

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230003681

APPLICANT REQUESTS:

- entitlement to retirement for length of service
- recalculation of his qualifying service to reflect inclusion of his active-duty service performed from 11 March 2007 to 24 March 2007 and 13 May 2007 to 27 May 2007

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 199-1 (Formal Physical Evaluation Board (PEB) Proceedings), 16 September 2022
- DA Form 4187 (Personnel Action), 22 November 2021
- Memorandum – Subject: Request for Continuation on Active Duty (COAD), 16 November 2021
- Memorandum – Subject: Recommendation to Retain Following Medical Evaluation Board Decision, 16 November 2021
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 22 February 1990
- DD Form 214, 23 August 1991
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 16 December 1991
- DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the U.S.), 28 November 2006
- DA Form 1059 (Service School Academic Evaluation Report)
- DD Form 214, 2 September 2008
- DD Form 4, 3 September 2008
- DD Form 4, 14 March 2012
- Retention Active Duty Calculation Worksheet
- DA Form 1506 (Statement of Service – For Computation of Length of Service for Pay Purposes) 27 February 2015

FACTS:

1. The applicant states in pertinent part that he was permanently medically retired on 7 January 2023. He contests that according to his personnel records; he reached his retirement eligibility date on 6 January 2023. He notes that this too was understood by persons involved in his separation processing to include his Physical Evaluation Board Liaison Officer (PEBLO) and the U.S. Army Human Resources Command (AHRC). He adds that he attended Advance Individual Training (AIT) in 2007 for a period of 29 days. However, this period of service is not reflected as qualifying service towards retirement. The inclusion of this service (28 days) when added would be sufficient to meet the requirement for 20 qualifying years of service. His records currently reflect 19 years 11 months 2 days of qualifying service towards retirement. He further notes that his documentation (DA Form 199-1) reflects that he "should not be released from service until he reached 20 years of service" since he was within 120 days of retirement. He also submitted a request for Continuation of Active Duty (COAD) packet in order to ensure he met the retirement eligibility timeline.

2. A review of the applicant's available service records reflects the following:

a. On 25 February 1986, the applicant enlisted in the Regular Army.

b. On 22 February 1990, the applicant was released from active duty and transferred into the U.S. Army Reserve (USAR) and subsequently enlisted into the Army National Guard (ARNG). DD Form 214, reflects:

- Item 12.c. (Net Active Service this Period) – 3 years, 11 months, and 28 days
- 12.d. (Total Prior Active Service) = 0 years 0 months 0 days

c. On 16 December 1991, the applicant was honorably released from the ARNG and transferred into the USAR Control Group (Reinforcement) to complete his remaining service obligation.

d. On or about 27 December 1993, the applicant was released from the USAR.

e. On 28 November 2006, the applicant enlisted in the ARNG.

f. On 21 July 2007, the applicant enlisted in the Regular Army.

g. On 14 February 2017, the applicant reenlisted indefinitely.

h. On 16 September 2022, a PEB convened finding the applicant physically unfit for continued military service with a recommendation that he be permanently medically retired. DA Form 199-1, Section V (Administrative Determinations) provides that the

applicant's disability disposition was not based on disease or injury incurred in the line of duty in combat with an enemy of the U.S. and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war. Further, the applicant's disability did not result from a combat-related injury. Section VII (Instructions and Advisory Statements) provides that the applicant would reach 20-years of Title 10, United States Code (USC), section 1208 (Computation of Service) and 20 years of active service point by the time he would otherwise be separating. The applicant should not be separated or retired prior to 7 January 2023. The applicant concurred to the board's determination and waived his rights to reconsideration of his ratings.

i. On 3 October 2022, Headquarters, U.S. Army Garrison, Fort Carson, CO, issued Orders Number 276-0011 releasing the applicant from assignment and duty because of a physical disability incurred while entitled to basic pay under conditions that permit his retirement for permanent physical disability, effective 7 January 2023. The applicant was retired in accordance with Title 10, USC, section 1201 (Regulars and Members on Active Duty for More than 30 days: Retirement). The following additional information is reflected:

- Basic Pay – 24 years, 1 month, and 10 days
- Disability Retirement – 16 years, 4 months, and 21 days
- Section 1405 – 16 years, 4 months, and 21 days

j. On 7 January 2023, the applicant was permanently medically retired from military service under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), chapter 4. DD Form 214, item 12 (Record of Service) reflects the following in items:

- 12.c. (Net Active Service this Period) – 14 years, 4 months, and 5 days
- 12.d. (Total Prior Active Service) – 5 years, 6 months, and 27 days
- 12.e. (Total Prior Inactive Service) – 16 years, 11 months, and 11 days

k. On 23 February 2023, Headquarters, U.S. Army Garrison, Fort Carson, issued Orders Number 054-0050 amending Orders Number 276-0011 to reflect the following:

- Basic Pay – 38 years, 7 months, and 18 days
- Disability Retirement – 19 years, 11 months, and 2 days
- Section 1405 – 19 years, 11 months, and 2 days

l. On 7 March 2023, the Department of the Army issued Orders Number 4156229, placing the applicant on the Permanent Disability Retired List, effective 8 January 2023. The applicant was credited with 37 years of total service and total active service.

