

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20230008963

APPLICANT REQUESTS:

- reconsideration of his previous request to correct his record to show he was retired in the highest rank/grade held of major (MAJ)/O-4 instead of staff sergeant (SSG)/E-6
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- List of enclosures
- Army Regulation (AR) 600-39 (Dual Component Personnel Management Program), pages 2 and 4
- AR 623-105 (Officer Evaluation Reporting System), page 47
- Army Reserve Personnel Command (ARPC) Form 249-2-E (Chronological Statement of Retirement Points), 7 July 2000
- AR 600-8-24 (Officer Transfers and Discharges), pages 68 and 71
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 31 July 2000
- U.S. Total Army Personnel Command (TAPC), Chief, Retirements and Separations Branch Letter, 8 August 2000
- Army Times Article, 29 December 2014 - 5 January 2015

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 AR20200009520 on 14 October 2021.

2. The applicant states:

a. This is his second appeal to the Board. It appears after a great deal of study and reflection that only one generic rule of thumb has been used to decide his retirement

status. That has been that to retire as a commissioned officer he must have 10 years Active Federal Commissioned Service.

b. During the period 1988 to 1994, he stayed as active as possible in the U.S. Army Reserve (USAR). He was originally in the Individual Ready Reserve while still living in TX. Subsequently, he was assigned as an Individual Mobilization Augmentee to the 902nd Military Intelligence Group, serving in several different locales. He finally found a position as a linguist officer with the 415th Civil Affairs Battalion in Portage, MI. While he was assigned to the 415th he served several active duty tours at Fort Bragg and Guantanamo Naval Air Station. Realizing that the civilian job market was not well suited for him, he decided to enlist in the Army under the provisions of AR 600-39. While at Fort Huachuca as well as the Berlin Brigade, he met several noncommissioned officers who held Army Reserve commissions. He cites AR 600-39, dated 12 November 1984 update, page 2, paragraph 1 (Purpose) and page 4 paragraphs 34 (Assignment) and 35 (Active Duty).

c. He returned to active duty at Fort Hood, TX. During the entire period of Dual Component service, he received regular evaluations in the specified format for each status (AR 623-105, Page 47 Paragraph 7-8 a-c). He was promoted to MAJ in the Reserves. He was also selected for an Active Guard/Reserve order of merit list. As shown on Department of the Army Reserve Personnel Form 249-2-E, dated January 1999, Chronological Statement of Retirement Points, dated 7 July 2000. He was regularly reviewed and given credit for his Reserve service to include the three drills he attended while serving in Korea in 1997. He was also afforded the courtesy of a Reserve officer for his Medical Evaluation Boards. He was considered but not selected by a lieutenant colonel (LTC)/O-5 Reserve Promotion Board. However, when he became ill it seems that the process of continued service and potential retirement became much more parochial.

d. He cites AR 600-8-24, page 68, paragraph 6-2d and states, he tried multiple times, but the Fort Meade Retirements Officer refused to initiate any of the designated paperwork. He was allowed to present his case to the Retirement Section at what was then the Military Personnel Center, in Alexandria, Virginia. He was assisted by the Chief of the Army Field Support Center, Personnel Department who insisted he could retire as an officer. The Fort Meade Retirement Office also is lacking per AR 623-105 Page 47 Paragraph 7-8d, which states, "when the rated officer is being transferred to the Retired Reserve for any reason, the rater will indicate in Part V. e the grade and assignment for the officer should be recalled to active duty in the event of a mobilization (e.g., colonel, installation DPCA) This applies only if the report is the rated officers final report before transfer."

e. A USAR officer does not have to be serving on active duty in his or her commissioned status or in an active USAR status to be eligible under the provisions of

AR 600-8-24, page 71, paragraph 14c(1). He has included this finding in his packet as well as a copy of his DD Form 214 dated 18 October 1988 which shows that his time as an active duty officer was 8 years, 9 months, and 18 days. This was not done.

f. His retirement DD Form 214, dated 31 July 2000, states in paragraph 18, "Member is retiring as provided by section 4403 of the FY [fiscal year] 1993 NDAA [National Defense Authorization Act] PL [Public Law] 102-484 and may qualify for a recomputation of retired pay at age 62 (section 4464 of same law)." This has yet to be accomplished.

g. Finally, in an article by M- T- in the 29 December 2015 issue of the Army Times entitled "Army Reverses Forced Separation for 160 Officers" she relates the following: "About 160 officers who were selected for separation from the Army can now remain on active duty or separate with retirement benefits" according to an announcement from Department of the Army on 18 December 2015. Army Secretary J- Mc- made this decision. As many as 44 prior enlisted officers were improperly considered by separation boards. This determination was based only on active-duty service, not active commissioned service. According to Secretary Mc- "Under the criteria for officer separations these Soldiers should not have been considered. This is an issue of fundamental fairness, and today we have taken appropriate action."

