

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 January 2024

DOCKET NUMBER: AR20230003802

APPLICANT REQUESTS: correction of Orders Number D-03-410485 showing she was transferred to the Retired Reserve vice discharged from the U.S. Army Reserve (USAR).

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum, Subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter)
- Memorandum, Subject: Nonparticipation in the USAR
- AHRC Form FL 3948 (Election of Options)
- Orders Number D-03-410485

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 she was discharged instead of being transferred to the Retired Reserve. At the time, she was in the control group and had no retention office or advisement available. She already had her 20-Year letter. You can see on the form (attached nonparticipation memorandum) that it does not explain or make any mention of financial loss that would be experienced if a discharge was selected. She would have never selected this option if the options had been explained to her or if they had been clearly stated on the form. Why would she or anyone make this selection when they had a 20-Year letter and was set for retirement? There was no way, from the information she was provided, she could have known what "discharge" actually meant. The form did not clearly explain the consequences of the choices. She would assume that there are others who were sent this same form and have made the same mistake and hopefully they make contact with someone in Retirements Branch that will help them navigate a

correction. Now because of this lack of proper advisement, she is losing out on a significant portion of her retirement. She spent many, many hours over many, many years of her life serving the Army (with one deployment and a sexual assault that has had a major impact on her life) and to have it end like this is just a tragedy.

3. A review of the applicant's official record shows the following:

a. On 18 November 1981, the applicant enlisted in the USAR for a period of 6 years.

b. On 19 December 2001, the USAR Personnel Command, issued a Memorandum, Subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter) which shows the applicant completed the required number of years to be eligible for retired pay.

c. On 26 September 2002, Orders Number 02-269-00028 issued by Headquarters, 99th Regional Support Command, reassigned the applicant from her current assignment to the USAR Control Group (Reinforcement) for cogent personal reasons, effective 1 October 2002.

d. On 26 March 2004, Orders Number D-03-410485 issued by the U.S. Army Human Resources Command (HRC), St. Louis, honorably discharged the applicant from the USAR, effective, 26 March 2004, under the provisions of Army Regulation (AR) 135-178 (Enlisted Administrative Separations)

e. On 5 July 2023, Orders Number C07-398979 issued HRC, Fort Knox, KY, placed the applicant on the Retired list, effective 10 August 2023, under the provisions of Title 10, USC, section 12731.

4. The applicant provides:

a. Memorandum, Subject: Nonparticipation in the USAR dated 18 February 2004 showing the applicant was informed that enlisted Soldiers who have accrued 20 years of qualifying service for retired pay must earn a minimum of 50 retirement points annually to be retained in an active status in the USAR. Soldiers who do not earn 50 points by the Retirement Year Ending (RYE) dates will be removed from an active status. She had been identified as not having earned 50 retirement points during her most recent RYE. If the information was incorrect, she could notify her Regional Support Team immediately. If the information was correct, she could complete the election of options provided and return by the suspense date. A failure to respond would result in her being discharged. If she did not remain in an active status by earning 50 points each

year, she could have a choice of requesting transfer to the Retired Reserve or being discharged.

b. AHRC Form FL 3948 showing the applicant elected to be discharged from the USAR. She understood that it was a complete separation from her military status. The applicant endorsed this form on 12 March 2004.

5. On 29 August 2023, in the processing of this case, HRC, Chief, Personnel Services Division, provided an advisory opinion, which states HRC reviewed the application and requested administrative action. In the Nonparticipation in the USAR memorandum provided to the applicant, paragraph four recommended the applicant consider the positive aspects of transferring to the Retired Reserve. The applicant elected to be discharged. HRC cannot revoke the discharge order and issue a retirement order without a determination from the Army Review Boards Agency.

6. On 8 September 2023, the applicant was provided with a copy of the advisory opinion for comment.

7. On 8 September 2023, the applicant responded to the advisory opinion and stated in pertinent part to HRC's identification of the verbiage in paragraph four of the Nonparticipation memorandum:

a. This paragraph states nothing about the effect of "discharge" on retirement status or retirement pay. She had no retention office, no supervisor, nobody to tell her what the ramifications of being discharged were beyond what paragraph 4 states. She would have never assumed it would cost her money in her retirement. She does not understand why HRC thinks this paragraph explains this aspect of the choice. It absolutely does not. Nobody with a 20-year letter would ever opt to take a cut in retirement pay for any reason that she can think of. She was finished with being a drilling reservist, but she earned her retirement (many times over). Please consider granting her request.

b. They should have automatically transferred her to the Retired Reserve if she had not met the requirements for the status she was in. The 20-Year letter should be a huge red -flag for that type of action. Discharge should not even have been an option for someone with a 20-Year letter.

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 not warranted.

2. A majority of the Board concurred with the conclusion of the advisory official that the applicant was advised of the option to request transfer to the Retired Reserve before she was discharged and clearly indicated her preference to be discharged. A majority of the Board determined the evidence does not support correction of her record to show she elected transfer to the Retired Reserve in lieu of discharge.

3. The member in the minority found relief is warranted in this case, noting that the notification memorandum she received did not address one of the key benefits of transferring to the Retired Reserve, which is the impact on the calculation of retired pay. The member in the minority determined the applicant's record should be corrected to show she was transferred to the Retired Reserve in lieu of discharge.

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.

3/20/2024

X

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CHAIRPERSON

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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, 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. AR 140-10 (Assignments, Attachments, Details, and Transfers) in effect at the time states, assignment to the Retired Reserve is authorized if an eligible Soldiers who has completed 20 years of active or inactive service in the U.S. Armed Forces and requests to be transferred. Orders will be issued transferring Soldiers to the Retired Reserve.
3. AR 135-178 (Enlisted Administrative Separations) in effect at the time states, the Army Reserve includes all Reserves of the Army who are not members of the Army National Guard of the United States (ARNGUS) and who are in a Ready, Standby, or Retired Reserve category. It is a Federal force, consisting of individual reinforcements and combat, combat support, and training type units organized and maintained to provide military training in peacetime, and a reservoir of trained units and individual reservists to be ordered to active duty in the event of a national emergency.
4. AR 600-8-105 (Military Orders) states only the organization that published the original order may amend, rescind, or revoke the orders.
5. Title 10 USC, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

//NOTHING FOLLOWS//