

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 6 August 2024

DOCKET NUMBER: AR20230006357

APPLICANT REQUESTS: Credit towards his retirement under the Public and Community Service (PACS) Program after his early retirement through the Temporary Early Retirement Authority (TERA) and recalculation of his retired pay at age 62.

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

- DD Form 149 (On line application for Correction of Military Records)
- DD Form 214, 18 November 1976
- Request for Early Retirement, December 1997
- Voluntary Retirement Application, January 1998
- Order Number 22-516, Separation Processing, January 1998
- Order Number 033-245, Retirement Out Processing, February 1998
- Order Number 136-007, Retired Reserve, May 1998
- Order Number 255-18, MTOE/TDA, Command Sergeant Major, December 1996
- Command Leadership Waiver, July 1996
- CSM Assignments, May 1996
- Order 19-4, Transfer from HHC 2-I 59 IN to 1st Battalion 184th IN January 1996
- Notification Memo: Grizzly Youth Program, November 1999
- Memorandum Youth Programs, June 2000
- Notification Memo: Grizzly Youth Authority (GYA) Program, July 2000
- State Order 0230-X-1, GYA Extension Dec. 1 999 - July 2001
- Notification Memo: GYA. August 2000
- State Order 0251-M-2, GYA, Change of Duty Assignment, September 2000
- State Order 1095-M-4, Turning Point Academy Assignment (TPA), April 2001
- Notification Memo: TPA, Extension, June 200,1
- State Order 1162-A-7, TPA Assignment, June 2001
- Notification Memo: Oakland Military Institute (OMI) Assignment, October 2001
- State Order 1289-A-2, OMI Assignment, October 2001
- Notification Memo: OMI Assignment, July 2002
- State Order 3238-M-1, Office of Homeland Security, August 2003

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 that when he retired under the Temporary Early Retirement Authority (TERA) he did not submit a Public And Community Service (PACS) application and is now seeking to appeal his denial of entitlement to receive credit for post active duty public service credit. He just turned 65 and this fact was pointed out to him. At this time, he continues to be in Public Service in the Governor's Emergency Service in Mather, CA.
3. The applicant enlisted in the Army National Guard on 6 August 1976 and completed training and was awarded the military occupational specialty 11B (Infantryman). He was released from active duty and returned to his ARNG unit on 18 November 1976.
4. The applicant retired in the grade of E-8 under the TERA program on 30 April 1998 with 15 years, 8 months, and 24 days of creditable service for voluntary retirement.
5. From 1 December 1999 until 30 March 2001, the applicant served as a counselor and Operations/Training NCO for the Grizzly Youth Academy. He then served as the Student Advisor at the Turning Point Academy from 1 April 2001 to 30 September 2001. From 1 October 2001 to 30 June 2003, he served as an Operations Sergeant and First Sergeant at the Oakland Military Institute.
6. In the development of this case, an advisory opinion was obtained from the National Guard Bureau, dated 28 August 2023.
 - a. The applicant requests credit towards his retirement under the Public and Community Service (PACS) Program after his early retirement through the Temporary Early Retirement Authority (TERA). The NGB recommends disapproval.
 - b. The applicant retired effective 30 April 1998 under Temporary Early Retirement Authority (TERA). He then served in a public or community service employment position which qualifies him for a re-computation of military retirement pay under the Public and Community Service (PACS) Program. The applicant requests a re-evaluation of his military retirement pay under the authority of TERA and PACS.
 - c. The applicant requested voluntary early retirement under the authority of OTAG Memorandum 97-42, 21 November 1997, Temporary Early Retirement Authority (TERA). He retired from ARNGUS (AGR) effective 30 April 1998 with a total of 15 years,

8 months, and 24 days creditable service for his voluntary retirement. Starting on 1 December 1999, the applicant served as a counselor and Operations/Training NCO for the Grizzly Youth Academy until 30 March 2001. He then served as the Student Advisor at the Turning Point Academy from 1 April 2001 to 30 September 2001. From 1 October 2001 to 30 June 2003, he served as an Operations Sergeant and First Sergeant at the Oakland Military Institute. All of these programs were a part of the California National Guard State Active Duty (SAD) Program.

