

IN THE CASE OF: ██████████

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230005323

APPLICANT REQUESTS:

- reinstatement in the U.S. Army Reserve (USAR) Control Group (Reinforcement) (commonly known as the Individual Ready Reserve (IRR))
- in the alternative, enlistment in the ██████████ Army National Guard (█████ ARNG) or USAR
- correction of his reentry eligibility (RE) code to "1" vice "3"
- a personal appearance hearing before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DA Form 705 (Army Physical Fitness Test (APFT) Scorecard), 17 December 2016
- U.S. Army Human Resources Command Email ((Applicant)), 15 February 2018 and 5 March 2018, with ██████████ Joint Force Headquarters Email (Reply: Inspector General (IG) Assistance), 21 June 2018
- ██████ ARNG Form 149 (Application for Correction of Military Record under the Provisions ██████████ Military and Veterans ██████████), 6 September 2021
- Congressional Casework Authorization Form, 1 January 2018, with Email (Congressional Inquiry: (Applicant)), 23 June 2018
- Email ((Applicant)), 19 November 2023 (response to National Guard Bureau (NGB) advisory opinion)

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 was denied retention in the ██████ ARNG by a retention board in 2017. He later learned he was flagged for failing an APFT, which he was not aware of at

the time. He was reassigned to the USAR IRR, but when he tried to reenlist in 2018, was told he was flagged and he could extend until the flag was removed. Then he was told he could not reenlist because his previous term of enlistment was for a 6-year extension, which could not be true because extensions are only for 1 to 2 years. He was able to have his flag lifted, but it was close to his expiration term of service (ETS). He was sent a reenlistment packet the day before his ETS, but it was not received by the U.S. Army Human Resources Command until after his ETS. He requested assistance from the Inspector General's Office but never received a response.

3. The applicant enlisted in the Illinois Army National Guard (ARNG) on 25 August 1986 and transferred to the [REDACTED] ARNG on 27 July 1999. He reenlisted in the [REDACTED] ARNG on 29 January 2005 and again on 10 March 2010.

4. The U.S. Army Human Resources Command memorandum (Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)), 10 January 2012, notified him that he completed the required qualifying years of service for retired pay upon application at age 60.

5. On 12 February 2012, he extended his term of enlistment for a period of 6 years, establishing his ETS as 9 March 2018.

6. On 1 December 2012, he was notified by his commander that he was scheduled for review by the Enlisted Qualitative Retention Board (EQRB), convening 4-8 March 2013, and counseled accordingly.

7. The Joint Force Headquarters Office of the Adjutant General – California National Guard memorandum (Selection for Retention under Army Regulation 135-205 (ARNG and Army Reserve – Enlisted Personnel Management)), 6 April 2013, notified him the EQRB recommended his retention in the [REDACTED] ARNG for 1 year. The [REDACTED] National Guard Adjutant General approved his retention in the [REDACTED] ARNG for 1 year based on the board recommendation. He was advised that the EQRB identified one or more deficiencies in his Army Military Human Resource Record (AMHRR) located in the interactive Personnel Electronic Records Management System that reduced his retention eligibility from 2 years to 1 year. The EQRB retains only the "best qualified" Soldiers for retention. The [REDACTED] National Guard Adjutant General highly recommended that he thoroughly review his AMHRR and submit missing documentation. Failure to correct discrepancies in his AMHRR could result in his non-retention during the next EQRB.

8. On 3 November 2013, he was promoted to staff sergeant. He provided his DA Form 705 showing he failed the record APFT on 20 November 2016; however, there is no documentation in his AMHRR to show he was flagged for this failure. He retook the record APFT on 17 December 2016 and passed.

9. On 30 November 2016, he submitted two DA Forms 4187 (Personnel Action) wherein he stated:

a. He reviewed and updated his AMHRR located in the interactive Personnel Electronic Records Management System and his AMHRR accurately reflected his service. He understood he was responsible for the accuracy of his AMHRR and that the EQRB would use his AMHRR as their sole source to determine his future retention in the ■■■ ARNG.

b. In the event he was not selected for retention, he chose the following option: "Transfer/reassignment to the Control Group (Reinforcement) of the Individual Ready Reserve." (Note: He did not elect transfer/reassignment to the Retired Reserve, if qualified.)

c. He understood that once he made a decision to elect transfer/reassignment to either the IRR or the Retired Reserve, his orders would not be amended or revoked to change his election.