h. Under most circumstances a long-standing rule required 10 years of commissioned service to be eligible to retire in an officer rank. This is modified to eight years during certain time frames. "In a 17 June 2015, directive Secretary Mc- reduced that minimum to eight years, the shortest amount of time allowed under federal law. After that action Secretary Mc- suspended the eight-year requirement for active commissioned service, allowing all who are retirement eligible to retire as officers." I should think that this finding alone sets precedent and would be sufficient to prove his case. However, he has researched AR 600-39 and AR 600-8-24. These regulations seem very clear on how a Dual Component Soldier should best be used and how they should be properly retired.

3. A review of the applicant's service records show:

a. On 19 September 1976, he completed and signed a DA Form 597 (Army Senior Reserve Officers' Training Corps (ROTC) Student Contract), for enlistment in the USAR. He enlisted in the USAR, ROTC, on 20 September 1976.

b. DA Form 71 (Oath of Office - Military Personnel) shows he was appointed in the USAR in the rank/grade of second lieutenant (2LT)/O-1 and executed an oath of office on 7 June 1980.

c. He entered active duty on 18 June 1980.

d. On 25 May 1984, the U.S. Army Military Personnel Center published Orders Number 68-113, which promoted the applicant to the rank/grade of captain (CPT)/O-3, with an effective Date of Rank (DOR) of 1 July 1984.

e. On 18 October 1988, he was honorably released from active duty, in the grade of CPT, by reason of failure to meet minimum standards for retention. He was transferred to the USAR Control Group (Reinforcement). DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 years, 4 months, and 1 day of active service.

f. On 8 May 1992, he was notified of his non-selection for promotion to the rank/grade of MAJ/O-4, USAR.

g. On 26 September 1993, he completed and signed a DD Form 368 (Request for Discharge or Clearance from Reserve Component) for enlistment in the Regular Army (RA). The request was approved on 11 February 1994.

h. He enlisted in the RA, in pay grade E-5, on 11 February 1994.

i. On 4 April 1994, Headquarters, U.S. Army Special Operations, Fort Bragg published Orders Number 60-14, which released the applicant from his USAR unit in Michigan and assigned him to the USAR Control Group (Dual Component), effective 10 February 1994. The reason shown on the orders state "voluntary transfer."

j. His record contained DA Forms 67-8 (U.S. Army Officer Evaluation Report (OER)) which covered the period of 11 February 1995 to 20 April 1997, and shows he was rated in the rank of MAJ with a DOR of 6 June 1993 and received favorable ratings. The OERs state, in pertinent part, he was an USAR officer serving as an E-5 on active duty.

k. He reenlisted in the RA on 14 August 1996 and 5 August 1997, and was promoted to SSG/E-6 on 1 September 1997.

l. On 9 May 2000, he was notified of his non-selection for promotion to LTC, USAR.

m. On 21 June 2000, Headquarters, U.S. Army Garrison Fort Meade published Orders Number 173-0001, which retired the applicant in the rank/grade of SSG/E-6, effective 31 July 2000 and placed him on the retired list, effective 1 August 2000. In pertinent part, the orders show:

- Component: Regular Army
- Statute authorizing retirement: 4403
- Voluntary retirement: 15 years, 3 months, 9 days
- Date initially entered military: 7 June 1980

- Section 1405: 16 years, 1 month, 22 days
- Basic pay: 20 years, 1 month, 24 days

n. He was retired from active duty in the rank/grade of SSG/E-6 on 31 July 2000 and was transferred to the Retired Reserve. His DD Form 214 shows in:

- item 4a (Grade, Rate, or Rank) – SSG
- item 12c (Net Active Service This Period) – 6 years, 5 months, and 20 days
- item 12d (Total Prior Active Service) – 8 years, 9 months, and 19 days
- item 12e (Total Prior Inactive Service) – 4 years, 10 months, and 15 days
- item 12f (Foreign Service) – 1 year
- item 12h (Effective Date of Pay Grade) – 1 September 1997
- item 18 (Remarks) – "Member is retiring as provided by section 4403 of the FY 1993 National Defense Authorization Act (NDAA) (Public Law 102-484) and may qualify for recomputation of retired pay at age 62 (section 4464 of same law)"
- item 28 (Narrative Reason for Separation) – Voluntary Early Retirement

o. In a letter, dated 8 August 2000, the Total Army Personnel Command, Chief, Retirements and Separations Branch, advised the applicant's command, in response to their letter regarding the applicant's desire to retire as a MAJ, the applicant's request for early retirement was approved on 16 June 2000, with a retirement date of 1 August 2000. He retired under the Temporary Early Retirement Authority program, which was governed by Title 10, USC, section 3911. At the time of his retirement, he did not have 10 years active Federal commission service to qualify for retirement in the highest grade held as a MAJ. His ROTC and Reserve time does not qualify as active Federal commission service. If he believed there was an error or injustice with his military career, he could petition the ABCMR.