3. The applicant provides the following a:

a. DA Form 4187 dated 22 November 2021, reflective of the applicant's submitted request for COAD in lieu of retirement or separation in the event that he was determined to be unfit due to physical disability. The applicant requested COAD until he obtained 20 years of active federal service. The applicant noted that he had completed between 18 to 20 years of active federal service and his disability was the result of combat or an act of terrorism.

b. Memorandum – Subject: Request for COAD, dated 16 November 2021, reflective of the Soldier Recovery Unit (SRU) Medical Manager's support of the applicant's request for COAD.

c. Memorandum – Subject: Recommendation to Retain Following Medical Evaluation Board Decision, dated 16 November 2021, reflective of the SRU Command team's recommendation that the applicant be retained on active duty.

d. DD Form 214, ending on 23 August 1991, which reflects the applicant's service on active duty from 7 January 1991 – 23 August 1991. Item 12 (Record of Service) reflects:

- 12.c. (Net Active Service this Period) – 0 years, 5 months, and 17 days
- 12.d. (Total Prior Active Service) – 3 years, 11 months, and 28 days
- 12.e. (Total Prior Inactive Service) – 0 years, 10 months, and 14 days

e. NGB Form 22 dated 16 December 1991, reflective of the applicant's service in the ARNG from 23 February 1990 – 16 December 1991.

f. DA Form 1059 reflective of the applicant's completion of the 88N (Transportation Management Coordinator) course Phase One from 11-24 March 2007.

g. DA Form 1059 reflective of the applicant's completion of Phase Two of the 88N course from 13-27 May 2007.

h. DD Form 214, ending on 2 September 2008, reflective of the applicant's service on active duty from 21 July 2007 – 2 September 2008. Item 12 (Record of Service) reflects:

- 12.c. (Net Active Service this Period) – 1 year, 1 month, and 12 days
- 12.d. (Total Prior Active Service) – 4 years, 5 months, and 15 days
- 12.e. (Total Prior Inactive Service) – 4 years, 2 months, and 8 days

i. DD Form 4 dated 3 September 2008, reflective of the applicant's reenlistment in the Regular Army for 3 years.

j. DD Form 4 dated 14 March 2012, reflective of the applicant's reenlistment in the Regular Army for 6 years.

k. Retention Active-Duty Calculation Worksheet reflective of service dates/periods to be utilized in calculating the applicant's qualifying service. This document reflects a calculated 7 January 2003 Basic Active Service Date and a 26 January 1999 Pay Entry Basic Date

l. DA Form 1506 dated 27 February 2015 reflective of the applicant's submitted request for verification of his military service completed between 27 December 1985 – 27 February 2015. This document is also utilized to adjust the applicant's Basic Pay Entry Effective Date and further reflects an approximate 12 year, 11 month, and 1 day break in service from 27 December 1993 – 27 November 2006.

4. The applicant did not provide nor does review of his available records reflect DA Form 2339 (Application for Voluntary Retirement).

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 Board carefully considered the applicant's contentions, the military record, and regulatory guidance. The Board considered the review and conclusion of the Formal Physical Evaluation Board and Liaison Officer (PEBLO) and the U.S. Army Human Resources Command (AHRC). The Board found that the applicant's time while attending Advance Individual Training (AIT) is not reflected in his record and as he attended for a period of 28 days, this service when added would be sufficient to meet the requirement for 20 qualifying years of service. After due consideration of the applicant's request, 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:

The Board determined the evidence presented is 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 to show in:

