

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230008074

APPLICANT REQUESTS:

- correction of retirement points for the period of 19 July 2010 – 18 July 2011 to reflect 51 points rather than 49 points
- entitlement to retirement pay effective 1 October 2022
- a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Requested Relief
- Power of Attorney
- DA Form 1380 (Record of Individual Performance of Reserve Duty Training), 3 September 2010
- Memorandum – Subject: Recovered Documentation, 9 November 2021
- Orders Number D 335-05, 1 December 2021
- Self-authored statement
- Email communication
- Retiree Account Statement

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. Counsel stated, the applicant suffering from complications associated with Post-Traumatic Stress Disorder (PTSD) when she realized that her records did not reflect the correct amount of retirement points in 2010. She contests that during this period she struggled with maintaining normalcy while in uniform and neglected her records. She did not realize the importance of maintaining her military records until she was medically retired. During this period, the applicant attempted to correct her records to reflect 8 hours of creditable service performed on 3 September 2010. On this day, the

applicant conducted additional training (for points only) in preparation for her subsequent attendance at Drill Sergeant school. The applicant was under the assumption that her DA Form 1380 was processed accordingly until December 2021, when she received her retirement orders reflecting 20 years, 5 months, and 12 days of basic pay. She notes that this order led her to believe that her records were correct when they were not. The applicant received retirement pay from 1 April 2022 – 30 September 2022 when it was erroneously terminated because her records failed to reflect 20 qualifying years of service. At the time of her retirement, the applicant was rated at 70 percent disabled. A copy of this argument is further provided in its entirety within the supporting documents for the Board's review.

3. The applicant provides a statement reflective of her account of her military career. She notes the physical and mental challenges that she experienced as a result of her deployment to Iraq (2004-2005). The applicant contests that in 2010 she was encouraged to attend the Drill Sergeant course. During this period, she participated in a lot of training throughout the week and weekends in preparation for her attendance. She struggled both physically and mentally which resulted in her being reassigned to another unit. After being medically retired, she began receiving retirement pay. She assumed all things were in order regarding her 20 years of qualifying service, she was merely awaiting her 20-year letter. However, the Defense Finance and Accounting Service (DFAS) conduct an audit of her records noting that she was no longer entitled to retirement pay. A copy of this statement is further provided in its entirety within the supporting documents for the Board's review.

4. On 19 July 2001, the applicant enlisted in the U.S. Army Reserve (USAR) for 8 years to serve as a 92F (Petroleum Supply Specialist) and was subsequently assigned to a Troop Program Unit (TPU).

5. On 7 December 2003, the applicant was ordered to active duty.

6. The applicant was deployed in support of Operation Iraqi Freedom from 22 February 2004 – 20 February 2005.

7. On 23 March 2005, the applicant was honorably released from active duty.

8. On 8 May 2008, Headquarters, 98th Division (Institutional Training) issued Orders Number 08-129-00008 announcing the applicant's promotion to the rank/grade of sergeant (SGT)/E-5, effective 15 April 2008.

9. On 5 August 2008, the applicant reenlisted in the USAR for 6 years.

10. DA Form 1380 dated 3 September 2010, reflective of the applicant's performance of military duty for points only on 3 September 2010 (8 hours = 2 points). This document is endorsed by Captain (CPT) W_ P_, the applicant's company commander.

11. On 18 September 2015, the applicant again reenlisted in the USAR for 6 years.

12. On 1 March 2016, the applicant was promoted to the rank/grade of staff sergeant (SSG)/E-6.

13. On 13 August 2021, the applicant extended her enlistment by 1 year resulting in a 5 October 2022 expiration term of service date.

14. On 20 October 2021, an informal Physical Evaluation Board (PEB) was conducted finding the applicant physically unfit for continued military service with a recommendation that she be permanently medically retired with a disability rating of 70 percent for PTSD. The applicant concurred with the boards findings and waived her rights to a formal hearing.

15. Memorandum – Subject: Recovered Documentation, dated 9 November 2021, reflective of CPT W_ P_'s statement regarding the applicant's performance of duty. CPT W_ P_ provides the applicant served as a Drill Sergeant candidate and conducted duties in a non-pay status in preparation for her attendance at the drill sergeant school. He notes the provided DA Form 1380 validates this performance of duty and was later recovered within the applicant's personnel records.

16. On 1 December 2021, the U.S. Army Physical Disability Agency issued Orders Number D-335-05 releasing the applicant from assignment and duty due to a physical disability incurred while entitled to basic pay and under conditions that permit her retirement for permanent physical disability effective 31 December 2021. At the time of her retirement under Title 10, USC, Section 1204, the applicant received credit for:

- Disability Retirement: 5 years, 5 months, and 26 days
- Basic Pay: 20 years, 5 months, and 12 days

17. The applicant's records are void of evidence of her enrollment, attendance or completion of the Drill Sergeant course or a Notification of Eligibility for Retired Pay at Age 60 (20-year letter).

