

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2024

DOCKET NUMBER: AR20230006506

APPLICANT REQUESTS: correction of his retirement points to reflect inclusion of service for points only performed for the retirement period covering 27 May 1982 to 26 May 1983 to reflect a total of 20 years, 7 months, and 19 days vice 20 years, 6 months, and 26 days.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Letter
- Leave and Earnings Statements (LES), covering May 1976 – October 1983
- Army Correspondence Courses
- Orders Number C-03-700182, 11 March 1998
- Orders Number C-03-700183, 11 March 1998
- Orders Number C-03-700183A01, 28 April 1998
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 31 August 1998
- Defense Finance and Accounting Service (DFAS) Letter of Retired Pay, 10 September 1998
- DA Form 5016 (Chronological Statement of Retirement Points), 26 August 2022

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, in pertinent part, he was comparing the DA Form 5016 used for his retirement with the information he had on correspondence courses completed and realized that the extension courses completed from 27 May 1982 to 26 May 1983 were not listed and therefore, not credited to his retirement points. When calculating the non-active-duty points, he calculated that the total retirement credit should be 20 years, 7 months, and 19 days vice 20 years, 6 months, and 26 days.

3. A review of the applicant's available service record reflects the following:

- a. Having prior enlisted service with the U.S. Navy, he enlisted in the U.S. Army Reserve (USAR) on 27 May 1976 for a period of 1 year.
- b. On 26 May 1977, he reenlisted in the USAR for a period of 1 year.
- c. On 29 April 1978, he reenlisted in the USAR for a period of 3 years.
- d. On 21 March 1981, he reenlisted in the USAR for a period of 3 years.
- e. On 30 September 1983, the applicant entered active duty.
- f. On 30 September 1986, he reenlisted in the USAR for a period of 3 years.
- g. On 26 September 1989, he reenlisted in the USAR for a period of 6 years.
- h. On 29 June 1995, he reenlisted in the USAR for a period of 6 years.
- i. On 11 March 1998, the U.S. Army Reserve Personnel Command issued Orders Number C-03-700182 and C-03-700183, reassigning him to the U.S. Army transition point for out processing, and honorably retiring him from service, effective 31 August 1998, with 19 years, 2 months, and 27 days at the rank/grade of master sergeant (MSG)/E-8. These orders show for section 1405 (active service) service he completed 20 years, 6 months, and 17 days.
- j. On 28 April 1998, the U.S. Army Reserve Personnel Command issued Orders Number C-03-700183A01, amending Orders Number C-03-700183, honorably retiring him from service with 19 years, 2 months, and 26 days and section 145 service to show 20 years, 6 months, and 26 days of service.
- k. DD Form 214, ending 31 August 1998 reflects an honorable voluntary retirement. Item 12 (Record of Service) shows service from 30 September 1983 to 31 August 1998 for a net active service this period of 14 years, 11 months, and 1 day, with total prior active service of 4 years, 3 months, and 25 days.
- l. DA Form 5016 (Chronological Statement of Retirement Points), dated 3 July 2023 shows for the retirement year ending 26 May 1983, the applicant earned 50 Inactive Duty Training (IDT) points, 15 membership points, and 30 active duty points, totaling 90 total points creditable.

4. The applicant provides the following:

a. LES, covering May 1976 – October 1983 showing his pay and benefits received at the time in the ranks of staff sergeant and sergeant first class while in the USAR.

b. Army Correspondence Courses completed showing his participation in training courses spanning from between 3 August 1981 to 2 May 1984 with the corresponding credits for each course. For the period 3 August 1981 to 10 August 1983, he completed 84 credits and for the period 17 October 1983 to 2 May 1984 he completed 43 credits.

c. DFAS Letter of Retired Pay, dated 10 September 1998 showing his retired pay calculated at the rank of master sergeant for service of 20 years, 6 months, and 26 days at 51.25 percent compensation for retired pay.

5. On 17 July 2023, the U. S. Army Human Resource Command (HRC), Chief, Army Service Center, provided a response to the request for an advisory opinion of the applicant's request stating, in effect, they enclosed an updated DA Form 5016 which shows 26 creditable reserve retirement years and 7783 cumulative retirement points.

