

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 April 2024

DOCKET NUMBER: AR20230009366

APPLICANT REQUESTS:

- credit for a good year towards retirement from 2005 to 2006; and
- 15 membership points in the Individual Ready Reserve (IRR) for 2007, 2008, and 2009
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 10 March 2006
- DA Form 5016 (Retirement Accounting Statement), 18 May 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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. She was discharged from military service in March 2006 due to homosexual conduct. The discharge was honorable. With the repeal of Don't Ask, Don't Tell, she applied to recommission in 2011 and was recommissioned in March 2012 into the U.S. Army Reserve (USAR). She commissioned from the U.S. Military Academy and her 5th and final year of service was cut short due to the discharge. June 2006 would have been five years of active duty and she was discharged in March 2006. She would also have served three years in the IRR from June 2006 to June 2009, if she had not been forced out.

b. Since 2012, she has had sufficient "good years" towards retirement in the USAR. However, she was recently told that even though she has 282 retirement points from

June 2005 to March 2006, this does not count for a "good year" creditable towards retirement because she was not available for 365 days during that retirement year, regardless of whether she had more than 50 points that year (which she did).

c. She is requesting that she receive credit for a good year towards retirement from 2005 to 2006 and also that she receives 15 membership points for 2007, 2008, and 2009 since she would have been in the IRR for these three years if she had not been forced out.

d. She was discharged against her will for homosexual conduct, a code that does not even exist anymore. She came back into the USAR as soon as she could and does not think she should be penalized for time that she would have served if she had not been kicked out. She is requesting a good year for 2006 and a total of 45 membership points for each year she would have been in the IRR.

3. A review of the applicant's official record shows the following:

a. Having prior service as a Cadet at the U.S. Military Academy, the applicant's DD Form 214 shows she entered active duty on 2 June 2001 and was honorably discharged by reason of "homosexual conduct (statement)" on 10 March 2006. She completed 4 years, 9 months, and 9 days net active service this period.

b. On 20 March 2012, after a break in service, DA Form 71 (Oath of Office - Military Personnel) shows she was reappointed as a Reserve commissioned officer and executed her oath of office.

c. On 21 March 2012, the U.S. Army Human Resources Command published Orders Number C-03-204278, which assigned the applicant to her USAR unit for appointment, effective 20 March 2012.

d. On 27 July 2023, the Department of the Army published Orders Number 0005488134.00, which promoted the applicant to the rank/grade of lieutenant colonel (LTC)/O-5, effective 31 May 2023.

e. The applicant's record contains DA Form 5016 (Retirement Accounting Statement), dated 2 November 2023, which shows her total career retirement points earned as 636 Inactive Duty Training (IDT), 43 extension course, 165 membership, 2478 Active Duty Training (ADT), 15 years, 9 months, and 9 days qualifying for retirement, 3322 points earned and 3313 points creditable. In pertinent part, it also shows for the anniversary year of 2 June 2005 to 10 March 2006 she earned the following retirement points:

- 0 – IDT points

- 0 – extension course points
- 0 – membership points
- 282 – ADT points
- 9 months and 9 days – qualifying for retirement
- 282 – points earned
- 282 – points creditable

f. DA Form 5016 (Chronological Statement of Retirement Points), dated 9 April 2024 shows in pertinent part, a total of 568 IDT points, 43 extension course points, 150 membership points, 2142 ADT points, 14 years, 9 months, and 9 days qualifying for retirement, and 2899 points creditable. In pertinent part, it also shows for the anniversary year of 2 June 2005 to 10 March 2006 she earned the following retirement points:

- 0 – IDT points
- 0 – extension course points
- 0 – membership points
- 282 – ADT points
- 9 months and 9 days – qualifying for retirement
- 282 – total points creditable

4. On 16 November 2023, Headquarters, U.S. Army Reserve Command (USARC), Chief, Soldier Programs Branch, provided an advisory opinion for this case and recommended granting partial administrative relief. The advisory official stated, USARC reviewed the applicant's documents and determined she should not be awarded any points based off Army Regulation (AR) 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records). Membership points are not awarded while in the IRR. The applicant should be given credit for March through June 2006 in order to have a qualifying year for non-regular retirement. "Partial administrative relief granted."

