

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 March 2024

DOCKET NUMBER: AR20230008130

APPLICANT REQUESTS: in effect, Service Academy credit from 1 July 1986 through 30 May 1990, while in the U.S. Military Academy (USMA)

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

- DD Form 149 (Application for Correction of Military Record)
- Enclosure A - National Guard Bureau (NGB) Form 23A (Army National Guard (ARNG) Current Annual Statement)
- Enclosure B - National Guard Regulation (NGR) 680-2 (Automated Retirement Points Accounting Management) excerpt
- Enclosure C - Department of Defense (DoD) 7000.14-R (Financial Management Regulation) excerpt
 - Excerpt from Army Regulation (AR) 140-185 ((Training and Retirement Point Credits and Unit Level Strength Accounting Records)
 - Excerpt from AR 135-180 (Retirement for Non-Regular Service)
 - Excerpt from NGR 680-2
- Enclosure D - The Comptroller General of the United States Decision B-195448
- Enclosure E - Emails between Brigade and NGB
- Enclosure F - Email from Inspector General (IG)
- NGR 680-2 (complete regulation)
- AR 135-180 (complete regulation)

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:

a. He is requesting correction to his NGB Form 23A for the time period of 1 July 1986 through 30 May 1990. This period covers the time of his service at the USMA.

b. His time is currently coded D8-U.S. Army Reserve (USAR) Reserve Officer Training Corps/Simultaneous Membership Program. Now that he is serving as a noncommissioned officer (NCO), this time should be coded as H2 Service as a Cadet at a Service Academy as creditable for pay and retirement in accordance with NGR 680-2. This change is also supported by AR 135-180, AR 140-185, DoD 7000.14-R, and DoD Instruction (DoDI) 1215.07 (Service Credit for Non-Regular Retirement). There is also supporting precedence established in U.S. Government Accounting Office (GAO) Decision B-195448.

c. The [REDACTED] G1 is unable to make this change at their level. NGB was consulted. Their stance was that the regulations were not in agreement and required updating. The applicant included correspondence with NGB for the Board's consideration.

d. The applicant subsequently contacted the [REDACTED] IG and they referred him to the Board to rectify the situation.

e. NGB Form 23A coding is a carryover from his service as a commissioned officer. It just needs a correction now that he is serving as an NCO.

3. The applicant provides the following documents:

a. Excerpt from NGR 680-2, which states in paragraph 2-1 (The anniversary year) the full year period used to credit a qualifying year of service for non-regular retirement is based on an anniversary year. The rules to establish anniversary year are:

(1) Chapter 2-1b(7)(c) Who was in a Service Academy and is (or last served as) an enlisted member of a uniformed service who served as a cadet or midshipman but who did not receive or who does not hold a commission as an officer, service as a cadet or midshipman at a Service Academy should be included and counted as active duty to establish the member's anniversary year. Service as a cadet or midshipman at a Service Academy is always creditable service for enlisted members.

(2) Appendix L (Retirement Points Accounting Management (RPAM) and Reporting Codes) states Other Membership Status code H2 Service as a cadet at a Service Academy (USMA). Note 3 "If an officer was commissioned through a Service Academy and later becomes an enlisted member, the service as a Service academy cadet is creditable for pay and retirement. If a former cadet serves as an enlisted member, the service as a Service academy cadet is creditable for pay and retirement."

b. Excerpt from DoD 7000.14-R, 1 December 2022, states:

(1) in paragraph 3.1.5 Service Creditable for Retirement Eligibility. Service creditable for the purpose of retirement eligibility varies with each type of retirement.

(2) For retirement types and the specific service creditable for each type see paragraphs 3.2 through 3.8. Service Creditable for Regular Voluntary Enlisted Members (Table 1-1) Service as a cadet or midshipman at Service Academy is creditable service for Regular voluntary retirement for enlisted members.

