

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230008244

APPLICANT REQUESTS: through a Member of Congress, in effect, correction of his records to show:

a. his DD Form 2676 (Validation of Public or Community Service Employment), 24 January 2023, was submitted to the Defense Manpower Data Center (DMDC) within 1 year of attaining 20 years of total active federal military service, had he continued to serve on active duty; and

b. his DD Form 2676 was forwarded to the Defense Finance and Accounting Service, verifying his qualifying public service for recomputation of his military retired pay, as well as his Survivor Benefit Plan (SBP) for determination of base amount pay under the Temporary Early Retirement Authority (TERA) Program enacted by the National Defense Authorization Act (NDAA) for Fiscal Year 1993 (FY93), Public Law 102-484.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Member of Congress Letter, 1 May 2023, with Privacy Release Form
- Fort Myer Orders 60-03, 5 April 1994 (two copies)
- DD Form 214 (Certificate of Release of Discharge from Active Duty) for the period ending 31 August 1994
- DD Form 2676, 24 January 2023 (two copies)
- U.S. Army Human Resources Command Army Service Center Letter, 8 March 2023

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. In accordance with Department of Defense (DOD) Instruction 1340.19 (Certification of Public and Community Service Employment of Military Retirees), an eligible retiree member under the FY93 NDAA shall be eligible to have his/her military retired pay recomputed and SBP base amount at age 62 recomputed as long as he/she has received military service credit for continuing to work in Public and Community Service.

b. This correction should be made because when he retired under the TERA Program, he was only provided his DD Form 214. He never received any Army documentation referencing the TERA Program. He only had his DD Form 214 containing the statement that his retired pay would be recomputed at age 62. When he reached age 62, he inquired about his pay increase and he submitted the DD Form 2676 to the Department of the Army; however, he received an 8 March 2023 letter, stating the form was rejected because it was not submitted 1 year after he would have obtained 20 years of total active military service. He is requesting approval of his application for payment since the information was never provided to him from 1994 to present.

c. When he retired from the Army, he went to work for the Alexandria City Public School system from 31 August 1994 through 31 December 2014. As a result, he requests military service credit and an increase in his retired pay to 50 percent. This increase should also include his SBP base amount from 1 September 1994 through 1 September 2013.

3. He enlisted in the Regular Army 31 July 1978. He was promoted to the rank/grade of staff sergeant (SSG)/E-6 effective 1 October 1983.

4. Fort Myer Orders 60-03, 5 April 1994, released him from active duty and placed him on the Retired List in the rank of SSG effective 31 August 1994.

5. His records contain DD Form 2656 (Data for Payment of Retired Personnel) (pages 3 and 4 only), 31 August 1994, with the counseling memorandum, showing in:

a. Section I (Pay Identification), block 3 (Retirement/Transfer Date), he entered 1 September 1994;

- b. Section IV (Federal Income Tax Withholding Information), block 14 (Marital Status), he placed an "X" in the "Married" box;
  - c. Section VI (Dependency Information), block 22 (Spouse), he listed a spouse, C\_\_\_\_ A. D\_\_\_\_, with a marriage date in 1984; did not list a spouse;
  - d. Section VI, block 27 (Dependent Children), he did not list any children;
  - e. Section VII (SBP Election), block 28 (Beneficiary Category(ies)), he placed an "X" by the "I elect coverage for children only" statement;
  - f. Section VII, block 29 (Level of Coverage), he placed an "X" by the "I elect coverage with a reduced base amount of \$700" statement;
  - g. Section VII, block 30 (Name of Insurable Interest or Former Spouse Beneficiary), he listed his daughter, S\_\_\_\_ A. D\_\_\_\_, with a birthdate in 1986;
  - h. Section VIII (SBP Spousal Concurrence) (Required when member is married and does not elect full coverage), his spouse signed the form on 31 August 1994 (Note: There is no witness to her signature); and
  - i. Section IX (Certification), he signed the form on 1 September 1994 and his signature was witnessed at the Fort Myer Transition Point, Fort Myer, VA, on the same date.
6. He retired on 31 August 1994 by reason of voluntary early retirement in the rank/grade of SSG/E-6. His DD Form 214 shows he completed 16 years and 1 month of active service during this period. Block 18 (Remarks) of his DD Form 214 contains the entry: "Member is retiring as provided by section 4403 of the FY 1993 NDAA (PL [Public Law] 102-484) and may qualify for a recomputation of retired pay at age 62 (Section 4464 of same law)."
7. The applicant would have attained 20 years of total active federal military service on 31 July 1998. He turned age 62 in December 2022.
8. He provided the following documents in support of his request:
- a. his DD Form 2676, 23 January 2023, wherein he provided certification of full-time public and community service employment with the Alexandria City Public Schools from 31 August 1994 through 31 December 2014. This form was signed and certified by his employer on 24 January 2023 and he signed the form on the same date; and