6. On 24 July 2023, the applicant was provided with a copy of the advisory opinion to provide a response.

7. On 1 August 2023, the applicant provided a rebuttal to the advisory stating, in effect:

a. He reviewed the corrections from HRC made to the DA Form 5016 and agrees finding the corrections acceptable.

b. He is confused on the HRC advisory response as they show information concerning years and points for an Army Reserve retirement. However, he retired from the Active Guard/Reserve (AGR) program and thus received an active duty retirement.

c. What he is looking to see corrected is the retirement calculations that were originally used to calculate his retirement income. When his retirement percentage was calculated, they used 20 years, 6 months, and 26 days. With the corrected DA Form 5016, the corrections need to be implemented. Based on the corrected DA Form 5016, he calculated the following correction for computing his retirement:

- Membership points: $(15 \times 9 + 5) = 140$
- Extension Courses: $(84/3) = 28$
- Inactive Duty Points: 345
- Total Active Duty: 19 years, 2 months, and 27 days
- Total Non-Active Duty: 1 year, 4 months, and 28 days (513 points)
- Total: 20 years, 7 months, and 25 days

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and Human Resources Command – Army Service Center advisory opinion, the Board concurred with the advising official finding correction were made to the applicant's DA Form 5016 to show his time as 20 years 6 months and 26 days. The Board noted that at the time of the applicant's reserve component time the 60-point rule was in effect as shown in paragraph 4 on the back of the DA Form 5016.

2. In addition, the Board determined the applicant's IDT points, plus his extension courses and his membership points only count up to 60, anything over that is not credited toward retirement points. The Board agreed the combination of those three items up to 60 points are added to the active-duty points to get the applicant's retirement points for that retirement year ending (RYE). Furthermore, the Board determined the applicant's active-duty points for the RYE in question (30) combined with the 60-point rule reflect the applicant would be unable to get a maximum of 90 points that year regardless of how many IDTs or correspondence courses completed. Based on this, the Board determined the applicant's contentions have already been corrected. Therefore, relief is denied.

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.

1/29/2024

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, 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. Army Regulation (AR) 140-185 (Army Reserve Training and Retirement Point Credits and Unit Level Strength Accounting Records) dated 15 November 1979, in effect at the time provides:
 - a. Paragraph 3-4 (DA Form 2328 (Record of Army Extension Courses Completed)), states that the DA Form 2328 is used to report the number of course credit hours creditable to unit and non-unit Soldiers for satisfactory course completion during a retirement year.

b. Paragraph 3-4(5) (Extension Courses), report only Army extension courses credited by service schools on courses completed for the entire retirement year. In addition, when a Soldier enrolls in an Army extension course, make a notation of the enrollment as indicated below:

(1) Retirement point column. Enter the number of retirement points for completion of Army extension courses. One point is authorized for each 3 hours of courses completed.

(2) Calendar months columns. Enter under the retirement year ending month the number of creditable points.

3. Department of Defense Financial Management Regulation 7000.14, Volume 7B (Military Pay Policy – Retired Pay), Section 010102 (Retired Pay Base), provides the retired pay base is determined based upon the date the member first entered military service and whether the member is retiring under regular, reserve, or disability provisions of law. Details are in Chapter 3. a(1) Final Basic Pay: For members who first entered military service before 8 September 1980, the retired pay base is generally the final basic monthly pay that the member is receiving at the time of retirement.

4. AR 600-8-105 (Military Orders), Chapter 2-21, in effect at the time, provides only the organization that published the original order may amend, rescind, or revoke the order.

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. The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

6. Title 31, USC, section 3702, is the 6-year barring statute for payment of claims by the government. In essence, if an individual brings a claim against the government for monetary relief, the barring statute says that the government is only obligated to pay the individual 6 years from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the court held that the Board for Correction of Military Records (BCMR) is not bound by the barring act, that the BCMR decision creates a new entitlement to payment and the 6 years starts running over again, and that payment is automatic and not discretionary when a BCMR decision creates an entitlement.

//NOTHING FOLLOWS//