

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230011234

APPLICANT REQUESTS: in effect, correction of his DA Form 5016 (Retirement Accounting Statement) to reflect the additional 24 non-paid retirement points in Retirement Year Ending (RYE) 17 August 2021.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 1380 (Record of Individual Performance of Reserve Duty Training) for October 2020
- DA Form 1380 for January 2021
- DA Form 1380 for February 2021
- DA Form 1380 for March 2021
- DA Form 1380 for April 2021
- DA Form 1380 for May 2021

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 state in effect, he completed his Intermediate Level Education (ILE) phase II for his professional military education in a hybrid status due to Coronavirus Disease 2019 (COVID-19) which he did not receive pay or retirement points. He believes the manner which ILE was conducted due to COVID-19 is what disqualified him from receiving pay or retirement points due to no fault of his own. He completed the mandatory course for career progression and he should be compensated. He requests his DA Form 5016 be corrected to add the additional 24 non-paid retirement points in the RYE of 17 August 2021 for his completion of ILE phase II.

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

a. With prior enlisted Army National Guard (ARNG) service, the applicant executed his oath of office on 17 September 2007 and was appointed as a commissioned officer in the Wisconsin (WI) ARNG and was extended temporary Federal Recognition (FEDREC).

b. On 14 January 2008, Special Orders Number 9, issued by the National Guard Bureau (NGB), the applicant was appointed in the ARNG, effective 19 August 2007, and was extended FEDREC.

c. On 31 December 2012, the applicant was honorably released from the ARNG and assigned to the U.S. Army Reserve (USAR) Control Group (Reinforcement). NGB Form 22 (Report of Separation and Record of Service) shows the applicant completed 5-years, 3-months, and 14-days of service.

d. On 31 January 2013, Special Orders Number 30, issued by the NGB, the applicant's FEDREC was withdrawn for transfer to the USAR, effective 31 December 2012.

e. On 7 April 2015, Orders Number C-04-505493, issued by the U.S. Army Human Resources Command (HRC), the applicant was assigned to the USAR Control Group (Individual Mobilization Augmentee (IMA)), effective 7 April 2015. The additional instructions stated the applicant was authorized to perform up to 48 Inactive Duty Trainings (IDTs) each fiscal year. Drills performed without prior authorization is for points only.

f. On 25 February 2016, Orders Number T-02-601338, issued by HRC, the applicant was ordered to Active Duty for Operational Support for Reserve Component (ADOS-RC), effective 29 February 2016.

g. On 30 September 2016, Orders Number T-09-608848, issued by HRC, the applicant was ordered to ADOS-RC, effective 1 October 2016.

h. On 30 September 2017, the applicant was honorably released from active duty and assigned to the USAR Control Group (IMA). DD Form 214 shows the applicant completed 1-year, 7-months, and 2-days of active service.

i. On 18 May 2020, Orders Number T-05-003342, issued by HRC, the applicant was ordered to Active Duty for Training (ADT), effective 12 July 2020, for completion of ILE Phase I. The additional instructions stated for pay only.

j. On 9 April 2021, Orders Number T-04-110699, issued by HRC, the applicant was ordered to ADT, effective 13 June 2021, for completion of ILE phase III. The additional instructions stated for pay only.

k. DA Form 1059-2 (Senior Service and Command and General Staff College Academic Evaluation Report) dated 15 July 2021 shows the applicant completed ILE Common Core during the period of 14 through 26 June 2021.

l. On 24 September 2021, the applicant's unit was notified by HRC his DA Form 1380 for ILE phase I and II were rejected as DA Form 1380 for non-paid retirement points should be accurately completed and submitted no later than the end of the month the duty was performed with the proper authority for completing the training. The unit was also notified that Electronic Based Distributed Learning (EBDL) was not authorized for non-paid retirement points as of 15 April 2016 for approved EBDL courses and requests for EBDL must be submitted through the Soldier's unit for pay.

m. On 2 November 2021, Orders Number C-11-111535, issued by HRC, the applicant was assigned to the USAR Control Group (Reinforcement), effective 2 November 2021.

n. On 5 November 2021, Orders Number C-11-111704, issued by HRC, the applicant was assigned to a USAR Troop Program Unit, effective 5 November 2021.

o. The applicant's DA Form 5016 dated 17 September 2023, shows for RYE 17 August 2021 the applicant obtained 16 Inactive Duty Training (IDT) points, 15 membership points, and 13 Active Duty Training (ADT) points for a total of 44 creditable points.

4. The applicant provides:

a. DA Form 1380 dated 25 April 2023 which shows the applicant performed 8-hours of duty each day for 2 non-paid retirement points for each day on 24 through 25 October 2020 completed ILE phase 2 virtual class. Lieutenant Colonel (LTC) S- F-, ILE Instructor digitally signed the DA Form 1380 on 7 May 2023 as the officer having knowledge for the duties performed.

b. DA Form 1380 dated 25 April 2023 which shows the applicant performed 8-hours of duty each day for 2 non-paid retirement points for each day on 9 through 10 January 2021 completed ILE phase 2 virtual class. LTC S- F-, ILE Instructor digitally signed the DA Form 1380 on 7 May 2023 as the officer having knowledge for the duties performed.

c. DA Form 1380 dated 25 April 2023 which shows the applicant performed 8-hours of duty each day for 2 non-paid retirement points for each day on 20 through 21 February 2021 completed ILE phase 2 virtual class. LTC S- F-, ILE Instructor digitally signed the DA Form 1380 on 7 May 2023 as the officer having knowledge for the duties performed.

