

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 November 2024

DOCKET NUMBER: AR20230008026

APPLICANT REQUESTS: in effect, correction of his discharge order to show he was transferred to the Retired Reserve.

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum Notification of Eligibility for Retired Pay at Non-Regular Retirement (20 Year Letter)
- DA Form 5061 (Chronological Statement of Retirement Points)
- Orders 22-056-00035 U.S. Army Reserve (USAR) Discharge Orders
- Email Regarding Retirement
- General Privacy Release Form

FACTS:

1. The applicant states, in effect:

a. There is an injustice in his orders in that he is being denied retirement orders. He was not able to retire having followed the direction of his commander, Captain (CPT) R-. He was directed by CPT R- to go to his retention noncommissioned officer to have him submit the packet he received for retirement. He was told to wait for his retirement orders and to check on them every two weeks, which he did.

b. From September 2021 through February 2022 the S-1 stated his packet was resubmitted because the dates were incorrect. Two months later, it had not been submitted through his chain of command. He finally called his commander in January 2022 about receiving retirement orders and was assured they were working on them. On 25 February 2022, he received expiration term of service (ETS) orders honorably discharging him from the U.S. Army Reserve (USAR) with the comment he had been held beyond his ETS date at no fault to his own. He had 23 years of service with 20 good years and submitted his retirement packet which included his retirement points, retention counseling, and his letter stating he was eligible for retirement. He called CPT R- and texted him, but the CPT never responded and ignored his phone calls.

c. He served honorably for two tours of deployment. In communication with several people, he has been told his command does not know how to retire or handle Soldiers' retirement packets as they should and it is easier for the command team to ETS a Soldier and clear them from the books. He does not want a ceremony. His only request is to receive retirement orders and to be able to present them to his parents before they pass to show his accomplishment he honorably earned.

d. His retirement packet was submitted to his command team. Errors in the packet were not his fault and it should not be overlooked that he attained a 20 year letter. He has earned his retirement and not just some ETS discharge paperwork to clear a command's roster. This is an injustice and he would like the Board to investigate the error. He has also been told he is not the only Soldier this has happened to.

e. He has been seeking help for this error for over a year. He has been given every excuse from his unit and U.S. Army Human Resources Command (AHRC). He has email traffic which shows his texts to his commander which went unanswered.

2. The applicant provides emails regarding his request for retirement orders and his retirement packet. He includes screen shots of text messages to his commander, to his first sergeant, and from another Soldier in the unit. On 25 October 2022, he received an email from the San Antonio Retirement Service Officer, which stated they gathered the necessary documents to submit an inquiry to Department of the Army Reserve Retirements. They would be in contact. The entire email chain is available for the Board's review.

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

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the USAR on 28 September 1998. He remained in the USAR through immediate reenlistments.

b. Memorandum notification of eligibility for retired pay at non-regular retirement (20 Year Letter), 29 October 2020, informed him he had completed the required years of qualifying Reserve service and was eligible for retired pay, upon application, at age 60.

c. Orders 22-056-00035, published by Headquarters, 63rd Readiness Division (USAR), 25 February 2022, honorably discharged him from the USAR effective 25 February 2022. The additional instruction states "Soldier was held beyond normal discharge date through no fault of the Soldier."

d. DA Form 5016 (Chronological Statement of Retirement Points), 29 October 2024, shows he was an enlisted member of the ARNG from 28 September 1998 through 24 February 2022. He had 21 years qualifying service for retirement.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board found no record of derogatory information in the applicant's service record and determined as a matter of equity, his orders should reflect transfer to the Retired Reserve.

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 is 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 amending Orders 22-056-00035, published by Headquarters, 63rd Readiness Division (USAR), 25 February 2022 to show he was transferred to the Retired Reserve.

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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 12731 (Age and service) states:

a. A person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person— (1) has attained the eligibility age applicable under subsection (f) to that person; (2) has performed at least 20 years of service computed under section 12732 of this title; (3) in the case of a person who completed the service requirements of paragraph (2) before 25 April 2005, performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before 5 October 1994, the number of years of such qualifying service under this paragraph shall be eight; and (4) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

b. Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of Homeland Security, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

c. The Secretary concerned shall notify each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice shall be sent, in writing, to the person concerned within one year after the person completes that service.

2. Title 10, USC, section 12738 (Limitations on revocation of retired pay)

a. After a person is granted retired pay under this chapter, or is notified in accordance with section 12731(d) of this title that the person has completed the years of service required for eligibility for retired pay under this chapter, the person's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed as required by section 12731(a)(2) of this title, unless it resulted directly from the fraud or misrepresentation of the person.

b. The number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination and when such a correction is made the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date the person is granted retired pay.

3. Army Regulation 135-180 (Qualifying Service for retired Pay Non-Regular Service) implements statutory authorities governing the granting of "retired pay" to Soldiers and former Reserve Component Soldiers. Chapter 2 provides eligibility criteria and states, in pertinent part, that in order to qualify for non-regular retirement, a member must have attained age 60 and completed a minimum of 20 years of qualifying service. Paragraph 2-8 defines qualifying service and states, in pertinent part, that a Reserve Component Soldier must earn a minimum of 50 retirement points each retirement year to have that year credited as qualifying service.

//NOTHING FOLLOWS//