

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 May 2024

DOCKET NUMBER: AR20230008435

APPLICANT REQUESTS: correction of his record to show he was transferred to the Retired Reserve and, in effect, to show he submitted a timely application for retired pay at age 60.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored Statement
- Memorandum, subject: Advisory Opinion for [Applicant], Issue: Requesting Retire Pay from 9 December 2005 to the effective date of 19 April 2023, dated 8 June 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 he turned 65 (sic) years of age in 2005. He started to research and correct his military records. However, in the middle of this process, he had a stroke, which incapacitated him for some time. His DD Forms 1380 (Record of Individual Performance of Reserve Duty Training) only reflect 11 years of good service. His pay entry basic date (PBED) was 3 April 1967, and he was assigned to the 76th Division (Training).
 - a. Besides basic combat training and advanced individual training, he had Leadership Academy, 1st Army NCO Academy, Drill Corporal School, Drill Sergeant School, Artillery OCS (Officer Candidate School), and Infantry Officer Branch Course while assigned to the 76th Division.
 - b. He was in the U.S. Army Reserve from 1967 to 1975. This was continuous service, and his records did not reflect this. In an effort to correct his records, and the

errors made while he was assigned to schools and the 75th MAC (Maneuver Area Command). Schools attended while with the 75th MAC include Advanced Infantry Course, Military Intelligence Advance Course, and Command and General Staff Officer Courses.

c. When COVID-19 hit, correspondence was very difficult, and responses were almost non-existent. After continuous efforts were made, fruitful contact was made with the proper personnel. Eventually, he was put in contact with the 99th Retirement Services Officer at Fort Dix, NJ and they in return put him in contact with the HRC (U.S. Army Human Resources Command) at Fort Knox, KY without whose help, this letter would never have been sent.

d. He is requesting (1) that his records be corrected; (2) that his records reflect that he was transferred to the Retired Reserve, and (3) all pay and allowances he is authorized and entitled to be paid. Through inaccuracies of the system and a lack of awareness on his part, he has fallen through a crack in the system. This is an effort to correct this situation.

3. A review of HRC's Soldier Management Services portal shows the applicant received orders on 24 April 2023 that placed him on the retired list with an effective date of [REDACTED] and authorized him retired pay under Title 10, U.S. Code, Section 12731.

4. A review of the applicant's service records shows:

a. The applicant was born in 1945. He turned 60 years of age [REDACTED]

b. He enlisted in the U.S. Army Reserve on 3 April 1967.

c. Letter Orders Number 05-411, issued by Headquarters, XIII U.S. Army Corps on 18 May 1967, ordered him to active duty for training (IADT) for a period of 20 weeks, beginning 5 June 1967.

d. He completed training for award of military occupational specialty 11B, Light Weapons Infantry and he was honorably released from ADT on 3 December 1967. He completed 5 months and 29 days of active service.

e. The applicant was discharged from his enlisted status on 23 July 1970 and he was appointed as a Reserve commissioned officer on or about 24 July 1970.

f. His DA Form 2-1 (Personnel Qualification Record – Part II) shows in item 17 (Civilian Education and Military Schools) he completed the following military schools:

• Drill Corporal School	4 weeks	1967
• Drill Sergeant School	4 weeks	1969
• New Hampshire Military Academy	2 weeks	1970
• Officer Basic Course	9 weeks	1970
• CBR Course	2 weeks	1971
• USATGC	EXT	1983

g. A DA Form 1059, dated 1 June 1983, shows he completed the Infantry Officer Advanced Course, Non-Resident. The duration of the course was from 1 April 1981 to 1 June 1983.

h. A DA Form 1059, dated 10 February 1984, shows he completed the Command and General Staff Officer Refresher Course. The duration of the course was from 5 February 1984 to 10 February 1984.

i. The applicant served in a variety of positions, assigned to the 75th U.S. Army Maneuver Command, Houston, TX. He was promoted to the rank of major in November 1983.

