

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 March 2024

DOCKET NUMBER: AR20230008460

APPLICANT REQUESTS: reconsideration of his previous request for recalculation of his retired pay at age 62 and adjustment of his retired pay under the Temporary Early Retirement Authority (TERA).

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum of Employment, 1998 to 2020
- Defense Finance and Accounting Service (DFAS) Letter, dated 1 July 2022
- DFAS Summary of Retired Pay
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 28 February 1997
- DFAS website excerpt on TERA

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220011254 on 15 June 2023.

2. The applicant states, in effect, he needs an Enhanced Retirement Qualification Period credit update for working from a public or community service organization from years 1998 - 2020. Haywood County Tennessee Sheriff Office provided a memorandum with his work verification which would complete the additional 5 years needed for 20 years of military service he would receive at age 62. The Board previously denied his request because the procedures for reporting and computing the enhanced retirement credit are computed based on the DD form 2276 (Validation of Public or Community Service Employment), which is missing from the application. The Board's decision was that when he resubmits the application with the required DD Form 2276, if the employment is verified as currently reflected on the Certification of Service form, the applicant's Enhanced Retirement Qualification Period will be calculated as 19 January 2002.

3. Review of the applicant's service records shows:

a. He enlisted in the Regular Army on 19 January 1982. He served through multiple reenlistments in a variety of stateside or overseas assignments, including Southwest Asia and Haiti, attaining the rank of sergeant (SGT)/E-5.

b. On 9 September 1996, Headquarters, 10th Mountain Division (Light Infantry) and Fort Drum issued Orders Number 253-1020 retiring him from active duty on 28 February 1997 and placing him on the retired list at the rank of SGT/E-5.

c. The applicant's DD Form 214 shows he retired under the Voluntary Early Retirement Program with 15 years, 1 month, and 12 days of active service. His DD Form 214 stated: Member is retiring as provided by section 4403 of the FY1993 NDAA (Public Law 102-484) and may qualify for a re-computation of retired pay at age 62 (Section 4464 of the same law)

4. The applicant provides a Memorandum of Employment verifying that he was an active employee with the Haywood County Government from 1998 to 2020.

5. In the previous case, the Army G-1 provided an advisory opinion in the processing of this case. An advisory official stated:

a. After careful consideration, this office does not recommend approval of the applicant's request for re-computation of his retirement pay at age 62 under the provision of section 4464 of Public Law 102-484. Procedures for reporting and computing the enhanced retirement credit are computed based on the DD form 2276 (Validation of Public or Community Service Employment), which is missing from the application. One the applicant provides a completed DD Form 2276, as required, the Army G-1 will process the request.

b. The applicant retired from the Army under TERA on 28 February 1997, with a total of 15 years, 0 months, and 12 days of active Federal service. When the applicant resubmits the application with the required DD Form 2276, if the employment is verified as currently reflected on the Certification of Service form, the applicant's Enhanced Retirement Qualification Period will be calculated as 19 January 2002.

c. On 14 April 2023, the applicant was provided with a copy of the advisory opinion to provide a response. As of 28 April 2023, he did not respond.

6. On 15 June 2023, 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. The applicant retired from the Army under TERA on 28 February 1997, with

a total of 15 years, 0 months, and 12 days of active Federal service. Procedures for reporting and computing the enhanced retirement credit are computed based on the DD form 2276 (Validation of Public or Community Service Employment), which is missing from the application. When he resubmits the application with the required DD Form 2276, if the employment is verified as currently reflected on the Certification of Service form, the applicant's Enhanced Retirement Qualification Period will be calculated as 19 January 2002. There is insufficient evidence to support his request at this time.

7. On 11 January 2024, the Army G-1 provided an updated advisory opinion in the processing of this case. The Army G-1 official referenced (a) Title 10, United States Code, Section 1143a and (b) DODI 1332.37 (Program to Encourage Public and Community Service Employment), and recommended approval. The advisory official stated:

a. After careful consideration, this office recommends approval of the applicants request for re-computation of retirement pay at age 62 under the provision of section 4464 of Public Law 102-484. Procedures for reporting and computing the enhanced retirement credit are computed based on the DD Form 2276 (Validation of Public or Community Service Employment).

b. The applicant retired from the Army under TERA on 28 February 1997, with a total of 15 years, 1 months, and 12 days of active Federal service. The applicants enhanced retirement qualification period (ERPQ) is calculated as 18 July 2000.

c. The applicant submitted the required DD 2276's, which reflected employment by Haywood County Government during the period 1 September 1998, through 20 June 2021. The total period of employment that meets the criteria referenced in 1.b, is 3 years, 4 months, and 18 days as calculated from 1 September 1998, through 18 January 2002. The applicant's retirement date should be adjusted to allow for the military service credit of 3 years, 4 months, and 18 days upon attainment of 62 years of age.

8. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit comments and/or a response. He did not respond.

BOARD DISCUSSION:

1. The Board reconsidered the applicant's request for recalculation of his retired pay at age 62 and adjustment of his retired pay under the Temporary Early Retirement Authority (TERA), and found relief was warranted.
  
2. The applicant retired from the Army under TERA on 28 February 1997, with a total of 15 years, 1 months, and 12 days of active Federal service. The applicant submitted the required DD 2276's, which reflected employment qualifying employment by a County Government during the period 1 September 1998, through 20 June 2021.
  - a. The total period of qualifying employment is 3 years, 4 months, and 18 days as calculated from 1 September 1998, through 18 January 2002.
  
  - b. The applicant's retirement date should be adjusted to allow for the military service credit of 3 years, 4 months, and 18 days upon attainment of 62 years of age.

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 amendment of the ABCMR's decision in Docket Number AR20220011254, dated 15 June 2023. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- a. recomputing his retired pay effective at age 62 based on his employment from 1 September 1998 - 18 January 2002 and his ERQP (18 July 2000); and
- b. based on this correction, paying the applicant any additional retired pay he is due retroactive to his 62nd birthday.

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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. The Temporary Early Retirement Act (TERA) was enacted by Congress on 23 October 1992 as part of the NDAA of Fiscal Year 1993.

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 PACS program.

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

2. Department of Defense Instruction (DODI) 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, Department of Defense (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 DODI 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 administrators
- 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/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.

3. Retirees were required to document their employment using 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).

//NOTHING FOLLOWS//