

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2024

DOCKET NUMBER: AR20230007773

APPLICANT REQUESTS: in effect, correction of his records to show he retired from active duty due to length of active service vice being transferred to the Retired Reserve.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 5016 (Chronological Statement of Retirement Points), 23 June 2023
- Email exchange with the U.S. Army Reserve Command – Retirement and Separation Branch

FACTS:

1. The applicant states he was retired in the Army Reserve Component when he should have been retired in the Active Component because he had more than 20 years of active federal service. The unit administrator made the error when requesting the retirement. He (the applicant) had requested retirement in the active component beforehand, but she (the unit administrator) forgot. On 29 April 2021, he sent an email to U.S. Army Reserve Command (USARC) inquiring about the request for the change from the Reserve retirement to the Active retirement that was resubmitted in January 2021. His reserve retirement date was 1 December 2020. On 29 April 2021, he got a response from [Name] of the USARC Retirements and Separations Branch, requesting his DOD/SSN number. He responded on the same day. On 11 June 2021, he again sent an email to USARC to see if the packet had been received. On 23 June 2021, he again received a response from same USARC person stating that since he had already been retired in the Reserve Component that the packet needed to go to the Army Review Board. There was no mentioning of requesting that any orders be revoked in any of their emails.

2. Review of the applicant's service records shows:

a. The applicant was born in February 1964. He will turn 60 years of age in February 2024.

b. He served in the Regular Army (on active duty) from February 1984 to February 1987 and from November 1987 to November 1992.

c. He enlisted in the U.S. Army Reserve on 6 November 1992. He served in a variety of assignments. His DA Form 5016 shows he entered the active guard reserve (AGR) program from on or about 7 November 1999 to on or about 6 June 2005. However, there is no DD Form 214 (Certificate of Release or Discharge from Active Duty) available for this period.

d. After a break in service from 6 December 2008 to 17 February 2009, he enlisted in the U.S. Army Reserve on 18 February 2009 and reenlisted indefinitely on 5 May 2011.

e. On 27 May 2011, the U.S. Army Human Resources Command issued him a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

f. On 18 September 2020, following his request to be transferred to the Retired Reserve, Headquarters, 63rd Readiness Division published Orders 20-262-00028 transferring him to the Retired Reserve effective 1 December 2020 after he had completed 20 or more qualifying years of service for pay towards non-regular retirement at age 60.

3. On 10 February 2024, the U.S. Army Reserve Command provided an advisory opinion in the processing of this case. The advisory official referenced Army Regulation (AR) 140-10, Assignments, Attachments, Details, and Transfers, and stated this Headquarters conducted extensive research and provides the following:

a. Records indicate [Applicant] initiated his request for reassignment to the Retired Reserve on 15 November 2019. His DA Form 5016 – Chronological Statement of Retirement Points indicated over 32 years of combined service (Active and Reserve) and received his Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter) on 27 May 2011. [Applicant's] application for reassignment to the Retired Reserve consisted of several documents to include: DA Form 4187 – Personnel Action, DA Form 4651 – Request for Reserve Component Assignment or Attachment, and a DA Form 4856 – Developmental Counseling Form from the Company Commander and the Army Reserve Careers Counselor (ARCC). Enclosed is his request for reassignment to the Retired Reserve. [Applicant] requested an effective date of 1 December 2020 for his reassignment to the Retired Reserve. His chain of command endorsed the application and processed to the 63d Readiness Division (RD) IAW Army Reserve policy and regulatory guidance. On 18 September 2020, the 63d RD published his reassignment order to the Retired Reserve effective 1 December 2020, as requested.

b. A review of [Applicant's] packet for reassignment to the Retired Reserve reveals his voluntary request was composed, submitted, and processed within Army regulatory guidance. [Applicant] received counseling from his ARCC and Company Commander about applying for and receiving retired pay at age 60, as indicated on the enclosed DA Form 4856 documents. There is no record of [Applicant] submitting a request for Sanctuary status or Active Federal Service (AFS) retirement prior to his reassignment to the Retired Reserve on 1 December 2020.

c. After exhaustive review of this case, this Headquarters cannot recommend relief for [Applicant] regarding his request for AFS retirement. Evidence indicates [Applicant] did not submit a request for AFS retirement and received proper counseling for his reassignment to the Retired Reserve. This office recommends him to apply for retired pay immediately as he will reach age 60 in February 2024.

