is 8 May 1963 (which puts his 60th birthday on 8 May 2023).

b. Physical Data shows effective June 2002, the applicant had a physical profile effective rating of "3" in the factors H (Hearing and ear) and E, with significant limitations in hearing and vision and no limitations in any other factors, with a rating of "1" in all other factors.

c. The following transactions were completed on the applicant:

- (1) A transaction was completed on 2 May 2003 to return the applicant to

Reserve Component Control, current organization “H” (USAR Troop Program Unit (TPU) service) after partial unit mobilization.

(2) A transaction was completed on 30 November 2003, to voluntarily discharge the applicant due to hardship other than parenthood, changing his current organization from “H” (USAR TPU service) to “Y” (archived record).

(3) A transaction was completed on 8 May 2023 to transfer the applicant from his current organization of “Y” (archived record) to “R” (Retired Reserve) due to completion of 20 or more years of qualifying service for retired pay at age 60, subsequent to his application for retired pay at age 60.

20. There are no documents in the applicant’s available service records corresponding to a voluntary request for and approval of a hardship discharge form the USAR.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant’s contentions, military record, and regulatory guidance. The Board agreed that the applicant had not been advised properly on his options regarding being discharged or transferred to the Retired Reserve. The Board further noted that although the applicant had been determined to be non-deployable due to a severe allergy to bee stings, evidence is insufficient to determine that the applicant had been referred to the Integrated Disability Evaluation System for further consideration. The Board further agreed that as a reservist, he should have been transferred back to his assigned unit. As the applicant served a total of 21 years of combined service, the Board determined the evidence presented sufficient to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

- amending his discharge orders to show he was transferred to the Retired Reserve effective 1 May 2003 at the basic pay rate for an E-6 with over 20 years of service

- amending his DD Form 214 (Certificate of Release or Discharge from Active Duty) covering the period ending 1 May 2003, showing in:

- block 25 (Separation Authority): AR 635-200
- block 28 (Narrative Reason for Separation): transfer to Retired Reserves

2. All entitlement to back pay and allowances is to be determined by the Defense Finance and Accounting Agency.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, provides policy pertaining to the separation of enlisted personnel.

a. Paragraph 1-11 (Separation Orders), in effect at the time, states the authority for separation (Army Regulation 635-200) will be included in directives or orders directing Soldiers to report to the appropriate transition point or transition activity for separation processing. A U.S. Army Reserve (USAR) Soldier who is being separated for any reason for which a Regular Army soldier would be discharged, will also be discharged.

b. Paragraph 1-11, as shown in the 2003 version of this regulation, provides more detailed information, stating the authority for separation per this regulation will be included in directives or orders directing Soldiers to report to the appropriate transition center for separation processing. Except as provided in (1) and (2), below, USAR personnel will be released from active duty or active duty for training (ADT) and returned to their appropriate USAR status. Subparagraph (2) states the exception to above is as follows: a USAR Soldier who is being separated for any reason for which a Regular Army Soldier would be discharged, will also be discharged. When a USAR Soldier is to be transferred to the Individual Ready Reserve (IRR), the Soldier will be released from active duty. The Soldier will be transferred to the appropriate USAR Control Group to complete his/her military service obligation.

c. Paragraph 5-17 (Other Designated Physical or Mental Conditions) states commanders who are special court-martial convening authorities may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability that potentially interfere with assignment to or performance of duty. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition. Members may be separated for physical or mental conditions not amounting to disability sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired. Such conditions may include, but are not limited to the following:

- (1) Chronic airsickness
- (2) Chronic seasickness
- (3) Enuresis
- (4) Sleepwalking
- (5) Dyslexia
- (6) Severe nightmares
- (7) Claustrophobia

(8) Other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired.

(9) See paragraph 1-11 for additional instructions for Army National Guard of the United States (ARNGUS) and USAR Soldiers. The criteria in chapter 1, section VII will govern whether the Soldier will be released from active duty or ADT with transfer to the IRR or discharged.

3. Army Regulation 135–178 (ARNG and Reserve Enlisted Administrative Separations), in effect at the time, establishes policies, standards and procedures governing the administrative separation of certain enlisted Soldiers of the ARNGUS and the USAR.

a. Paragraph 6-2 shows, upon the request of a Soldier and the approval of the separation authority, separation due to dependency or hardship may be directed when it is considered that continued membership and service on active duty, full time National Guard Duty or ADT would result in genuine dependency or undue hardship. Criteria for separation include the following:

- hardship or dependency is not temporary
- conditions have arisen or have been aggravated to an excessive degree since entry in the Army and the Soldier has made every reasonable effort to remedy the situation
- the administrative separation will eliminate or materially alleviate the condition
- there are no other means of alleviation reasonably available.

b. Paragraph 15-1 (Separation for Other Reasons), shows a Soldier who attains age 60, as appropriate, unless granted a waiver will be discharged or, if eligible and the Soldier applies, be transferred to the Retired Reserve.

4. Army Regulation 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing non-regular retirement and applies to active Army, Army National Guard (ARNG)/ARNGUS, and USAR Soldiers.

a. Paragraph 4-1 (Application requirements and timelines) shows applications for retired pay for USAR Soldiers must be submitted on a DD Form 108 (Application for Retired Pay Benefits) and DD Form 2656 (Data for payment of Retired Personnel) and among the required inclusions in the application for retired pay packet is transfer orders to the Retired Reserve. The DD Form 108 will show the current assignment of a USAR Soldier, or if discharged, show the date of discharge.

b. Paragraph 4-4 (Retirement orders) shows once the application is received and certified by the U.S. Army Human Resources Command (AHRC), orders will be issued by AHRC placing the eligible individual in the Army of the United States Retired List and announcing the effective date eligible persons are entitled to retired pay.

c. Paragraph 4-6 (Computation of retired pay) shows retired pay for non-regular retirement is determined as follows for a member who entered service after 7 September 1980:

(1) The retired pay base is an average of the highest 36 months of pay as prescribed in DODFMR 7000.14-R, Volume 7B, Chapter 3.

(2) In the case of a Reserve Component member, this is the total amount of basic pay to which the member was entitled during the member's high 36 months or to which the member would have been entitled if the member had served on active duty during the entire period of the member or former member's high 36 months.

(3) Only months during which the individual was a member of a uniformed service may be used.

(4) Monthly basic pay amounts, starting with the highest rate of pay, are added together until the total number of months equals 36 months.

(5) Divide the total pay derived from the sum of months by 36, and round to the nearest cents to obtain the retired pay base applicable to the member.

(6) Any lost time the member had is not to be included in the computation.

(7) This average base pay is multiplied 2 1/2 percent times the years of service credited and any fraction thereof, on the basis of 360 days per year to determine retired pay amount.

(8) A member who is transferred to the Retired Reserve will have their high 36 months of pay based on the basic pay rate for their grade in effect the 36 months prior to their retirement date.

(9) A member who is discharged and separated from military service after becoming eligible for non-regular retired pay will have their high 36 months of pay based on the basic pay rate for their grade in effect the 36 months prior to their discharge from military service.

5. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) 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.

//NOTHING FOLLOWS//