d. According to DoD Financial Management Regulation Volume 7B, Chapter 3, Temporary Early Retirement Authority (TERA) authorized members with over 15, but less than 20 years of total active-duty service to apply for early retirement. The opportunity to retire under this TERA program ended in September 2002. The Public and Community Service (PACS) Program allowed TERA retirees to apply some post-retirement employment (with certain pre-approved employers) towards their military retirement starting at age 62. PACS credit was authorized up to the time the member would have met 20 years of military service had they remained on active duty. This period was called the Enhanced Retirement Qualification Period (ERQP). The timeline to submit PACS applications to the Defense Military Data Center (DMDC) ended one year to the day after the member's ERQP expired.

e. Based on the guidelines from DFAS, the applicant should have applied for his PACS credit at least by one year to the day after his ERQP expired. The applicant's ERQP was August 2002, so he had up to August 2003 to submit his PACS application. If he had applied by August 2003, his retirement benefits would have been recalculated when he turned age 62, or in February 2020. Additionally, the California Army National Guard's Director of the State Personnel Department stated that CAARNG has never applied for PACS Program. The SAD Program that the applicant was employed through is a part of the California Public Employees' Retirement System (CalPERS) and is not a part of PACS under TERA since TERA is a federal program. The DoD regulations and DFAS specifically state that in order to receive credit, post-retirement employment must be with pre-approved DoD-registered organizations.

f. For these reasons, it is the recommendation of this office to disapprove the applicant's request. There is no evidence of an error or injustice. The policies and guidelines specifically state the timeline for submitting the PACS application. There are no provisions in the law that allows retroactive registration for employment in public or community service organizations. The applicant was required to report creditable service within one year of the date he would have completed 20 years of total active federal military service, which was in August 2003. This was not accomplished within the required time.

g. The Army National Guard Retirement Branch concurs with this recommendation. The California Army National Guard concurs with this recommendation.

7. A copy of the advisory opinion was forwarded to the applicant. He submitted a statement on his own behalf wherein he stated that he had not been informed of the details of the TERA and PACS at the time he entered the TERA program or at any time thereafter. He questions why the CAANG would offer TERA, but not the PACS and that if the state can offer the program why the Soldier is held solely responsible.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant retired under the Temporary Early Retirement Authority from the ARNG (AGR) effective 30 April 1998 with a total of 15 years, 8 months, and 24 days creditable service for his voluntary retirement. The Board reviewed and agreed with the NGB advisory official's finding that (1) the applicant's Enhanced Retirement Qualification Period (ERQP) was August 2002, so he had up to August 2003 to submit his PACS application; and (2) according to the CAANG Director of the State Personnel Department, the CAARNG has never applied for PACS Program (The SAD Program that the applicant was employed through is a part of the CalPERS and is not a part of PACS under TERA since TERA is a federal program); DoD regulations and DFAS specifically state that in order to receive credit, post-retirement employment must be with pre-approved DoD registered organizations). Therefore, the Board determined relief is not warranted.

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.

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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, 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. Title 10 of the United States Code, section 3914 provides the legal authority for the Secretary of the Army to retire an enlisted member of the Army who has at least 20, but less than 30, years of service. Public Law 102-484 provided Temporary Early Retirement Authority (TERA) by authorizing the Secretary of the Army, during the period beginning October 23, 1992, and ending October 1, 1995, to apply this section to an

enlisted member with at least 15 but less than 20 years of service by substituting "at least 15" for "at least 20." TERA authority was subsequently extended to cover the period through 31 December 2001 via Public Law 105-206. The program was discontinued in 2023

3. DoD Financial Management Regulation Volume 78, Chapter 3, TERA authorized members with over 15, but less than 20 years of total active-duty service to apply for early retirement. The opportunity to retire under this TERA program ended in September 2002. The Public and Community Service (PACS) Program allowed TERA retirees to apply some post-retirement employment (with certain pre-approved employers) towards their military retirement starting at age 62. PACS credit was authorized up to the time the member would have met 20 years of military service had they remained on active duty. This period was called the Enhanced Retirement Qualification Period (EROP). The timeline to submit PACS applications to the Defense Military Data Center (DMDC) ended one year to the day after the member's Enhanced Retirement Qualification Period (ERQP) expired. PACS credit was authorized up to the time the member would have met 20 years of military service had they remained on active duty.

//NOTHING FOLLOWS//