- 12.d. (Total Prior Active Service) = 0 years 0 months 28 days

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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 (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation) prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability

a. Paragraph 4-29 (Final Disposition for Unfit Soldiers on Active Duty with 18 but Less than 20 Years Active Service) provides the provisions of law in Title 10, USC, on the retention of Soldiers on active duty after they complete 18 but less than 20 years of active Service vary in addressing application to Soldiers who are determined unfit due to physical disability. The U.S. Army Physical Disability Agency (USAPDA) is responsible for ensuring a service computation is performed by the appropriate transition center to confirm the Soldier meets the 18, but less than 20, year criterion. The USAPDA will submit the case through the DCS, G-1 (DAPE-MPE) to the Assistant Secretary of the Army (Manpower and Reserve Affairs) for final approval or disapproval to separate the Soldier or to defer disability disposition until the Soldier obtains 20 years of active Service. In the interest of equity and uniformity across all components, these Soldiers will be dispositioned as set forth below –

1) When the Assistant Secretary of the Army (Manpower and Reserve Affairs) directs that a Soldier pending separation with or without entitlement to disability benefits be retained to 20 years of active Service, the Soldier will be managed as a COAD.

2) Generally, Soldiers retained as a result of Secretarial review will be retired effective the first day of the month after the Soldier attains 20 years active Service.

b. Paragraph 4-27 (Final Disposition by the USAPDA) provides that unless reserved for higher authority, USAPDA approves disability cases for the SECARMY and issues the disposition instructions to the Transition Center for Soldiers separated or retired for physical disability from an active-duty status.

1) Permanent disability retirement. This disposition is directed under Title 10, USC, section 1201 or Title 10, USC, section 1204, as applicable, when the Soldier is determined unfit for continued service and has a compensable disability in accordance with the standards of this regulation, and—

- the disability(ies) are permanent and stable or, subject to the requirements in chapter 5 concerning certain mental diagnosis, the disability rating will not improve to less than 80 percent
- the Soldier has at least 20 years of service as computed under Title 10, USC, section 1208
- the Soldier has a combined disability rating of at least 30 percent

2. Title 10, USC, section 1201 (Regulars and Members on Active Duty for More than 30 days: Retirement) provides that upon a determination by the Secretary concerned that a member 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, 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

- has at least 20 years of service computed under section 1208 or –
- the disability is at least 30 percent disabling and either –
 - the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service
 - the disability is the proximate result of performing active duty
 - the disability was incurred in line of duty in time of war or national emergency; or
 - the disability was incurred in line of duty after 14 September 1978

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides that no Soldier is retired who has not completed at least 20 years of active federal service that is creditable for retirement.

a. Paragraph 12-7 (Verification of Service) provides that each Soldier of the Regular Army will be interviewed by the officer having custody of the Soldier's records when he or she completes 18 years of service for basic pay. The interview will determine if the Soldier has had service (active federal service or inactive service in any branch of the Armed Forces) in addition to that shown in the Army Military Human Resources Record (AMHRR) (or local file, as appropriate) or Personal Financial Records (PFR). Army service claimed by the Soldier that is not clearly substantiated in his or her AMHRR or PFR will be verified. If breaks in the applicant's Army service or periods of prior Army service have been previously verified, one copy of DA Form 2339 will be submitted to Commander, requesting verification. The signature of the commander or personnel officer at the close of DA Form 2339, section II, certifies that the service claimed by the Soldier in DA Form 2339, items 14 through 18, is correct.

b. Paragraph 12-4 (20 Year Retirement Law (Title 10, USC, section 7314) provides that 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. A Soldier who is retired for physical disability under Title 10, USC, section 1201 or Title 10, USC, section 1202 and is otherwise eligible for retirement under Title 10, USC, section 7314 is

entitled to the 10 percent increase in retired pay based on this criteria. A Soldier referred to the Disability Evaluation System may request and be approved for length of service retirement. The date of the length of service retirement will not exceed the date of the disability disposition.

c. Paragraph 12-7 (Eligibility) provides that Soldiers who have completed 20 but less than 30 years of active federal service and who have completed all required service obligations are eligible, but not entitled, to retire upon request. Except as indicated in chapter 16 of this regulation, unless restricted in this section, Soldiers who have completed 19 or more years of active federal service may apply for retirement.

d. Paragraph 12-14 (Responsibility of Retirement Authority) provides that no Soldier is retired who has not completed at least 20 years of active federal service that is creditable for retirement.

e. Paragraph 12-18 (Retirement Orders) provides once an order has been issued, it will not be amended or revoked except for extreme compassionate reasons or the best interest of the Army. Orders may not be modified, amended, or revoked on or after the effective date of retirement in the absence of fraud, mistake of law, mathematical miscalculation, or substantial new evidence affecting the Soldier's basic eligibility.

4. Title 10, USC, section 1208 (Computation of Service) provides a member of a regular component shall be credited with the sum of his active service as a member of the armed forces and his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of Title 32.

//NOTHING FOLLOWS//