

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230008860

APPLICANT REQUESTS: in effect, correction of his records to show he completed 20 years of qualifying service for a non-regular retirement on 20 March 2010, at age 60.

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states, in effect, he served 20 years in the military and was set to retire on 20 March 2010, but his retirement points incorrectly showed that he only completed 19 years, 8 months, and 11 days. He petitioned the Army Board for Correction of Military Records (ABCMR) to add retirement points that were missing for the period from April 1991 through 21 October 1991. The Board found that relief was warranted and he was granted 20 years of creditable service for retirement; however, the effective date of his retirement became the date of the Board's action, 3 August 2021.
2. The applicant's record is not available for review. The supporting documents from a previous ABCMR Docket are sufficient for the Board to make an impartial decision in this case.
3. The applicant was born on 20 M\_\_ 1950. A review of his DA Form 5016 (Chronological Statement of Retirement Points), dated 24 April 2021, shows he was inducted into the Army of the United States on 1 May 1969. He subsequently completed service in the Regular Army, U.S. Army Reserve (USAR), and Army National Guard (ARNG).
4. On 21 October 1991, the applicant was discharged from the USAR. The DA Form 5016 shows that at the time of his separation, the applicant had completed 19 years, 8 months, and 11 days of creditable service for retirement.
5. The applicant's available record shows:

a. Annex B (Advanced Body) to Order #144-014, dated 17 April 1991, published by Headquarters, 124th Army Reserve Command, which show the applicant was directed to attend annual training from 6 June 1991 to 22 June 1991 at Camp Roberts, CA. His DA Form 5016 shows that for the period from 18 October 1990 to 17 October 1991, which also covers the period in contention, the applicant earned 75 total retirement points (40 inactive, 15 membership, and 20 active duty).

b. A Memorandum, Subject: Request for 20 Year Letter, dated 4 November 1991, shows the Executive Officer, 319th Signal Battalion (CORPS AREA), CA, requested the applicant be issued a 20-year letter. This letter states the applicant had spent the last 9 years of qualifying service as a member of the ARNG.

c. A Routing and Transmittal Slip, addressed to the Commander, 319th Signal Battalion, dated 16 November 1991, which shows, in pertinent part:

- Return without action
- SM has 19 years, 4 months, and 9 days for retirement
- Need NGB Form 23 (ARNG Current Annual Statement), from [AR]NG to support information

d. A U.S. Army Human Resources Command (HRC) Memorandum, dated 21 February 2018, addressed to the applicant's Congressional Representative. The Deputy Chief, Soldiers Programs and Services Division stated the Reserve Component Retirement Branch conducted a thorough review of the applicant's military record and determined that he had 19 years, 8 months, and 11 days of qualifying service for retirement. The applicant was directed to apply to this Board for correction of his retirement points.

6. On 3 May 2020, the applicant petitioned the ABCMR to add missing retirement points for the period April 1991 to October 1991 to his DA Form 5016 and that he be granted a non-regular retirement based on this correction. He indicated that his application was delayed because he was mentally incapacitated due to post-traumatic stress disorder, alcoholism, stroke (2012), and heart surgery (2012).

7. The applicant's case was considered in ABCMR Docket Number AR20200005177 on 3 August 2021. The Board stated, in part, that the applicant's record showed he received one year of qualifying service for retirement during the contested period (April 1991 to October 1991); therefore, his request to add points for the period in order to receive a 20-year letter was mute. However, the Board did note his 19 years, 8 months, and 11 days of qualifying service for retirement resulted from receiving over 50 total creditable points for selected periods. The applicant had 6 years in which he accumulated less than 50 creditable points. The Board agreed to add the points (redistribute the points) from those 6 years to provide him with one additional 50-point

year, thus granting him the 20 years of qualifying service needed to be placed on the retired list. The Board recommended that all the applicant's Department of the Army records be corrected by:

a. correcting his chronological record of retirement points to show he accumulated exactly 20 years of qualifying service for retirement and issuing him a 20-year letter effective the date of the Board's decision;

b. placing him on the AUS Retired List effective the date of the Board's decision; and furthermore;

c. paying him back pay as a result of this correction. Any correction to the applicant's record to effectuate the Board's decision would be effective no earlier than the date of the Board's decision (e.g., Reserve Component Survivor Benefits Plan/Survivor Benefit Plan). The records correction in this case would in no way be deemed as having retroactive effect to when the applicant reached the age of 60. It was the Board's intent that the records correction in this case did not result in any debt or recoupment action prior to the Board's decision in this case.

8. As the result of the Board's decision –

a. The applicant's DD Form 5016 currently shows he completed 20 years and 8 months of creditable service.

b. HRC published Orders: C08-296890, dated 24 August 2022, which show the applicant was placed on the AUS Retired List, effective 3 August 2021.

9. The ABCMR is the highest level of administrative review within the Department of the Army with the mission to correct errors in or remove injustices from Army military records.

10. Regulatory guidance states a reservist must earn a minimum of 50 retirement points each retirement year to have that year credited as qualifying service. To be eligible for retired pay an individual does not need to have a military status at the time of application for retired pay but must have (1) attained age 60; (2) completed a minimum of 20 years of qualifying service; and (3) served the last 6 years of his or her qualifying service as a Reserve Component (RC) Soldier.

#### 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 evidence of record shows the applicant applied to the Army Board for Correction of Military Records in a previous consideration and was granted relief for a non-regular retirement on 3 August 2021. The Board notes the applicant's contention of his retroactive retirement date; however, determined by a preponderance of the evidence, that the applicant's 20 years of qualifying service were dependent on the previous Board's decision which occurred on 3 August 2021, not prior to that date and therefore found no error or injustice in the applicant's record.

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.

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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. Army Regulation (AR) 135-180 (Army National Guard and Army Reserve-Retirement for Non-Regular Service), implements statutory authorities governing the granting of “retired pay” to Soldiers and former Reserve components Soldiers. Chapter 2 states:

a. That to be eligible for retired pay an individual does not need to have a military status at the time of application for retired pay but must have (1) attained age 60; (2) completed a minimum of 20 years of qualifying service; and (3) served the last 8 years of his or her qualifying service as a Reserve Component (RC) Soldier. The requirement to serve the last 8 years in an RC was later amended to the last 6 years (5 October 1994-24 April 2005), and on 25 April 2005 this requirement was reduced to zero (0) years. This regulation also specifies that each RC Soldier who completes the service required to be eligible for retired pay at age 60 will be notified in writing with a 20-year letter within one year after he/she completes the service.

b. Qualifying service as service performed in an active status in a Reserve component or in active federal service. After 30 June 1949, a reservist must earn a minimum of 50 retirement points each retirement year to have that year credited as qualifying service. When a person is in an active status for a period less than a full retirement year, a minimum number of retirement points are required to be earned in order to have that period credited as qualifying service.

c. A partial qualifying year is any period less than 12 full months in which the retirement points credited to a Service member, when computed proportionally are equal to or greater than 50 retirement points.

2. Title 10, U.S. Code, sections 12731 through 12740 authorize retired pay for Reserve component military service. Under this law, a Reserve Soldier must complete a minimum of 20 qualifying years of service to be eligible for retired pay at age 60.

3. 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 will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. Except as otherwise provided, the ABCMR acts for the Secretary of the Army, and an ABCMR decision is final when it:

a. Denies any application (except for actions based on reprisals investigated under Title 10, U.S. Code, section 1034).

b. Grants any application in whole or in part without a hearing when: (a) the relief is as recommended by the proper staff agency in an advisory opinion. (b) Is unanimously

agreed to by the ABCMR panel. (c) Does not involve an appointment or promotion requiring confirmation by the Senate.

//NOTHING FOLLOWS//