

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230011155

APPLICANT REQUESTS: reconsideration of his prior request for:

- correction of the computation of his active years of military service
- adjustment of his retirement pay including back pay

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

- Self-Authored Statement
- Applicant's Request for Advisory Opinion, 6 June 2023
- Chief, Chaplain Corps Division Letter, 14 July 2023

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 AR20190002693 on 15 August 2020.

2. The applicant states he is requesting reconsideration of the prior decision made on his case, as he is presenting new evidence. The applicant's letter states in part:

a. In the decision letter dated 27 April 2023, it stated the Deputy Assistant Secretary of the Army (DASA) overturned the unanimous recommendation of the Board based upon the findings outlined within the Office of the Chief of Chaplain's advisory opinion (7 July 2020). Since the advisory opinion was based solely on the current policy for chaplains, he requested, in a letter to the Office of the Chief of Chaplains, dated 6 June 2023, additional information regarding the basis of his application. Specifically, for clarification between the 3 years of service in an active status credited to him in his commissioning orders and the 3 years of constructive credit for active duty grade determination in his orders to active duty. Current policy still grants 3 years for grade determination; however, current policy does not credit new commissioned chaplains with years of service in an active status. He believes the Chief of Chaplain's action officer who prepared the prior advisory opinion (7 July 2020) only addressed the 3 years for grade determination, the current policy with which he was familiar.

b. Based on the information listed below from the Office of the Chief of Chaplain, the applicant is requesting the DASA disregard the prior advisory, dated 7 July 2020 and consider reversing the decision based on the advisory the applicant obtained. The individual that provided the previous advisory falls under the supervision of the chaplain that he engaged to provide a review of his requests and outlined the following key points:

(1) The Chief of Chaplains advisory opinion, dated 7 July 2020, was not prepared by a subject matter expert who could answer questions about service computation or retirement pay for chaplains.

(2) Over a period of three assignments from 2009 to date, the current Chief, Chaplain Corps Division knows of no one in the Chief of Chaplain's Office who has the training or expertise to answer questions about service computation for retirement pay for chaplains.

(3) The Chief, Chaplain Corps Division has personal knowledge of chaplains who have received 3 years of constructive service for retirement pay.

3. The applicant provides:

a. His personal request for an advisory opinion to the Office of the Chief of Chaplains, dated 6 June 2023, which states he was requesting additional information for an appeal he was making to the ABCMR. The DASA overturned the Board's decision citing "insufficient evidence of an error or injustice to warrant relief." The applicant requested a review of the advisory provided in his prior case with the Record of Proceedings to capture the full request in addition to posing several questions. The full statement is available for review by the Board.

b. A letter from the Chief, Chaplain Corps Division, dated 14 July 2023, notes he did not believe the advisory opinion, dated 7 July 2020 was provided by a subject matter expert needed to answer questions about computations of service for chaplain or retired pay.

(1) It is his opinion after beginning his eighth year of serving in chaplain personnel, no one in the office, including himself since he started serving in the office in 2009, has the training or expertise to be able to answer questions concerning computations of service or retirement pay. In fact, they have always referred chaplains who are preparing to retire to go to those who are trained in computations of service and retirement pay which is typically at the local Garrison's Military Personnel Division. In reference to his specific question concerning his appointment orders as a reserve commissioned officer, he did not have the expertise to provide him with an informed answer.

(2) He was able to confirm that he was familiar with chaplains receiving 3 years of constructive service for retirement pay in the same way Medical Corps and Dental Corps officers receive, but there was confusion on if or how it applies to chaplains.

4. A review of the applicant's service record shows:

a. On 3 March 1982, he was appointed as a Reserve commissioned officer and executed an oath of office on 12 March 1982. Paragraph 4 of the appointment memorandum further indicated if he had been credited with years of service in active status, the number of years, months, and days would be shown in "D" (applied only to medical personnel and the Judge Advocate General's Corps). The service was not valid for pay entry basic date and was not the result of prior military service. Item D listed 3 years, 0 months, and 0 days.

b. Two DD Forms 220 (Active Duty Reports) list the following:

- 14 June 1982 - shows the effective date of entry on active duty and the reporting date listed as 13 June 1982
- 13 October 1982 - shows the effective date of entry on active duty as 10 June 1982 and the reporting date listed as 26 July 1982

c. The below listed orders outline the applicant's promotion dates:

- Orders 177-50, 2 December 1982 – captain effective 1 January 1983
- Orders 8-13, 21 January 1983 – first lieutenant effective 13 December 1980

d. On 1 November 1984, the applicant submitted a request for voluntary indefinite state on active duty. His request was approved on 8 January 1985.

e. On 14 December 1989, the applicant completed General Staff College and additional promotions are listed as follows:

- Order #179-031, 8 November 1990 – major effective 1 December 1990
- Order #321-012, 17 November 1997 – lieutenant colonel effective 2 December 1997
- Order #350-005, 16 December 2003 – colonel effective 1 January 2004

f. He was retired from active duty on 30 September 2010. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 28 years, 3 months, and 22 days of active service. Block 18 (Remarks) also lists two deployment periods:

- Afghanistan - 22 August 2002 to 10 January 2003
- Iraq - 13 February 2003 to 7 May 2003

5. On 25 August 2020, the ABCMR rendered a decision in Docket Number AR20190002693. The Board noted, per the policy, the applicant was awarded 3 years of creditable service in the form of constructive credit for completing his coursework as a chaplain. Per regulation, constructive credit is creditable toward retirement years and pay computation. The Board determined the applicant's records were in error and should reflect an additional 3 years of service for computation of retired pay.