(3) Exception to calculating anniversary years if an enlisted member of a Military Service served as a cadet or midshipman at a Service Academy but did not receive or does not hold a commission as an officer, the service as cadet or midshipman at a Service academy must be included as active duty.

c. Excerpt from AR 140-185 paragraph 1-8(2) states, establishment of anniversary year, the criteria for establishing the service requirement for a satisfactory year of service for non-regular retirement per DoDI 1215.07 and changing the anniversary year ending date includes an enlisted member of a military Service who served as a cadet at a Service academy but who did not receive or who does not hold a commission as an officer, will have the service as a cadet at a Service Academy included and counted as active duty.

d. Excerpt from AR 135-180 states time spent as a cadet or midshipman at the USMA may be counted as service for basic pay purposes in the computation of pay for enlisted men, but not for commissioned officers.

e. Excerpt from NGR 680-2 states those who were in a Service Academy and is (or last served as) an enlisted member of a uniformed Service who served as a cadet or midshipman but who did not later receive or who does not hold a commission as an officer, service as a cadet or midshipman at a Service Academy shall be included and counted as active duty to establish the member's anniversary year. Service as a cadet or midshipman at a Service Academy is always creditable service for enlisted members.

f. The comptroller General of the United States Decision B-195448, dated 3 April 1980 states in pertinent part Service as a cadet or midshipman at a Service Academy is creditable for the purpose of determining eligibility for retirement of enlisted members but is not creditable for a member retiring as a commissioned officer. The entire document is available for the Board's consideration.

g. Email traffic regarding the applicant's Service Academy retirement points, which states:

(1) 22 September 2022, email from Senior Human Resources Analyst stated the applicant should get credit for time served at the USMA per NGR 680-2 Appendix L.

(2) 22 September 2022, email from Systems Branch Chief, states looks like a potential conflict/need for clarification between NGR 680-2 and DoDI 1215.07/AR 140-185. The NGR indicated the applicant could receive a service academy commission and receive retirement credit if he later reverted to an enlisted status. Both the AR and DoDI indicate they only get credit if they "did not receive or do not hold a commission as an officer" implying that initial receipt of the commission regardless of current enlisted status disqualifies the period of service. Recommend U.S. Army Human Resources (AHRC) Command clarification as the word "or" can potentially be argued to interpret both if the member is not currently an officer.

(3) 23 September 2022, email from AHRC states response from Retired Reserve: "The servicemember did accept a commission, so he would not be eligible for the Service Academy credit, regardless if he went back to an enlisted status."

(4) 30 September 2022, email from applicant states he did not like the answer and would like to reconfirm it. If the GAO decision directed the Assistant Secretary of the Army back in 1980 holds, he contended the "or" in the AR, DoDI, and NGR 680-2 is correct and should be interpreted literally.

h. Email from IG, dated 3 March 2023 states as IG, they did not interpret regulations or hold authority to grant such a request to overturn a decision. IG concluded the applicant's best avenue of redress was the Board.

i. NGR 680-2, which prescribes the Retirement Points Accounting Management application in the Reserve Component Automation System as the system of record for ARNG Soldiers. The entire regulation is available for the Board's consideration.

j. AR 135-180, which implements statutory authorities governing the granting of retired pay for non-regular service to Soldiers in the ARNG. The entire regulation is available for the Board's consideration.

4. The applicant's service record contains the following documents:

a. NGB Form 22 (Report of Separation and Record of Service) shows the applicant was an enlisted member of the ARNG from 9 February 1985 through 30 June 1986, when he was discharged under the provisions of NGR 600-200, paragraph 7-10n (sole surviving sons/daughters).

b. USMA Oath of Allegiance is an undated document showing the oath the applicant took for attendance at the USMA. The entire document is available for the Board's consideration.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was honorably discharged from the Regular Army, in the rank of first lieutenant on 30 April 1994. He was discharged for miscellaneous/general reasons.

d. NGB Form 22, shows the applicant was an officer in the ARNG from 11 May 1994 through 10 February 2003. He was honorably transferred to the USAR Control Group (Reinforcement) in the rank of major.

e. Election of Options - Military Service Obligation, dated 9 October 2006 shows the applicant elected to remain a member of the Individual Ready Reserve.

f. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) dated 17 July 2020 shows the applicant enlisted in the ARNG in the rank of sergeant/E-5.

g. NGB Form 23A, dated 17 July 2023 shows his time period from 1 July 1986 through 31 December 1989 is coded as H2 (Service Academy Cadet (Accepted Officer Appointment)). From 1 January 1990 through 30 May 1990 his period is coded as D4 (USAR Control Group (Reinforcement)). He did not receive retirement points for those two periods of service.