10. The Joint Force Headquarters Office of the Adjutant General – ■■■ National Guard memorandum (Non-selection for Continued Unit Participation), 10 March 2017, notified the applicant of his non-selection for continued unit participation and stated:

a. While he was a fully qualified Soldier of the Army National Guard of the United States (ARNGUS), Army Regulation 135-205 provided that only the best qualified Soldiers would be retained in units. The best qualified Soldiers were selected by a qualitative retention board. The regulation further provides that a Soldier who was not selected for retention would be removed from unit participation. He was considered for qualitative retention and was not selected. Accordingly, he would be discharged from the ■■■ ARNG not later than 25 September 2017 and transferred as a Reserve of the Army to the USAR Control Group (Reinforcement) (IRR) or to the USAR Retired Reserve, according to the option he selected by endorsement.

b. Since he was being separated as a result of non-selection for retention, there was no appeal process. Additionally, pursuant to Army Regulation 600-8-19 (Enlisted Promotions and Reductions), he would be administratively removed from the current enlisted promotion list and ineligible for promotion.

11. On 25 September 2017, he was honorably discharged from the ■■■ ARNG and assigned to the USAR Control Group (Reinforcement). His NGB Form 22 shows he completed 7 years, 6 months, and 16 days of net service during this period, and 27 years, 6 months, and 16 days of total service for retired pay. Item 26 (Reenlistment Eligibility) shows his RE code as "RE 3."

12. On 15 February 2018, he contacted the U.S. Army Human Resources Command requesting reenlistment in the USAR IRR. He stated he contacted his Career Management Team but had not received a response. On 5 March 2018, the U.S. Army Human Resources Command Army Reserve Enlisted Division responded to the applicant, noting he had a flag code in the system and may want to extend until he had this resolved.

13. U.S. Army Human Resources Command Orders D-03-809088, 27 March 2018, honorably discharged him from the USAR effective 27 March 2018. (Note: He reached his ETS on 9 March 2018.)

14. On 21 June 2018, the Joint Force Headquarters Office of the Inspector General – ██████ National Guard responded to his email inquiry requesting IG assistance (not available for review), stating their systems did not contain a DA Form 1559 (Inspector General Action Request) from him and requesting a copy.

15. In the processing of this case, an advisory opinion was obtained from NGB on 30 October 2023 with an attached email response from the ██████ ARNG (Reply: ABCMR Input Request (Applicant) (AR20230005323)) wherein the Special Actions Branch Chief states:

a. The applicant requests reinstatement in the USAR IRR or enlistment in the ARNG or USAR after failing to reenlist or extend in the IRR due to a delay in submitting documents that would lift his suspension of unfavorable actions regarding his APFT.

b. A review of the applicant's claim by the ██████ ARNG showed the applicant was reviewed by the Fiscal Year 2017 EQRB and selected as non-retain.

(1) Army Regulation 135-205 states a qualitative retention board reviews and selects the best qualified enlisted personnel for retention beyond 20 years of service. If a Soldier is not selected by a qualitative retention board, he or she will be transferred (ARNGUS) or reassigned (USAR) to the Retired Reserve or to the IRR depending on the Soldier's option.

(2) Army Regulation 135-178 (ARNG and Army Reserve Enlisted Administrative Separations), chapter 16 (Qualitative Retention Program), paragraph 16-17 (Disposition of Soldiers Not Selected for Retention), states Soldiers who were not selected for retention in ARNGUS units or USAR troop program units are considered fully qualified for continued participation in the USAR as assigned IRR Soldiers if they have not reached 60 years of age.

c. NGB recommends disapproval of the applicant's request. Restrictions and retention policy and/or regulatory actions taken by the USAR IRR in order to retain or

extend the applicant while assigned to the USAR IRR do not fall under the purview of the ■■■ ARNG or the ARNG as a whole. Furthermore, the applicant's issue with the APFT should have been taken up with the USAR IRR IG Office, not the ■■■ ARNG IG Office. The applicant is ineligible for reenlistment in the ■■■ ARNG.

d. This opinion was coordinated with the ■■■ ARNG.

e. The ■■■ ARNG email response noted that Army Regulation 135-178, chapter 16, provides for assignment of RE code 3 upon separation in accordance with National Guard Regulation 600-200 (Enlisted Personnel Management), chapter 6.

16. He responded to the NGB advisory opinion via email ((Applicant)), 19 November 2023, wherein he stated:

I have read the opinion. This does not take into consideration that I only received my reenlistment packet for IRR the day before my ETS date which was on a Friday[.] I had all the required documents the next Monday but ws [was] told that was to [too] late. A very unreasonable amount of time to get that taken care of.