p. On 8 March 2001, he was notified of his non-selection for promotion to LTC, USAR.

q. He reached age 62 on X April 2020.

r. On 14 October 2021, ABCMR Record of Proceedings Docket Number AR20200009520 shows, after reviewing the application and all supporting documents, the Board determined relief was not warranted. Based upon the regulatory guidance outlined in AR 600-8-24 concerning retirement ranks of commissioned officers requiring 10 years of active commissioned service to retire as a commissioned officer and the applicant's record showing the applicant failed to serve such time, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's retired rank.

4. In support of his case the applicant provides:

a. Copies of AR 600-39, pages 2 and 4 –

(1) Paragraph 1a (Purpose) provides that, this regulation prescribes policies governing the Army's Dual Component Personnel Management Program. This program allows the Department of the Army (DA) to quickly meet mobilization requirements through procurement of trained commissioned and warrant officers from enlisted and warrant officer ranks of the Regular Army.

(2) Paragraph 32c (Retirement) provides that, on completion of 30 years of service, the member may be advanced to the highest grade satisfactorily held while serving on active duty as determined by the Secretary of the Army. (Section 3961, Title 10, USC). (The 30 years of service consists of active Federal service plus time on the retired list.)

(2) Paragraph 34 (Assignment) provides that, assigning of dual component members in an Active Duty status follows normal career progression for that status.

(3) Paragraph 35 (Active Duty) provides that, the ultimate goal of dual component members should be to serve on Active Duty in the highest possible grade in order to increase their contribution to the Army. Procurement programs normally are announced through DA circulars. Eligible candidates should be encouraged to apply.

b. Copies of AR 623-105, paragraph 7-7 (Designation of rating officials), which describes the rating chain and responsibilities at each level. Paragraph 7-8 (Instructions for raters), which provides detailed instructions for completing each part of the OER. Paragraph 7-8d states, when the rated officer is being transferred to the Retired Reserve for any reason, the rater will indicate in Part Ve the grade and assignment for which the officer should be recalled to active duty in the event of mobilization (e.g., colonel; installation DPCA). This applies only if the report is the rated officer's final report before the transfer.

c. ARPC Form 249-2-E, dated 7 July 2000, which shows, in pertinent, as a USAR commissioned officer he earned a total of 14 years qualifying for retirement and 3649 total points creditable. It also shows various points earned during each anniversary year.

d. Copies of AR 600-8-24, paragraph 6-2d, which states, "Service computations for USAR officers not on the ADL (active duty list) will be performed by ARPERCEN (DARP-AR). For those retirements where the GCMCA (General Court-Martial Convening Authority) or his or her designee is the approval authority, PERSCOM (TAPC-MSR) will provide the service fiche of the retiree to the installation upon request.

When service has been computed for retirement or retired pay and an officer claims additional service that is not stated in the current official US Army Register, or the officer's OMPF (official military personnel file), the officer will contact the installation for recomputation of service. The officer will provide justifying documents. The documents must be certified statements of service, discharge certificates or other official evidence." Paragraph 14c(1) states, "A RA or USAR commissioned officer with 20 years Active Federal Service, of which 10 years of active commissioned service (8 years if waived during the period 1 October 1990 through 30 September 1998) may on his or her request and the approval of the Secretary of the Army be retired (10 USC 3911). A USAR officer does not have to be serving on active duty in his or her commissioned status or in an active USAR status to be eligible under this paragraph."

e. Army Times article dated 29 December 2014 - 5 January 2015, titled "Army Reverses Forced Separation for 160 Officers", which states, in pertinent part – "About 160 officers who were selected for separation from the Army can now remain on Active Duty or separate with retirement benefits" according to an announcement from DA on 18 December 2014. The applicant states, Army Secretary J- Mc- made this decision. As many as 44 prior enlisted officers were improperly considered by separation boards. This determination was based only on active-duty service, not active commissioned service. According to Secretary Mc- "Under the criteria for officer separations these Soldiers should not have been considered. This is an issue of fundamental fairness, and today we have taken appropriate action." The article further states "In a 17 June directive Secretary Mc- reduced that minimum to eight years, the shortest amount of time allowed under federal law. After that action Secretary Mc- suspended the eight-year requirement for active commissioned service, allowing all who are retirement eligible to retire as officers."