6. On 27 April 2023, the applicant was notified the DASA reviewed the evidence presented, findings, conclusions, and Board member recommendations. Based upon the findings outlined within the Office of the Chief of Chaplain's advisory opinion, he determined there was insufficient evidence of an error or injustice warranting relief. Therefore, the DASA overturned the Board's recommendation. The application submitted by the individual concerned was denied.

7. By regulation (AR 135-100), the purpose of constructive service credit is to provide grade and date of rank comparability. This is for a person who begins commissioned service after obtaining the additional education, training, or experience required for appointment or assignment as a commissioned officer in a professional field. This relates to a contemporary who began commissioned service immediately after obtaining a baccalaureate degree.

8. By regulation (AR 600-8-24), no period of service subsequent to the date the officer meets the service requirements for mandatory retirement is creditable in the computation of retired pay unless specified by law.

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 relief was not warranted.

2. This case was a request for reconsideration, with an advisory opinion from Chief Chaplain Division, which says they do not know how to respond to the request for an advisory opinion. Therefore, the Board reviewed the advisory opinion rendered in the applicant's first consideration, where the Chief of Chaplains division did render a thorough opinion. The advisory opinion rendered in the first consideration provided:

...the applicant was given three years at the time of his appointment as a commissioned officer. Constructive credit is used to determine rank and grade based on prior service and advanced degrees. Each appointed officer gains constructive credit for training, education, and experience. While the policy allows officers to be promoted to CPT three years earlier than normal based on chaplain-specific schooling and ministry experience, it does not grant additional years of active service for retirement purposes. The applicant's service computation for retirement appeared to give him the appropriate amount of years of active service. A copy of the complete advisory opinion has been provided to the Board for their review and consideration.

3. There is no error nor injustice. Time served to gain an education prior to commission is not creditable in terms of retirement calculations.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend decision of the ABCMR set forth in Docket Number AR20190002693, dated 15 August 2020.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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 135-100 (Appointment of Commissioned and Warrant Officers of the Army) prescribes policy and procedures for the appointment of commissioned and warrant officers of the Army National Guard of the United States (ARNGUS).and the United States Army Reserve (USAR).

a. Section III (Appointments of Chaplains) states applicants without prior commissioned service' will be credited with 3 years service in an active status. They will be appointed in the grade of first lieutenant.

b. The purpose of constructive service credit is to provide grade and DOR comparability. This is for a person who begins commissioned service after obtaining the additional education, training, or experience required for appointment or assignment as a commissioned officer in a professional field. This relates to a contemporary who began commissioned service immediately after obtaining a baccalaureate degree.

2. Title 10 U.S. Code§ 533 - Service credit upon original appointment as a commissioned officer

a. Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps and who has advanced education or training or special experience with constructive service for such education, training, or experience to include, one year for each year of advanced education beyond the baccalaureate degree level, for persons appointed, designated, or assigned in officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

b. Constructive service credited an officer under subsection (b) shall be used only for determining the officer's:

- initial grade as a regular officer
- rank in grade; and
- service in grade for promotion eligibility

c. Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status. However, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

3. Army Regulation 600-8-24 (Officer Transfers and Discharges), paragraph 6-2 covers computation of service and states:

a. There are different types of creditable military service. Each type is computed according to the applicable provisions of Federal law for the various types of retirement. Active Federal service (AFS) is applicable for retirement under this chapter. For mandatory retirement of an RA commissioned officer, AFS may include constructive service (for a commissioned officer on active duty on 14 September 1981) and is computed to determine whether:

- RA or RC officer may retire voluntarily.
- RA commissioned or warrant officer must be retired mandatorily.
- a warrant officer may be advanced to a higher commissioned grade.

b. Retired pay is computed according to pay formulas in Title 10, United States Code, chapters 71 and 371; provisions contained in the retirement law; and according to title 37 of U.S. Code.

c. Upon appointment in the RA, certain commissioned officers are credited with constructive service. This amount of service is used to determine the RA grade and placement on the AOL and counts as mandatory retirement service for commissioned officers on active duty before 15 September 1981. When the mandatory retirement service is greater than the total service for basic pay, it is used as the multiplier in determining the percentage in computing retired pay. No period of service subsequent to the date the officer meets the service requirements for mandatory retirement is creditable in the computation of retired pay unless specified by law.

d. For voluntary retirements that do not require a waiver and do not appear to involve retirement of a Regular commissioned officer with at least 30 but less than 40 years of active service for retirement purposes, service computations will be performed at the installation maintaining the local personnel file or MPF, as appropriate

of the retiree. For general officers, JAGC officers, chaplains, officers managed by the Special Management Branch, Regular commissioned officers with at least 30 but less than 40 years of active service for retirement purposes, and those that require waiver, service computations will be performed by the supporting service center and forwarded with the respective retirement request for validation to HRC-Alexandria (AHRC-OPD-A).

//NOTHING FOLLOWS//