

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 March 2024

DOCKET NUMBER: AR20230009391

APPLICANT REQUESTS: in effect, issuance of a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

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

- DD Form 149 (Application for Correction of Military Record)
- Leave and Earnings Statements

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 was medically discharged in 2005 despite having 22 years of service. He showed his Leave and Earnings Statements (LES), and they told him they needed proof of the missing years/points. They were just putting Soldiers out quickly. He provides his LES that reflect his pay/longevity.

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

a. He was born in June 1961 and turned 60 in June 2021. He had Regular Army (active duty) service from 4 December 1979 to 3 December 1983.

b. After his release from active duty, he was transferred to the U.S. Army Reserve (USAR). He served through multiple extensions or reenlistments. He entered active duty on 19 October 2001 and subsequently entered the disability system:

(1) A medical evaluation board found the applicant's medical condition of neck pain began in June 2002 after a motor vehicle accident (MVA). An MRI of the cervical spine showed mild to moderate degenerative changes impinging on the spinal canal. He was involved in a second MVA in February 2004, which exacerbated his symptoms.

(2) An informal physical evaluation board (PEB) found his conditions unfitting and rated the neck condition at 10% and low backpain at 10%, for a combined disability rating of 20%, and his disposition as separation with entitlement to severance pay.

c. On 1 December 2005, Headquarters, U.S. Army Garrison, Fort Meade, MD published Orders 335-0005 discharging him from active duty and the USAR due to disability effective 5 December 2005.

d. He was discharged from active duty on 5 December 2005. His DD Form 214 shows he was discharged due to disability with severance pay in accordance with Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation). He completed 5 years, 5 montsh and 12 days of active service during this period.

e. His DA Form 5016 (Chronological Statement of Retirement Points) shows he completed 18 years, 11 months, and 29 days of qualifying service for non-regular retirement.

4. On 24 April 2018, following his petition, the DOD Physical Disability Board of Review (PDBR) reviewed his disability processing. The PDBR revised his disability rating from 10% to 20% for chrnic neck pain and retained a 10% rating for his low back pain, for a combined disability rating of 30% and his disposition as permanent disability retirement.

a. On 15 May 2018, the Deputy Assistant Secretary of the Army (Review Boards) accepted the PDBR's recommendation to re-characterize the applicant's separation as a disability retirement with the combined disability rating of 30% effective the date of his medical separation for disability with severance pay (5 December 2005). The re-characterization of separation as a disability retirement will result in an adjustment to his pay providing retirement pay from the date of his original medical separation minus the amount of severance pay he was previously paid at separation.

b. On 22 June 2018, Headquarters, U.S. Army Garrison, Fort Meade, MD published Orders 173-0002 revoking Orders 335-0005 that discharged the applicant from active duty and the USAR due to disability effective 5 December 2005.

c. On 22 June 2018, Headquarters, U.S. Army Garrison, Fort Meade, MD published Orders 173-0004 retiring the applicant effective 5 December 2005 and placing him on the permanent disability list effective 6 December 2005.

d. On 27 June 2018, the applicant was issued a DD Form 215 (Correction to DD Form 214) that changed the reason for separation from "discharge" to "permanent disability retirement" and adjusting the corresponding codes 35-0005 discharging him from active duty and the USAR due to disability effective 5 December 2005.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.
3. The evidence show the applicant performed Reserve duty during the period of 4 December 1983 to 4 December 1987. As reflected on his LESs, but he was not credited for this service.

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 the Army records of the individual concerned be corrected by:

a. adding and recalculating retirement points, based on his leave an earning statements for the following periods:

- 1 January 1984 to 31 December 1984
- 1 January 1985 to 1-31 December 1985
- 1 February 1986 to 31 December 1986
- 1 January 1987 to 30 June 1987
- 1-30 April 1988
- 1-30 June 1988 to 31 July 1988
- 1 February 2002 to 1 August 2002

b. redistribute his retirement points to show he has a minimum of 20 qualifying years and issue him a 20 year letter.

6/6/2024

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. Title 10, U.S. Code, sections 12731 through 12740 authorize retired pay for Reserve Component (RC) 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. Section 12731 states a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person has attained the eligibility age applicable under the appropriate subsection and has performed at least 20 years of service computed under section 12732 of this title.

3. Title 10, U. S. Code, section 12731b states that in the case of a member of the Selected Reserve of an RC who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for the purpose of Section 12731 of this title, determine to treat the member as having met the service requirement and provide the member notification required if the member completed at least 15 years, but less than 20 years of qualifying service for retirement purposes.

4. Army Regulation 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing non-regular retirement. 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.

5. Army Regulation 140-10 (Assignments, Attachments, Details and Transfers) covers policy and procedures for assigning, attaching, removing, or transferring U.S. Army Reserve Soldiers. Chapter 6 provides for transfer to the Retired Reserve. Paragraph 6-1 states assignment to the Retired Reserve is authorized and eligible Soldiers must request transfer, for a variety of reasons such as:
 - entitlement to receipt of retired pay because of prior military service
 - completion of 20 years of active and inactive service
 - medical disqualification
 - reaching a certain age and completing a minimum of 8 years of qualifying service
 - non-selection for promotion

//NOTHING FOLLOWS//