f. The entire Army Times article and supporting documents can be reviewed within the supporting documents.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and military records, The Board determined the applicant served honorably and for the required tenure as a captain (CPT)/O-3, despite retiring under the Temporary Early Retirement Authority (TERA) as a staff sergeant (SSG)/E-6. The Board concluded the applicant should be retired in the rank/grade of CPT/O-3 vice SSG/E-6.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending Orders 173-0001, dated 21 June 2000 to show:

- Rank: CPT
- Pay Grade: O-3
- Grade Effective Date: 1 July 1984

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) 15-185 (ABCMR), states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2–11 states that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
2. The NDAA for Fiscal Year 1993, Public Law 102-484, 23 October 1992, Congress enacted the Temporary Early Retirement Authority (TERA), which permitted selected military members to retire early. Section 4403 (TERA) of that law gave the Secretary of Defense authority to allow the Service Secretaries to permit early retirement for selected military members having more than 15 but less than 20 years of active service. During the active force drawdown period, the Secretary of the Army may apply the provisions of section 3914 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting "at least 15" for "at least 20." Section 4464 of the FY93 NDAA allowed eligible members retired under TERA to perform public and community service following retirement and receive credit for this service to be used to recompute military retired pay when the retired member attains or would have attained 62 years of age.
3. Title 10, United States Code (USC), Section 3914 provides that under regulations to be prescribed by the Secretary of the Army, an enlisted member of the Army who has at least 20 years, but less than 30 years of service computed under section 3925 of this title may, upon his request, be retired. Section 3925 states for the purposes of determining whether an enlisted member of the Army may be retired under section 3914 his or her years of service are computed by adding all active service in the armed forces.
4. Title 10, USC, Section 3911, provides for the voluntary retirement of commissioned officers after completion of 20 years Active Federal Service, at least 10 years of which have been active duty service as a commissioned officer.
5. AR 600-39 (Dual Component Personnel Management Program), in effect at the time, prescribed policies governing the Army's Dual Component Personnel Management Program. The program allowed the Department of the Army to quickly meet mobilization requirements through procurement of trained commissioned and warrant officers from enlisted and warrant ranks of the Regular Army. The concept of the program was to quickly meet the mobilization needs for officers through procurement of trained commissioned and warrant officers. Current active duty members were ready assets during times of rapid expansion of the Active Army. They could be mobilized to assume greater responsibilities quickly. Paragraph 32a(1) states, warrant officers or enlisted

members may retire voluntarily in a commissioned officer status provided they had completed 10 years of active commissioned service in their overall total of 20 years active Federal service and held a USAR commission at the time of retirement.

6. AR 600-8-24 (Officer Transfers and Discharges), in effect at time, prescribed policies and procedures governing the transfer and discharge of Army officers. The regulation stated a Regular Army or U.S. Army Reserve commissioned officer with 20 years Active Federal Service, of which 10 years is active commissioned service (8 years if waived during period of 1 October 1990 through 30 September 1998)) could on his/her request and the approval of Secretary of the Army be retired (Title 10, USC, section 3911). A USAR officer did not have to be serving on active duty in his/her commissioned status or in an active USAR status to be eligible under this paragraph.

7. AR 635-5 (Separation Documents), in effect at the time, prescribed the separation documents which were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. Source documents consist of the DA Form 2-1, separation orders, or any other available record. The instructions stated for Blocks 4a (Grade, Rate or Rank) and 4b (Pay Grade), enter the rank and pay grade at the time of separation.

8. Title 10, USC, Section 3964 (Higher Grade after 30 Years of Service: Warrant Officers and Enlisted Members) provides that each retired member of the Army who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily as determined by the Secretary of the Army. This section applies to Warrant Officers, Enlisted Soldiers of the Regular Army and Reserve Enlisted Soldiers of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty).

9. Title 10, USC, section 7311 (Twenty years or more: regular or reserve commissioned officers) states, The Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who has at least 20 years of service computed under section 7326 of this title, at least 10 years of which have been active service as a commissioned officer. (b)(1) The Secretary of Defense may authorize the Secretary of the Army, during the period specified in paragraph (2), to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Army) of not less than eight years. (2) The period specified in this paragraph is the period beginning on 7 January 2011, and ending on 30 September 2018.

10. Title 31, 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, USC, 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//