

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20230003755

APPLICANT REQUESTS:

- Recalculate his service time using his DA Form 5016 (Chronological Statement of Retirement Points)
- Add his 465 reserve retirement points to his active duty time as required by federal law under 10 USC, Subtitle A, Part II, Chapter 61, § 1208, Paragraph 2

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

- DD Form 149 (Application for Correction of Military Record)
- Two (2) Headquarters, U.S. Army Garrison orders
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 215 (Correction to DD Form 214)
- DA Form 5016 (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, in effect:

a. He originally received disability, severance pay honorable discharge on 30 July 2004. He applied to the Physical Disability Board of Review (PDBR) in 2016 or 2017 to see if he qualified for an upgrade to medical retirement. In December 2017, the Secretary of the Army, after reviewing the Board's evaluation of his case, added him to the Permanent Disability Retired List (PDRL), retroactive to his original discharge date. When Headquarters, U.S. Army Garrison (HQ, USAG) revoked his original discharge orders and issued new ones reflecting his medical retirement in February 2018, they failed to correctly calculate his service time. Specifically, they did not add the 465 reserve retirement points (as recorded on his DA Form 5016) to his active duty time as

required by federal law under 10 USC, Subtitle A, Part II, Chapter 61, § 1208, Paragraph 2. It appears U.S. Army Human Resources Command (HRC) simply took the 3 years, 7 months, and 17 days of active duty credited to me on my DD214 and applied it to my new orders. Relief Sought: Correction to my retirement orders, DD214, and any other relevant records/documents with my reserve retirement points properly added to my active-duty service, which should give me more than a year's worth of additional total service time.

b. He made a call to HRC to inquire if they could provide a rough time frame when his new orders would be published. He was placed on hold for about 10 minutes after the representative assisting him expressed some confusion over his current status. Specifically, it appeared that he had never been discharged or released from the Reserve Component. The issue appeared to have been cleared up; however, it could have also contributed in part or whole to the error. The error directly impacts his family's financial well-being. Since applying and being approved for Combat-Related Special Compensation (CRSC) in December 2021 (retroactive to December 2016), the total service time used to calculate his monthly payments is now costing his family approximately \$60 per month in tax-free compensation. Likewise, this error has caused underpayment to all retroactive payments as well, likely totaling in the thousands of dollars.

3. The applicant provides:

a. Two (2) Headquarters, U.S. Army Garrison orders as follows:

(1) Orders 044-1015, dated 13 February 2018, reflects orders 183-1008 issued by HQ USAG on 1 July 2014, pertaining to his discharge was revoked.

(2) Orders 044-1016, dated 13 February 2018, reflects the applicant was released from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit him retirement for permanent physical disability. His effective date of retirement was 30 July 2004, retired grade of specialist (SPC)/E-4, and disability retirement of 3 years, 7 months, and 17 days.

b. DD Form 214 reflects he was honorably discharged on 30 July 2004, under the provisions of Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), paragraph 4-24b(3), disability, severance pay, separation code JFL, and reentry code 3. He had 3 years, 7 months, and 17 days of net active service this period; 3 months and 25 days of total prior active service; and, 1 year, 2 months, and 7 days of total prior inactive service.

c. DD Form 215 reflects the following corrections to the DD Form 214, with a separation date of 30 July 2004:

- Item 9 (Command To Which Transferred): USAR ConGrp (Ret)
- Item 18 (Remarks): (Delete) Disability Severance Pay -- \$15132.00
- Item 23 (Type of Separation): Retirement
- Item 25 (Separation Authority): AR 635-40, Para 4-24b(1)
- Item 26 (Separation Code): SFJ
- Item 27 (Reentry Code): 4
- Item 28 (Narrative Reason for Separation): Disability, Permanent

d. DA Form 5016, dated 22 December 2021, reflects the applicant's active duty points as 162, with 5 years qualifying for retirement.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 9 April 2001 for a term of three (3) years.

b. Record of Proceedings Physical Disability Board of Review reflects the following:

(1) Summary of Case: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty E4, Indirect Fire Infantryman, medically separated for "bilateral knee pain" with a disability rating of 10%.

(2) Board Findings: In the matter of the right and left knee conditions, the panel unanimously recommends a disability rating as follows: an unfitting left knee condition and an unfitting right knee condition, each rated 10%, both coded 5299-5260 IAW VASRD §4. 71a. In the matter of the contended left shoulder condition, the panel majority recommends no change from the PEB determination as not unfitting. The single voter for dissent submitted the appended minority opinion.

c. Army Review Boards Agency memorandum, undated, Subject: Department of Defense Physical Disability Board of Review Recommendation for the applicant states the following:

(1) I have reviewed the enclosed Department of Defense Physical Disability Board of Review (DoD PDBR) recommendation, minority opinion and record of proceedings pertaining to the subject individual. Under the authority of Title 10, United States Code, section 1554a, I reject the Board's majority recommendation and accept the Board's minority opinion to recharacterize the individual's separation as a permanent disability retirement with the combined disability rating of 30% effective the date of the individual's original medical separation for disability with severance pay.