b. the U.S. Army Human Resources Command Army Service Center letter, 8 March 2023, responding to his request for a recalculation of his retirement points at age 62 under the TERA, wherein the Veterans Inquiry Branch Analyst stated:

In the National Defense Authorization Act for Fiscal Year 1993 (FY93 NDAA), Public Law 102-484, dated 23 Oct[ober] [19]92, Congress enacted TERA. FY93 NDAA §4464 [section 4464] allowed eligible members retired under TERA to perform public and community service following retirement and receive credit for this service to be used to recalculate military retired pay and, where applicable, the Survivor Benefit Plan (SBP) base amount at age 62. The FY93 NDAA stated members retiring under TERA were to register in advance of the projected retirement date with the Public and Community Service Registry and allowed no provisions to retroactively register for employment. Further, applicants were required to turn in proof of public or community service to the Defense Management Data Center (DMDC) not later than one year after they would have attained 20 years of Total Active Federal Military Service (TAFMS) had they continued to serve on active duty.

If you have documentation supporting your compliance with all of the requirements set forth in the TERA program, you may submit said documentation, along with the completed DD Form 2676, to the Defense Finance and Accounting Service for processing.

9. The email correspondence from a Defense Finance and Accounting Service (DFAS) pay technician (Reply: Army Review Boards Agency Assistance), 8 May 2024, notes the applicant retired with child(ren)-only SBP coverage at retirement and declined to cover his spouse. His child aged off on 1 July 2023 and, therefore, he has been in a "no-beneficiary" status since that date. The DFAS database contains:

a. his marriage certificate showing he and C\_\_\_\_ A\_\_\_\_ H\_\_\_\_ married on 15 September 1984;

b. Fort Myer Orders 60-03, 5 April 1994, placing him on the Retired List in the rank of SSG effective 31 August 1994;

c. his DD Form 2656 (pages 3 and 4 only), 31 August 1994, described above;

d. his DD Form 214 for the period ending 31 August 1994, described above; and

e. his DD Form 2656-6 (SBP Election Change Certificate) (first page only), undated, showing a checkmark was placed in the "Child Only" box in Section II (Current Coverage), block 7 (My Current Coverage). A handwritten notation in the

bottom margin states: "Spouse Only Coverage." Accompanying this form is an undated statement from the applicant, wherein he stated: "I am requesting an exception to policy to change my SBP election from child only to spouse only. I elected child only coverage spouse excluded at the time of my retirement in 1994. My child has reached the age of 22 and is age ineligible. I would like to roll over my current SBP premiums to include coverage of my spouse."