4. The applicant responded to the advisory opinion via email and stated he did not know he was retired in the Reserve Component until he received the retirement order. He then got with his Unit Administrator and resubmitted another DA Form 4187 requesting retirement in the Active Component which was what was supposed to had been done the first time because he has over 20 years of Active Federal Service. About three months later he contacted USARC to check on the packet and he was informed that since they had already retired me, the packet needed to go to the ARBA. He then sent the packet to the ARBA and about 10 months later he received a response stating that no action was taken because they did not see that he had went thru USARC. He responded with all the email traffic between himself and USARC that confirmed his contact with them and showed that they were the ones who referred him to the ARBA. So, with that said, he did not have to apply for sanctuary because he already has more than 20 years of Active Federal Service. The second DA Form 4187 was the request for retirement in the Active Component. It was noted in the second one that the first one was erroneous.

5. By regulation (AR 140-10), Retired Reserve: Soldiers who have completed 20 or more qualifying years of service (QYS) for non-regular retirement can elect to transfer to the Retired Reserve.

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 Headquarters, U.S. Army Reserve Command (USARC)- Military Personnel Division, the

Board concurred with the advising official recommendation for denial finding insufficient evidence the applicant was not properly counseled regarding his reassignment to the retired reserves nor that he submitted a request for Sanctuary status or active federal service (AFS) retirement prior to his reassignment to the retired reserves with an effective date 1 December 2020.

2. The Board determined based on the preponderance of evidence and the advising opine, there is insufficient evidence to support the applicant's contentions for correction of his records to show he retired from active duty due to length of active service vice being transferred to the Retired Reserve. As such, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

5/14/2024

X

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:

Army Regulation (AR) 140-10, Assignments, Attachments, Details, and Transfers, provides policy and procedures for assigning, attaching, removing, and transferring U.S. Army Reserve Soldiers. It defines Ready Reserve Control Groups and the Selected Reserve.

a. Paragraph 2–3. Retired Reserve. Soldiers who have completed 20 or more qualifying years of service (QYS) for non-regular retirement can elect to transfer to the Retired Reserve

b. Paragraph 6–1. Eligibility. Assignment to the Retired Reserve is authorized, with the exception of enlisted Soldiers subject to involuntary separation. The Soldier may not elect reassignment to the Retired Reserve in lieu of involuntary separation, unless specifically waived. The eligible Soldiers may be allowed to transfer if they—

(1) Are entitled to receive retired pay from the U.S. Armed Forces because of prior military service or disability.

(2) Twenty QYS for retired pay at age 60 and are eligible to receive the notification of eligibility (NOE) of Retired Pay at age 60 (20-year letter).

(3) Are medically disqualified and not as a result of own misconduct, for retention in an active status, who have completed at least 15 QYS but less than 20 QYS for retired pay and are eligible to receive the NOE for Retired Pay at Age 60 (15-year letter). The 15-year NOE pertains only to members of the Selected Reserve and that loss of qualification to continue in the Selected Reserve must be solely due to medical disqualification.

(4) Have completed a total of 20 years of active service in the U.S. Armed Forces.

(5) Army Reserve (troop program unit and individual mobilization augmentee) officers and enlisted Soldiers will submit voluntary requests for transfer to the Retired Reserve not later than 9 months prior to the effective date of the transfer. Area commanders or their designees may waive the submission timeline requirements.

//NOTHING FOLLOWS//