(2) I direct that all the Department of the Army records of the individual concerned be corrected accordingly no later than 120 days from the date of this memorandum:

(a) Providing a correction to the individual's separation document showing that the individual was separated by reason of permanent disability retirement effective the date of the original medical separation for disability with severance pay.

(b) Providing orders showing that the individual was retired with permanent disability effective the date of the original medical separation for disability with severance pay.

(c) Adjusting pay and allowances accordingly. Pay and allowance adjustment will account for recoupment of severance pay, and payment of permanent retired pay at 30% effective the date of the original medical separation for disability with severance pay.

(d) Affording the individual the opportunity to elect Survivor Benefit Plan (SBP) and medical TRICARE retiree options.

d. The applicant was issued a DD Form 214, which reflects he was honorably discharged on 30 July 2004, under the provisions of AR 635-40, paragraph 4-24b(3), disability, severance pay, separation code JFL, and reentry code 3. A DD Form 215 was later issued to correct the separation authority, separation code, reentry code, narrative reason for separation, and to remove the phrase "Disability Severance Pay -- \$15132.00."

5. Human Resources Command advisory opinion, via electronic mail, dated 3 March 2022, states:

a. When the Regular Army did the applicant's Retirement Packet, it should have included a final DA Form 1506, which reflects the total amount of Active Duty and the chronological order of military service. In addition to the DA Form 1506, there should also have been a 1405 time computation completed. The 1405 time is a computation that converts U.S. Army Reserve (USAR) IDT pts towards Active Duty which might readjust the Basic Active Service Date (BASD) for a better retirement paycheck.

b. The Retirement/Separations Branch [usarmy.knox.hrc.mbx.epmd-retirementseparations@army.mil](mailto:usarmy.knox.hrc.mbx.epmd-retirementseparations@army.mil) can provide additional guidance relating to the retirement packet, 1405 time computation and answer questions relating to the retirement orders.

c. The RC Retired Pay Branch [usarmy.knox.hrc.mbx.tagd-retirement-applicationrequest@mail.mil](mailto:usarmy.knox.hrc.mbx.tagd-retirement-applicationrequest@mail.mil) should be able to provide guidance relating to pay issue questions.

d. The Retirement Points Statement (DA Form 5016) only goes up to the USAR discharge date. It does not include any other military component beyond the final USAR

discharge. With the DA Form 5016 and the Regular Army DD Form 214, the applicant has the chronological order of his military service and Active Duty service.

6. In response to the advisory opinion, the applicant states:

a. The email chain between Army HRC employee, Mr. [REDACTED] and myself from February 2022 represents a tiny fraction of the communications and research into my situation, with many of the former being conducted via telephone.

b. However, I fail to recognize anything I can readily identify as any “advisory opinion” that might impact the outcome of my case or that the Board could adopt, either in whole, in part, or reject. To my untrained eye, the only possible thing I can see is when Mr. [REDACTED] apparently misunderstood a question/statement about my DA Form 5016. His response was erroneous, as I was not trying to have my 5016 corrected. I was trying to have Reserve Retirement Points from my 5016 added to my active duty service as a Chapter 61 medical retiree.

c. I contacted Defense Finance and Accounting Services (DFAS), Army Human Resources Command (HRC), Army Reserve Component Retired Pay Branch, and the Physical Disability Board Review (PDBR) to have my Reserve Retirement Points added to my total service time and my retirement orders amended as such:

d. The consensus from everyone I communicated with was that my only avenue to seek and (hopefully) receive relief for error/injustice was through an application to the ABCMR.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.

2. A majority of the Board found the applicant’s retirement orders do not account for all of his service and determined the orders should be amended by recalculating his service time to add the service documented on the DA Form 5016 he provides.

3. The member in the minority found insufficient evidence to conclude there is an error in the calculation of the applicant’s service time and determined no relief is warranted.

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 by recalculating his service time to account for the service documented on his DA Form 5016 and amending his retirement orders accordingly. The applicant should receive any additional retired pay he is due as a result of this correction.

2/26/2025

X

CHAIRPERSON

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 (AR) 635-5 (Personnel Separations – Separation Documents) prescribes the separation documents that must be prepared for soldiers on retirement, discharge, release from active duty service, or control of the Active Army. It establishes

standardized policy for preparing and distributing the DD Form 214 (Certificate of Release or Discharge from Active Duty). Paragraph 2-4h(12)(d) *Total Prior Active Service*. From previously issued DD Forms 214, enter total amount of prior active military service less lost time, if any. If not applicable, enter "00 00 00."

3. 10 USC, Subtitle A, Part II, Chapter 61, § 1208, Paragraph 2 states, a member of a regular component shall be credited with the service described in paragraph (1) or that described in paragraph (2), whichever is greater. For the purpose of paragraph (2), a member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under section 12733 of this title.

//NOTHING FOLLOWS//