18. The applicant's Retiree Account Statement shows her pay and entitlements from April 2022 – September 2022. Beginning with the new pay due as of 1 July 2022, her retiree account statement shows a Veterans Affairs waiver of \$1,998.52.

19. Email communication, dated 16 February 2023, shows the applicant was advised by the U.S. Army Human Resources Command that her submitted DA Form 1380 was returned without action due to its untimely filling. Therefore, the applicant was referred to this board to request relief.

20. A review of the applicant's most recent DA Form 5016 (Chronological Statement of Retirement Points) dated 20 February 2024, reflects evidence of the applicant being awarded 49 retirement points (34 Inactive Duty Training and 15 Membership) for the period of 19 July 2010 – 18 July 2011. The applicant's detailed points history available within the Soldier Management System – Web (SMS-Web) is void of evidence of points previously awarded for the period requested in the relief.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's requests for •correction of retirement points for the period of 19 July 2010 – 18 July 2011 to reflect 51 points rather than 49 points, entitlement to medical retirement pay effective 1 October 2022, and a personal appearance before the Board via video/telephone. After thoroughly reviewing the application, all supporting documents, and the evidence found within the military record, the applicant's contentions, the military record, and regulatory guidance, the Board found that relief was warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.

3. The Board determination that the evidence of record is sufficient to show the applicant earned 2 retirement points after completing completed 8 hours of training, for points only, on 3 September 2010, and she is entitled to receive credit for the points she earned.

4. The applicant and counsel state, in effect, the applicant believed she was entitled to retirement pay, she did not know until later her DA Form 1380 was not processed. The applicant received retirement pay from 1 April 2022 – 30 September 2022 when it was erroneously terminated because her records failed to reflect 20 qualifying years of service. Once the applicant's points are corrected, and she is issued a 20 year letter, she should resume receiving retirement pay.

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:

- a. showing her DA Form 1380, dated 3 September 2010 was properly completed, and timely submitted, received, approved, and processed.
- b. awarding he 2 additional retirement points for the retirement year 19 July 2010 to 18 July 2011 (to show she was awarded 51 vice 49 points).
- c. issuing her Notification of Eligibility for Retired Pay at Age 60 (20-year letter), effective 18 July 2021.
- d. correcting Orders Number D-335-05, issued by the U.S. Army Physical Disability Agency, on 1 December 2021, based on the above noted corrections.
- e. notifying DFAS of the aforementioned corrections to the applicant's record, and paying her retirement pay, as determined appropriate by DFAS, or notifying the applicant if there is another reason, the applicant is not entitled to retirement pay.

█

█ █

 █
 █

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 (Training and Retirement Point Credits and Unit Level Strength and Accounting Records) prescribes the types of training and activities for which retirement points are authorized and the procedures for recording retirement point credits and training for U.S. Army Reserve (USAR) Soldiers. A qualifying year of service for non-regular retired pay is a full year during which a Reserve Component member is credited with a minimum of 50 retirement points.

a. Paragraph 2–2, (Criteria for Earning Retirement Points) states retirement points may be earned by USAR Soldiers for active duty (AD), or while in an active Reserve status, for ADT, initial active duty for training (IADT), involuntary active duty for training (involuntary ADT), AT, and IDT. Types of IDT are:

- regularly scheduled unit training includes UTA, and MUTA
- Regularly Scheduled Training (RST) other than UTA/MUTA
- make up assemblies for missed UTA/MUTA due to AT
- Equivalent Training (ET) in lieu of scheduled UTA/MUTA or RST
- additional training assemblies (ATA)
- two-hour unit training assemblies
- training of individual Soldiers in non-pay status.

b. Paragraph 2–4 (Criteria for Awarding Retirement Points) states, personnel on AD, ADT, IADT, involuntary ADT, or AT are awarded 1 point for each calendar day they serve in one of these categories and may not be awarded additional points for other activities while in such status. Most types of IDT are covered by one of the following rules on required duration of IDT and calendar day limitations on points:

- one point for each scheduled 4-hour period of IDT at UTA, RST, ET, ATA, or make up assembly maximum of 2 points in 1 calendar day
- one point for each 2 hour or greater period
- two-hour aggregates of shorter periods may be used, except in the case of 2-hour unit training assembly's maximum of 1 point in 1 calendar day
- one point for each 2 hour or greater period
- two-hour aggregates of shorter periods may be used except in the case of 2-hour unit training assemblies