1. At first the IRR said I could extend even though I was falsely flagged.
2. Then they (IRR) said I can not because my last enlistment was an extension which was a mistake by the recruiter in 2010. He put me down for extending 6 years. I had no flags then so it should have been a reenlistment.
3. Only at [the] last minute they told me I was flagged but I got the PT [APFT] card and sent [it] in. They are [sic] IRR sent me a reenlistment package without giving me time to send it back because I had to find a recruiter to do [administer] weigh in which I passed.
4. Obviously the flag was at [sic] my EQRB in 2017 which it should not have been.
5. I should not be held responsible for these admin. [administrative] failures.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was warranted. The

Board carefully considered the applicant's contentions, his military records, and regulatory guidance. The applicant requests reinstatement in the U.S. Army Reserve (USAR) Control Group (Reinforcement) (commonly known as the Individual Ready Reserve (IRR)) or, as an alternative, enlistment in the [REDACTED] Army National Guard ([REDACTED] ARNG) or USAR. The Board agreed that the applicant was ineligible for re-enlistment in the [REDACTED] ANG. However, applicable regulatory guidance states that Soldiers who were not selected for retention in ARNGUS units or USAR TPUs are considered fully qualified for continued participation in the USAR as assigned IRR Soldiers if they have not reached 60 years of age. After due consideration of the case, 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 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 affording him opportunity for continued participation in the USAR as an IRR Soldier.

2/28/2024

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 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 ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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. The ABCMR members will direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. Army Regulation 135-205 (ARNG and Army Reserve Enlisted Personnel Management), 11 March 2008 and in effect at the time, states a qualitative retention board reviews and selects the best qualified enlisted personnel for retention beyond 20 years of service. If a Soldier is not selected by a qualitative retention board, he or she will be transferred or reassigned to the Retired Reserve or to the IRR depending on the Soldier's option.
4. Army Regulation 135-178 (ARNG and Army Reserve Enlisted Administrative Separations), 7 November 2017, superseded Army Regulation 135-205, 11 March 2008. Chapter 16 (Qualitative Retention Program), paragraph 16-17 (Disposition of Soldiers Not Selected for Retention), states Soldiers who were not selected for retention in ARNGUS units or USAR troop program units are considered fully qualified for continued participation in the USAR as assigned IRR Soldiers if they have not reached 60 years of age.
5. National Guard Regulation 600-200 (Enlisted Personnel Management) prescribes the criteria, policies, processes, procedures and responsibilities to classify; assign; utilize; transfer within and between States; provides Special Duty Assignment Pay; separation; extension/reenlistment, and appointment to and from command sergeant major, ARNG and ARNGUS enlisted Soldiers.

a. Paragraph 6-34 (RE Codes) provides that RE codes are determined at separation. They provide information concerning the Soldier's service in the ARNG, which will be considered upon future enlistment. Table 6-1 (Definition of RE Codes) shows:

- 1 – fully qualified for reentry
- 2 – discharged before completing a contracted period of service, not contemplating reenlistment, or requesting discharge for reason of pregnancy
- 3 – not fully qualified for reentry or continuous service at time of separation, but this disqualification is waivable
- 4 – ineligible for enlistment
- 4r – retired with 15 or more years of active service or active service in full-time National Guard duty status – Soldiers ineligible for enlistment or reenlistment in the ARNG

b. Paragraph 6-35 (Separation/Discharge from State ARNG and/or Reserve of the Army) provides that the following are reasons, applicability, and codes for administrative separation or discharge from the Reserve of the Army, the State ARNG only, or both. These reasons may be used for separation from the State ARNG only. See Army Regulation 135-178, chapter 1 (General Provisions), Section V (Mobilization Asset Transfer Program), to determine whether to assign a Soldier to the IRR. Each separation reason outlined below reflect the assignment/loss reason codes that will be annotated on the separation order by the order issuing authority. Subparagraph n applies to Soldiers not selected for retention by a qualitative retention board per Army Regulation 135-205, chapter 2, and elect discharge. If the Soldier elects to be reassigned to the USAR Control Group (Reinforcement) or the Retired Reserve, use paragraph 6-36r and RE code 3.

c. Paragraph 6-36 (State ARNG Separation) applies to Soldiers not selected for retention by a qualitative retention board (see Army Regulation 135-205, chapter 2) and the Soldier elects to be reassigned to the USAR Control Group (Reinforcement) or the Retired Reserve. Subparagraph r states if the Soldier elects to be concurrently discharged, use paragraph 6-35n and RE code 3.

//NOTHING FOLLOWS//