#### 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 and available military records, the Board determined there is insufficient evidence to support correction of the applicant records to show he submitted the proper documentation to the Defense Manpower Data Center (DMDC) within 1 year of attaining 20 years of total active federal military service, had he continued to serve on active duty.
2. The Board noted based on the Fiscal Year (FY) 93 Defense Authorization Act (NDAA) enacted TERA the applicant must have performed public/community service within the period beginning on the date of retirement and ending on the date the retired member would have attained 20 years of creditable service for computing retired pay. As noted, the NDAA allowed members retiring under TERA to register in advance of the projected retirement date on the Public and Community Service Registry, allowing adjustment to the retirement pay at the age of 62. The Board agreed the applicant's record lacks proof of public or community service to the Defense Management Data Center (DMDC) not later than one year after he would have attained 20 years of Total Active Federal Military Service (TAFMS) had he continued to serve on active duty.
3. Furthermore, DFAS noted the applicant retired with child only coverage at retirement and declined spousal coverage. Evidence shows the applicant's child aged out of coverage on 1 July 2013 and he has not had a beneficiary since the date his child aged out. The Board determined there is no evidence the applicant requested SBP reinstatement, however he states 'this increase should also include his SBP from 09/1/1994 to 09/01/2013. Based on the evidence, DFAS memorandum and HRC letter, the Board determined relief is not warranted.

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.



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. The TERA was enacted by Congress on 23 October 1992 as part of the FY93 NDAA.

a. Its intent was to assist in the military draw-down of forces by permitting selected military members to retire early when they had between 15 and 20 years of service. Additional years of service could be accumulated, even though not serving in military uniform, during a period called Enhanced Retirement Qualification Period (ERQP).

b. The ERQP was that period from the date of retirement to the date on which the retiree would have attained 20 years of creditable service for the purpose of computing retired pay. The additional years were earned by service in military Reserve Components or employment in qualifying public or community service organizations – called the Program to Encourage Public and Community Service (PACS Program).

c. At age 62, the TERA retiree was permitted to have his/her retired pay recomputed and increased accordingly.

3. DOD Instruction 1332.37 (Program to Encourage Public and Community Service Employment) establishes policy, assigns responsibilities, and prescribes procedures to encourage and assist separating service members, service members retiring with 20 or more years of service, DOD civilian personnel leaving the Government, and spouses, to enter PACS employment and to encourage and assist service members requesting retirement with fewer than 20 years of service to register for PACS employment.

a. Section 4.2.2. In order to have their military retired pay recomputed in accordance with DOD Instruction 1340.19 (Certification of Public and Community Service Employment of Military Retirees), early retirees must be employed with a DOD-registered PACS organization that provides the services listed in enclosure 1, subparagraphs E1.1.4.1. through E1.1.4.12., or that coordinates the provision of services listed in enclosure 1, subparagraphs E1.1.4.1. through E1.1.4.12. PACS organizations provide or coordinate the following services:

- elementary, secondary, or post-secondary school teaching or administration
- support of teachers or school administrator
- law enforcement
- public health care
- social services
- public safety
- emergency relief
- public housing
- conservation
- environment

- job training
- work in a federal, state, or local government organization in which provides or coordinates services listed above
- other PACS consistent with or related to services listed above

b. Section 6.3.1. Registering for PACS is a requirement for consummation of their early retirement under Public Law 102-484, section 4403 or section 561 of Public Law 103-160.

c. Section 6.3.5. DOD-approved PACS employment qualifies the service member who is retired under Public Law 102-484, section 4403, or Public Law 103-160 for increased retired pay effective on the first day of the first month beginning after the date on which the member or former member attains 62 years of age. The former service member must have worked in DOD-approved PACS employment between the date of early retirement and the date in which he or she would have attained 20 years of creditable service for computing retired pay, and have retired on or after 23 October 1992 and before 1 October 1999.

4. Retirees were required to document their employment using a DD Form 2676 (Validation for Public or Community Service) and submit the form to the DMDC. The timeline to submit PACS applications to the DMDC ended 1 year to the day after the member's ERQP expired. DMDC is no longer authorized to accept any new PACS applications. The program officially expired in August 2008 (1 year after the last official TERA recipient's ERQP expired).

5. Public Law 92-425, enacted 21 September 1972, established the SBP. The SBP provides that military members on active duty could elect to have their retired pay reduced to provide for an annuity after death to surviving dependents. An election, once made, was irrevocable except in certain circumstances. Elections are made by category, not by name. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Since its creation, the SBP has been subjected to a number of substantial legislative changes.

6. Title 10, U.S. Code, section 1454 (Correction of Administrative Errors), states the Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

//NOTHING FOLLOWS//