5. On 28 November 2023, the applicant responded to the USARC advisory opinion and stated she had no comments to provide. "Only question is whether her DA Form 5016 will be updated with the qualifying year automatically or if there is another process she will have to go through." She also provided her new address.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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. The Board reviewed and concurred with the U.S. Army Reserve Command's

advising official and determined the evidence supports the applicant receiving credit for a "good year" from 2005 to 2006 toward a non-regular retirement by applying 15 membership points to the applicant's retirement year ending 10 Mach 2006.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that so much of the request pertaining to awarding the applicant membership points for service in the Individual Ready Reserve (IRR) was not warranted. The Board determined that the applicant did not serve in the IRR for the years of 2007, 2008, and 2009 and noted her contention that she would have had she not been discharged.

3. 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:

<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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by awarding the applicant 15 qualifying membership points for the retirement year 2 June 2005 to 10 March 2006, provided all other criteria is met.
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to granting the applicant membership points in the IRR for the years 2007, 2008, and 2009.



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, USC, 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. 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 of the ABCMR may grant a formal hearing whenever justice requires.

3. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) contains Army policy for U.S. Army Reserve training and retirement point credit. It also prescribes guidance for USAR unit level strength accounting.

a. Paragraph 1-7 (Service requirement for a satisfactory year of service for non-regular retirement) states, a qualifying year of service for non-regular retired pay is a full year during which a Reserve Component member is credited with a minimum of 50 retirement points. Except as otherwise provided by law, an accumulation of 20 such years is one requirement necessary to qualify for non-regular retired pay.

b. Chapter 2 (Crediting and Awarding of Retirement Points), paragraph 2–1 (Criteria for crediting retirement points) states, the limitations on the number of points that may be credited to a Soldier during an anniversary year are — (1) Maximum — 365 (366 during leap year) points. (2) No more than one retirement point may be awarded for any day in which the Soldier is on active duty. A Soldier in active service may not receive retirement points for other activities performed concurrently. (3) Retirement points credited for activities other than active service or funeral honors duty may not exceed —

- For any anniversary years closing before 23 September 1996: 60 retirement points
- For anniversary years closing on or after 23 September 1996 but before 30 October 2000: 75 retirement points
- For anniversary years closing on or after 30 October 2000 but before 30 October 2007: 90 retirement points
- For anniversary years closing on or after 30 October 2007: 130 retirement points

c. A maximum of two retirement points may be awarded in 1 calendar day for any activity or combination of activities.

d. Partial year — If a Soldier is separated or removed from an active status during a retirement year, the Soldier may be credited with a proportionate maximum number of IDT points for that year per Department of Defense Instruction (DoDI) 1215.07. Table 2–1 shows the minimum number of points required for a partial year for qualifying service. Table 2–2 shows the number of membership points authorized for a partial year.

e. Membership — Soldiers are awarded 15 membership points for each year in an active status. If the Soldier is on active duty for more than 350 days (351 in leap year), membership points will be reduced so that maximum 365 (366) points are not exceeded.

f. Paragraph 2-2 (Criteria for earning retirement points) states, retirement points may be earned by USAR Soldiers for active duty or duty in an active status for active duty for training (ADT), initial active duty for training (IADT), involuntary active duty for training (involuntary ADT), voluntary IDT, annual training (AT), IDT, membership points, and for other activities specified in this regulation.

g. Paragraph 2-4 (Criteria for awarding retirement points) states —

(1) Personnel on active duty, ADT, IADT, involuntary ADT, or AT are awarded one point for each calendar day they serve in one of these categories and may not be awarded additional points for other activities while in such status.

(2) Table 2–3 provides criteria for award of retirement points for IDT performed in accordance with DODI 1215.07 and AR 140–1 (unless another reference is cited). Most types of IDT are covered by one of the following rules on required duration of IDT and calendar day limitations on points. A maximum of two retirement points may be credited for attendance at unit BA or IDT in any 1 calendar day.

//NOTHING FOLLOWS//