

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 April 2024

DOCKET NUMBER: AR20230009646

APPLICANT REQUESTS:

- correction of her U.S. Army Reserve (USAR) discharge orders to show she was transferred to the Retired Reserve instead of discharged
- issuance of a DD Form 214 (Certificate of Release or Discharge from Active Duty)
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record) (two forms)
- Leave and Earnings Statement (LES) for the period 10-30 June 1981
- LES for the period August 1981
- Army Master Military Pay Account (MMPA) for the period December 1994 – December 2001
- Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter), dated 21 March 2001
- USAR reassignment orders, dated 30 March 2001
- USAR discharge orders, dated 8 May 2001
- Chronological Statement of Retirement Points
- Email from the U.S. Army Human Resources Command (AHRC), dated 7 March 2014
- Letter from the Army Review Boards Agency (ARBA), Case Management Division, dated 9 April 2014
- Retired List orders
- Standard Form 180 (Request Pertaining to Military Records)

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:

a. Her discharge/separation was in error. She should have been transferred to the Retired Reserve instead of discharged from the USAR and she should have received a DD Form 214. Her duty time consisted of working weekends, two weeks a year, and 90-plus days of active duty attending job training courses. She was an instructor for basic and advance noncommissioned officer schools, she served on promotion boards, and worked in the inspector general's office. She also served as a human resources supervisor at Fort Liberty, NC (formerly known as Fort Bragg).

b. Prior to her last day of work in April 2001 at Fort Liberty, a new unit command from Fort Eisenhower, GA (formerly known as Fort Gordon) took over. Her paperwork was processed and submitted after she left. She did not understand the full procedure at the time until she discovered she was reassigned to the Individual Ready Reserve (IRR) instead of the Retired Reserve. She did not get credit for the times she served on active duty for 90 days or more. In 1981, she worked full time at a recruiting station in Massachusetts. In 1982, she worked full time for the Army Command Headquarters at Hanscom Air Force Base, MA. From 1983 to 1986, she worked full time for the Air Force Payroll Command. In 1998, she worked full time for the Army Psychological Civil Affairs Office at Fort Liberty. She also worked in the Psychological Operations Inspector General's Office. During these times, she never missed weekend USAR duty. She loved and served in the Army honorably. Her family faced a difficult situation which needed her attention.

3. The applicant enlisted in the USAR on 21 February 1981.

4. On 25 September 1994, the applicant reenlisted for a period of six years for continued service in a troop program unit.

5. The applicant's Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter) is dated 21 March 2001. This letter informed her that having completed the required years of qualifying reserve service, she is eligible for retired pay upon application at age 60. The letter also advised the applicant the following:

If you are in an active status, you are reminded that since you have completed 20 years of qualifying service you must earn a minimum of 50 points each retirement year to retain active status. This requirement may be waived for valid reasons, such as personal hardship. Contact your Personnel Manager for questions concerning participation.

6. Orders issued on 30 March 2001 directed the applicant's reassignment to the USAR Control Group (Reinforcement) effective 29 April 2001. The orders show the reason for the reassignment as "personal cogent reasons."

7. Orders issued on 8 May 2001 directed the applicant's honorable discharge from the USAR effective 8 May 2001.

Note: A Soldier who has achieved eligibility for a non-regular retirement and selects to be discharged over entering the Retired Reserve, loses out on the cost of living adjustments from the date he or she is discharged until reaching age 60, meaning that retired pay will be calculated based on the pay rates in effect at the time of discharge.

8. There is no evidence in the applicant's available records indicating she requested transfer to the Retired Reserve.

9. There is no evidence in the applicant's available records showing she completed 90 days or more of continuous active duty service, which would have required issuance of a DD Form 214 in accordance with Army regulations.

10. Orders issued on 15 February 2018 directed the applicant's placement on the Retired List effective 21 February 2018 (upon attaining age 60).

11. The documents provided by the applicant do not show she completed 90 days or more of continuous active service.

12. The applicant provided:

a. An email from AHRC, dated 7 March 2014, informing her that unfortunately, she was reassigned to the IRR instead of the Retired Reserve. She was also informed that because her expiration term of service had passed, she was discharged from the USAR. She was advised to submit a request to ARBA for correction of her discharge orders to show she was reassigned to the Retired Reserve.

b. A DD Form 149, dated 13 March 2014, showing she had previously applied to the ABCMR requesting correction of her discharge orders. She also provided a letter from the ARBA CMD, dated 9 April 2014, informing her that her request could not be acted upon by the ABCMR because she had not exhausted all administrative remedies available. She was advised to apply to AHRC.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found partial relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. A majority of the Board noted the relatively short timeline between the issuance of the applicant's 20-year letter, her transfer to the IRR, and her discharge from the USAR, and found it probable that she was not properly advised of her option to request transfer to the Retired Reserve in lieu of discharge. Based on a preponderance of the evidence, a majority of the Board determined her record should be corrected to show she was transferred to the Retired Reserve effective 29 April 2001.

3. The Board noted that the applicant would have been issued a DD Form 214 upon completion of initial entry training; however, this document is not available in her record and there is insufficient data available to recreate the form. The Board further found no evidence indicating the applicant completed a subsequent period of active duty service of 90 consecutive days or more that would have required issuance of a DD Form 214. The Board determined the evidence is insufficient to support issuance of a DD Form 214.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:	:	:	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 showing she was transferred to the Retired Reserve effective 29 April 2001.
2. The Board further determined 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 any relief in excess of that described above.

9/18/2024

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. Army Regulation 135-178 (Army National Guard and Army Reserve Enlisted Administrative Separations), chapter 4 (Expiration of Service Obligation) of the regulation in effect at the time states, on enlistment and reenlistment, a Soldier enters into an agreement to serve in a Regular or Reserve component of the armed forces for a specified term of service. The contracted term of service may expire during, run concurrent with, or exceed the term of an incurred statutory military service obligation (MSO). Unless reenlisted or extended, a Soldier will be discharged from military service on expiration of a contractual MSO, or a statutory MSO, whichever is the later.
3. Army Regulation 140-10 (Army Reserve Assignments, Attachments, Details, and Transfers) of the regulation in effect at the time of the applicant's discharge states in:

a. Chapter 6 (Transfer to and from Retired Reserve), assignment to the Retired Reserve is authorized if the Soldier have completed a total of 20 years of active or inactive service in the Armed Forces. Eligible Soldiers must request transfer.

b. Chapter 7 (Removal from Active Status), Soldiers removed from active status will be discharged or transferred to the Retired Reserve. Transfer to the Retired Reserve is authorized when requested by Soldiers who are eligible.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, states prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for the preparation of the DD Form 214. It states the DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. The regulation also states that a DD Form 214 will be prepared for Army National Guard and USAR personnel after completing 90 days or more of continuous active duty or after completing initial active duty for training which resulted in the award of a military occupational specialty.

5. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of evidence.

b. Paragraph 2-11 states 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.

//NOTHING FOLLOWS//