h. DA Form 5016 (Chronological Statement of Retirement Points), dated 4 March 2024 shows from 1 July 1986 through 30 May 1990, the applicant was enlisted in the USAR and received 15 membership points for each year of service.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The applicant was commissioned when he graduated from USMA and served as a commissioned officer for a number of years. He enlisted in the Army National Guard in 2020 and is currently serving as a non-commissioned officer. He seeks to have his cadet time count as qualifying service for retirement purposes. Relevant regulations state that enlisted members who served as a cadet at a Service academy but did not receive or do not hold a commission as an officer are authorized to include service at a Service academy. Although the applicant identifies some conflict among regulations, NGR 680-2 was updated in 2023 to clarify that an officer appointed subsequent to graduation from a military academy will not receive credit for service as a cadet. The applicant received a commission and is therefore not authorized to count cadet service for retirement purposes.

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.

6/6/2024

X [Redacted Signature]

CHAIRPERSON
[Redacted Name]

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. NGR 680-2, Automated Retirement Points Accounting Management, 19 August 2011, prescribes the Retirement Points Accounting Management application in the Reserve Component Automation System as the system of record for ARNG Soldiers. It states in:
 - a. Paragraph 2-1b(7)(c) Is (or last served as) an enlisted member of a uniformed Service who served as a cadet or midshipman but who did not later receive or who does not hold a commission as an officer, service as a cadet or midshipman at a Service Academy shall be included and counted as active duty to establish the member's anniversary years. Service as a cadet or midshipman at a Service Academy is always creditable service for enlisted members.
 - b. Appendix L (Retirement Points Accounting Management (RPAM) and Reporting Codes) states Other Membership Status code H2 Service as a cadet at a Service Academy (USMA). Note 3 incorporates Interim Change 1, 3 February 2023, "An officer appointed subsequent to graduation from a military academy will not receive credit for service as a cadet or midshipman if the officer held no concurrent enlisted or Reserve status. If not appointed, then member service as a cadet or midshipman at a military academy is creditable."
3. AR 140-185, contains Army policy for USAR training and retirement point credit. It also prescribes guidance for USAR unit level strength accounting. It states in paragraph 1-8a(2) an enlisted member of a military Service who served as a cadet at a Service Academy but who did not receive or who does not hold a commission as an officer will have the service as a cadet at a Service Academy included and counted as active duty.
4. DoDI 1215.07, established policy, assigned responsibilities, prescribes procedures, and establishes requirements for crediting active and reserve service for non-regular retirement. It states in paragraph 3.1d(2), if an enlisted member of a Military Service served as a cadet or midshipman at a Service academy but did not receive or does not hold a commission as an officer, the service as a cadet or midshipman at a Service academy must be included as active duty.
5. DoD 7000.14-R, Volume 7B, Chapter 1 provides information for the specific qualifications and entitlements for military retired pay, describes the basic types of retirement (regular, non-regular, and disability), discusses voluntary and involuntary

retirements, and explains basic qualifications for the differing military retired programs and Temporary Early Retirement Act. It states:

a. In paragraph 3.1.5 Service Creditable for Retirement Eligibility. Service creditable for the purpose of retirement eligibility varies with each type of retirement.

b. For retirement types and the specific service creditable for each type see paragraphs 3.2 through 3.8. Service Creditable for Regular Voluntary Enlisted Members (Table 1-1) Service as a cadet or midshipman at Service academy is creditable service for Regular voluntary retirement for enlisted members.

c. Exception to calculating anniversary years if an enlisted member of a Military Service served as a cadet or midshipman at a Service academy but did not receive or does not hold a commission as an officer, the service as cadet or midshipman at a Service academy must be included as active duty.

6. AR 135-180, implements statutory authorities governing the granting of retired pay for non-regular service to Soldiers in the ARNG. It states in Appendix B2k Time spent as a cadet or midshipman at the USMA, the U.S. Naval Academy, and the U.S. Coast Guard Academy may be counted as service for basic pay purposes and computation of pay for enlisted men, but not for commissioned officers.

//NOTHING FOLLOWS//