- award of a second point in the same day requires additional hours to bring the day's total to a minimum of 8, maximum of 2 points in 1 calendar day
- points may not be awarded under more than one of the rules above during any single calendar day
- Soldiers may not perform more than 48 BAs per fiscal year and Soldiers must perform RST within 60 days of the missed BA.

c. Paragraph 3-3 (DA Form 1380) provides that DA Form 1380 will be prepared for a unit Soldier who performs equivalent training or additional training with their unit after the scheduled Battle Assembly. TPU units will retain one copy of the DA Form 1380 to post the appropriate entry into ADARS for the months report. Nonpaid DA Forms 1380 will not be entered into ADARS and will be forwarded to HRC for award of retirement points no later than the end of each duty month.

d. Paragraph 3-3b, states a DA Form 1380 will be prepared for a unit Soldier who performs equivalent training or additional training. The code "P" or "N" will be entered in item 9c before the retirement point credit. The code "P" indicates the Soldier is entitled to inactive duty pay for the duties performed; the code "N" indicates the Soldier is entitled to retirement point credit only.

3. AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation) prescribes Army policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability

a. Paragraph 4-27 (Final Disposition by the USAPDA) provides that unless reserved for higher authority, USAPDA approves disability cases for the SECARMY and issues the disposition instructions to the Transition Center for Soldiers separated or retired for physical disability from an active-duty status. Permanent disability retirement. This disposition is directed under Title 10, USC, section 1201 or Title 10, USC, section 1204, as applicable, when the Soldier is determined unfit for continued service and has a compensable disability in accordance with the standards of this regulation, and: the disability(ies) are permanent and stable or, subject to the requirements in chapter 5 concerning certain mental diagnosis, the disability rating will not improve to less than 80 percent; the Soldier has at least 20 years of service as computed under Title 10, USC, section 1208; or the Soldier has a combined disability rating of at least 30 percent.

b. Reserve Component (RC) Soldiers separating with or without disability severance pay provides that under the provisions of 10 USC 1209, Ready Reserve Soldiers who have completed at least 20 qualifying years of Reserve service and who would otherwise be qualified for retirement for non-regular service may forfeit disability severance pay and request transfer to the Inactive Status List for the purpose of receiving non-disability retired pay at age 60 or at the age otherwise authorized by law. The USAPDA extends this election to the Ready Reserve Soldier being separated

without entitlement to severance pay with 20 qualifying years. The Soldier will be afforded the opportunity to make their election when making elections to PEB or USAPDA findings.

c. The election will include the election to be transferred to the Retired Reserve in lieu of placement on the inactive status list. (Soldiers in the Retired Reserve receive continued service longevity.)

d. RC Soldiers who are members of the Selected Reserve and have a disability disposition of separate with or without disability severance pay will be afforded the opportunity to make an election to transfer to the Retired Reserve under the provisions of 10 USC 12731b. A finding of unfit by the PEB or USAPDA is required for eligibility for the 15-year notice of eligibility when the RC Soldier's disability was incurred in the LOD or is compensable under the provisions of 10 USC 1207a.

4. Title 10, USC, section 1204 (Members on active duty for 30 days or less or on inactive-duty training: retirement) provides that upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that based upon accepted medical principles, the disability is of a permanent nature and stable -

a. the disability is a result of an injury, illness, or disease incurred or aggravated in line of duty after 24 September 1996—

- while performing active duty or inactive-duty training;
- while traveling directly to or from the place at which such duty is performed; or
- while remaining overnight, immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-

b. the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

c. either the member has at least 20 years of service computed under section 1208 of this title; or the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination.

5. AR 135-180 (Retirement for Non-Regular Service), paragraph 2-2 (Basic Qualifying Service) provides that to be eligible for retired pay at or after the age specified in paragraph 2-1, an individual need not have military status at the time of application, but must have completed one of the following:

a. A minimum of 20 years of qualifying service computed under Title 10, USC, section 12732; or,

b. Fifteen years of qualifying service, and less than 20, computed under Title 10, USC, section 12732, if the individual is to be separated because the Soldier has been determined unfit for continued Selected Reserve service, and none of the conditions in Title 10, USC, section 12731b(b) exist.

c. Paragraph 2-4 (Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) provides that under 10 USC 12731a RC Soldiers who complete the eligibility requirements in section I will be notified in writing within 1 year after completion of the required service in accordance with AR 140–185 or National Guard Regulation 680–2. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve.

6. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

7. Title 10, USC, section 1552 states, 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.

//NOTHING FOLLOWS//