j. On 31 July 1985, Headquarters, 75th U.S. Army Maneuver Area Command, published Orders 45-3, reassigning the applicant from the 75th U.S. Army Maneuver Command to the U.S. Army Reserve (Reinforcement) due to his voluntary request effective immediately.

k. The applicant's record contains a memorandum, subject: Options Upon Non-selection for Promotion After Second Consideration, issued by the U.S. Army Reserve Personnel Center on 8 November 1990, informing the applicant that he was twice non-selected for promotion to the next higher grade and advising him that his removal from the U.S. Army Reserve is mandatory no later than December 1990 unless he had a service obligation or was eligible for retention to complete 20 years. He was advised of his options and was asked to make an election. The letter also stated:

(1) If he was eligible for transfer to the Retired Reserve or retention to complete 20 years, it is imperative that he completes the election of options.

(2) If he failed to respond, the U.S. Army Reserve Personnel Center will discharge him in accordance with the law.

l. There is no indication the applicant completed the "Reserve Status Statement and Election of Options" that was enclosed with his promotion non-selection letter.

m. On 30 January 1991, Headquarters, U.S. Army Reserve Personnel Center published Orders D-01-002424, honorably discharging the applicant from the U.S. Army Reserve with an effective date of 21 December 1990.

n. The applicant turned 60 years of age [REDACTED] However, his service record does not show he submitted an application for retired pay before his 60th birthday.

o. In early April 2023, the applicant submitted various forms to the U.S. Army Human Resources Command related to his retired pay.

p. On 24 April 2023, the U.S. Army Human Resources Command (HRC) published Orders C04-394925 placing the applicant on the retired list in the rank of major effective (retroactive to) [REDACTED]

q. The applicant's DA Form 5016 (Chronological Statement of Retirement Points) reflects completion of 20 years and 1 day of qualifying service for non-regular retirement.

r. On 8 June 2023, HRC stated via memorandum that they have reviewed the applicant's military record and realized that he did not submit his retirement application 9 months before his retirement date. Additionally, HRC received a list from the Defense Finance Accounting Service (DFAS) of servicemembers who were not aware of the application process. As a result, HRC is requesting that the ABCMR consider the insufficiency of guidance from their past units and chain of command and recommends that every applying servicemember receive their full retirement pay from the date of eligibility.

5. AR 140-10 provides for the removal of Soldiers from an active status; Soldiers will be discharged or, if qualified and if they so request, will be transferred to the Retired Reserve. Eligibility for transfer includes having completed a total of 20 years of qualifying service for retired pay.

6. Title 31, U.S. Code, section 3702, also known as the Barring Act. prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.

2. The Board noted HRC's statement regarding the past insufficiency of guidance to Reserve Soldiers regarding their retirements and found that to have been the case for this applicant. Based on a preponderance of the evidence, the Board determined the applicant's record should be corrected to show he was transferred to the Retired Reserve in lieu of being discharged on 21 December 1990 and to show he submitted an application for retired pay prior to reaching 60 years of age. He should be paid any additional retired pay he is due as a result of these corrections.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 to show he was transferred to the Retired Reserve in lieu of being discharged on 21 December 1990 and to show he submitted an application for retired pay prior to reaching 60 years of age. He should be paid any additional retired pay he is due as a result of these corrections.

9/20/2024

X

CHAIRPERSON

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. Army Regulation 140-10 (Assignments, Attachments, Details, and Transfers), dated 15 August 2005, provides in pertinent part, for the removal of Soldiers from an active status. It states Soldier will be discharged or, if qualified and if they so request, will be transferred to the Retired Reserve. Eligibility for transfer includes having completed a total of 20 years of qualifying service for retired pay.

3. Title 31 U. S. Code (USC), section 3702, also known as the Barring Act, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U. S. Code, is relieving the government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

//NOTHING FOLLOWS//