

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20230010314

APPLICANT REQUESTS: correction of her records to show she received service credit for 20 years of service and adjustment of her retired pay at age 62 under the Temporary Early Retirement Authority (TERA).

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum, Subject: Fiscal Year (FY) 1995 Early Retirement Program Application, 25 May 1995
- DD Form 214 (Certificate of Release or Discharge from active Duty), ending 31 August 1995
- Defense Finance and Accounting Service (DFAS) Letter, 23 June 2023
- Civilian Career Report, 17 July 2023
- DD Form 2676 (Validation of Public or Community Service Employment), 14 December 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, in pertinent part, she was qualified for early retirement under section 4403 of the FY 1993 National Defense Authorization Act (NDAA) (Public LAW (PL) 102-484) and has been employed with the federal government since her retirement from 1 September 1995 to present. Her qualified public service would have been completed in 1998 to complete 20 years of service. She was told to apply for 20 years of service credit once she turns age 62.
3. A review of the applicant's available service record reflects the following:
 - a. The applicant's record is unavailable for review as it is reported by the National

Personnel Records Center to be charged out to another agency. The case will be written using DD Form 214.

b. On 5 September 1978, the applicant enlisted in the Regular Army and served continuously until her early retirement.

c. DD Form 214, ending 31 August 1995 reflects an honorable retirement for voluntary early retirement. Item 12 (Record of Service) shows service from 5 September 1978 to 31 August 1995 for a net active service this period of 16 years, 11 months, and 25 days. Item 18 (Remarks) shows "member is retiring as provided by section 4403 of the FY 1993 NDAA (PL 102-484) and may qualify for a recomputation of retired pay at age 62."

4. The applicant provides the following:

a. Memorandum, Subject: FY 1995 Early Retirement Program Application, dated 25 May 1995 showing her request for TERA was conditionally approved for 1 September 1995.

b. DFAS Letter, dated 23 June 2023 wherein the Military Pay Technician, Retired and Annuitant Pay notified the applicant that they were unable to find any Qualified Public Service for re-computation at age 62 and referring her to contact the ABCMR.

c. Civilian Career Report, dated 17 July 2023 showing her active employment as a Diagnostic Radiologic Technologist from 4 November 1996 to 16 June 2023.

d. DD Form 2676, dated 14 December 2023 showing her employment with the A.T. Augusta Military Medical Center on Fort Belvoir, Virginia, from 7 August 1995 to present.

5. On 10 January 2024, in the processing of this case, the Office of the Deputy Chief of Staff, G-1, Program Analyst, Compensation and Entitlements Pay, provided an advisory opinion recommending approval of the applicant's request stating, in effect:

a. After careful consideration, this office recommends approval of the applicants request for re-computation of retirement pay at the age 62 under the provision of section 4464 of Public Law 102-484. Procedures for reporting and computing the enhanced retirement credit are computed based on the DD Form 2276 (Validation of Public or Community Service Employment).

b. The applicant retired from the Army under TERA on 31 August 1995, with a total of 16 years, 11 months, and 26 days of active Federal service. The applicants enhanced retirement qualification period is calculated as 4 September 1998.

c. The applicant submitted the required DD Forms 2276, which reflected employment by Alexander T. Augusta Military Medical Center during the period 7 August 1995, through the present date. The total period of employment that meets the criteria referenced in 1.b, is 3 years, 0 month, and 4 days as calculated from 1 September 1995, through 4 September 1998.

d. The applicant's retirement date should be adjusted to allow for the military service credit of 3 years, 0 month, and 4 days upon attainment of 62 years of age.

6. On 11 January 2024, the applicant was provided with a copy of the advisory opinion to provide a response. She provided a rebuttal agreeing with the advisory and providing no further input.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant retired under TERA on 31 August 1995, with 16 years, 11 months, and 26 days of active Federal service. The applicant's enhanced retirement qualification period (ERQP) is calculated as 4 September 1998. She submitted the required DD Forms 2276, which reflected employment by a military medical center during the period 7 August 1995, through the present date. The total period of employment that meets the criteria is 3 years, 0 month, and 4 days as calculated from 1 September 1995 (date placed on retired list), through 4 September 1998 (ERQP). The Board agreed with the advisory official's determination that the applicant's retirement pay should be adjusted to allow for military service credit of 3 years, 0 month, and 4 days upon attainment of 62 years of age.

BOARD VOTE:

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| █ | █ | █ | 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:

- recomputing her retired pay effective at age 62 based on her employment of 3 years, 0 month, and 4 days calculated from her retirement date (1 September 1995) through her ERQP (4 September 1998)
- paying the applicant any additional retired pay she is due retroactive to her 62nd birthday as a result of this correction

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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. 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. TERA was enacted by Congress on 23 October 1992 as part of the NDAA of Fiscal Year 1993.

a. Its intent was to assist in the military draw-down of forces by permitting selected military members to retire early when they had between 15 and 20 years of service. Additional years of service could be accumulated, even though not serving in military uniform, during a period called Enhanced Retirement Qualification Period (ERQP).

b. The ERQP was that period from the date of retirement to the date on which the retiree would have attained 20 years of creditable service for the purpose of computing retired pay. The additional years were earned by service in military Reserve Components or employment in qualifying public or community service organizations – called the PACS program.

c. At age 62, the TERA retiree was permitted to have their retired pay recomputed and increased accordingly.

3. Department of Defense Instruction (DODI) 1332.37 (Program to Encourage Public and Community Service Employment) establishes policy, assigns responsibilities, and prescribes procedures to encourage and assist separating Service members, Service members retiring with 20 or more years of service, Department of Defense (DOD) civilian personnel leaving the Government, and spouses, to enter PACS employment and to encourage and assist Service members requesting retirement with fewer than 20 years of service to register for PACS employment.

a. Section 4.2.2. In order to have their military retired pay recomputed in accordance with DODI 1340.19 (Certification of Public and Community Service Employment of Military Retirees), early retirees must be employed with a DOD-registered PACS organization that provides the services listed in enclosure 1, subparagraphs E1.1.4.1. through E1.1.4.12., or that coordinates the provision of services listed in enclosure 1, subparagraphs E1.1.4.1. through E1.1.4.12. PACS organizations provide or coordinate the following services:

- Elementary, secondary, or post-secondary school teaching or administration
- Support of teachers or school administrators
- Law enforcement
- Public health care
- Social services
- Public safety
- Emergency relief

- Public housing
- Conservation
- Environment
- Job training
- Work in a Federal, state or local government organization in which provides or coordinates services listed above
- Other PACS consistent with or related to services listed above

b. Section 6.3.1. Registering for PACS is a requirement for consummation of their early retirement under Public Law 102-484, section 4403 or section 561 of Public Law 103-160.

c. Section 6.3.5. DOD-approved PACS employment qualifies the Service member who is retired under Public Law 102-484, section 4403 or Public Law 103-160 for increased retired pay effective on the first day of the first month beginning after the date on which the member or former member attains 62 years of age. The former service member must have worked in DOD-approved PACS employment between the date of early retirement and the date in which he or she would have attained 20 years of creditable service for computing retired pay, and have retired on or after 23 October 1992 and before 1 October 1999.

4. Retirees were required to document their employment using DD Form 2676 (Validation for Public or Community Service) and submit the form to the DMDC. The timeline to submit PACS applications to the DMDC ended 1 year to the day after the member's ERQP expired. DMDC is no longer authorized to accept any new PACS applications. The program officially expired in August 2008 (1 year after the last official TERA recipient's ERQP expired).

//NOTHING FOLLOWS//