d. DA Form 1380 dated 25 April 2023 which shows the applicant performed 8-hours of duty each day for 2 non-paid retirement points for each day on 13 through 14 March 2021 completed ILE phase 2 virtual class. LTC S- F-, ILE Instructor digitally signed the DA Form 1380 on 7 May 2023 as the officer having knowledge for the duties performed.

e. DA Form 1380 dated 25 April 2023 which shows the applicant performed 8-hours of duty each day for 2 non-paid retirement points for each day on 10 through 11 April 2021 completed ILE phase 2 virtual class. LTC S- F-, ILE Instructor digitally signed the DA Form 1380 on 7 May 2023 as the officer having knowledge for the duties performed.

f. DA Form 1380 dated 25 April 2023 which shows the applicant performed 8-hours of duty each day for 2 non-paid retirement points for each day on 1 through 2 May 2021 completed ILE phase 2 virtual class. LTC S- F-, ILE Instructor digitally signed the DA Form 1380 on 7 May 2023 as the officer having knowledge for the duties performed.

5. On 31 January 2024, in the processing of this case, Headquarters, U.S. Army Reserve Command (USARC), provided an advisory opinion regarding the applicant's request for the additional non-paid retirement points. The advisory official stated it was recommended the applicant's request be disapproved. According to the USARC policy, ILE is to be paid only when pre-approved by the unit commander. The applicant did not provide proof he attempted to get approval for pay before or after completing the EBDL to get paid by his unit.

6. On 15 February 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

7. On 15 February 2024, the applicant responded via e-mail stating he was not sure of the process as he was assigned to the USAR Control Group IMA at the time the course work was completed. He did not obtain a qualifying year for retirement because he did not realize he was not going to receive retirement points for his completion of ILE. He understood that he would only receive pay and receive retirement points if he traveled to Fort Dix, NJ as opposed to completing the course in a hybrid status due to COVID-19. The applicant provided his orders for ILE phase III which was in a hybrid status and for which he received pay and points.

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 applicant contends that he completed Phase II of his Intermediate Level Education (ILE) for his professional military education in a hybrid status due to COVID-19, which he did not receive pay or retirement points. He believes the manner which ILE was conducted

due to COVID-19 is what disqualified him from receiving pay or retirement points due to no fault of his own. The Board reviewed and disagreed with the USARC advisory official's finding that according to the USARC policy, ILE is to be paid only when pre-approved by the unit commander. The Board found the applicant' argument regarding COVID restrictions credible. He completed the course and should receive retirement points credit for it.

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:

- Showing the applicant timely submitted the referenced DA Forms 1380 (for points only) through and/or to the appropriate office for processing
- Showing the appropriate office timely received and processed his submitted DA Forms 1380 (for points only), provided all other criteria is met

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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. Army Regulation (AR) 140-1 (Mission, Organization, and Training), provides policy guidance on the mission, organization, and training of the USAR. It does not contain guidance on preparation for order to active duty under a mobilization situation. Paragraph 3-11 (Equivalent training (ET)), ET is performed in lieu of scheduled training (either RST or, UTA or MUTA). Pay or retirement point credit or both is authorized. ET must be accomplished within 60-days after the training for which it is substituted, or by the end of the training year (fiscal year) if within 60-days of that date. An explanation of the circumstances will be included, with a statement that the ET, if granted, will not cause the Soldier to exceed the 48 paid unit assemblies for the fiscal year. a. ET is limited to Soldiers who have missed a UTA, MUTA, or RST due to unforeseen personal emergencies and desire to make it up. No more than 4 UTAs may be made up during a fiscal year. b. ET given will be the same type and quality as the training missed. It will be appropriate to, and enhance the ability of, Soldiers to carry out their assigned duties. For staff or support personnel, this may include duty which enhances unit training, management, or readiness. c. ET must be at least as long as the training missed. d. ET will not be granted for assemblies missed due to ADT.

3. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records), in effect at the time, prescribes the types of training and activities or which retirement points are authorized and the procedures for recording retirement point credits and training for members of the USAR Soldiers.

a. Paragraph 2-1 (Criteria for crediting retirement points), the limitations on the number of points which may be credited to a Soldier during a retirement year area. Maximum-365 (366 during leap year) points. Maximum for inactive duty training (IDT) 60 points for IDT and membership points. However, Annual or Terminal Statement of Retirement Points will report all points earned.

b. 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 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.

c. Paragraph 2-4 (Criteria for awarding retirement points), personnel on AD, ADT, IADT, involuntary ADT, or AT are awarded 1 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. Table 2-1 provides criteria for award of retirement points for IDT performed in accordance with 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.

- Four-hour rule; Soldiers earn one point for each scheduled 4-hour period of IDT at Battle Assembly, RST, ET, or ATA
- Four/eight-hour rule; Soldiers earn one point for each 4 hour or greater period, award of a second point in the same day requires additional hours to bring the day's total to a minimum of 8 hours for a maximum of two points in 1 calendar day
- Eight-hour rule; approved EBDL courses will be awarded to members of the Selected Reserve (TPU), subject to available funding, and as pre-approved, Soldiers may earn one retirement point and be paid for one IDT for every 8 hours of distance learning completed

d. Paragraph 3-3 (DA Form 1380), DA Form 1380 will be prepared for a unit Soldier who performs ET or additional training with their unit subsequent to the scheduled BA. TPU units will retain one copy of the DA Form 1380 to post the appropriate entry into ADARS for the month's report and then place in the appropriate Army records information management system file. Non-paid DA Forms 1380 will not be entered into ADARS and will be forwarded to HRC for award of retirement points no later than the end of each duty month.

e. Table 3-1 provides that the code "N" will be entered for RST. The code "N" indicates the Soldier is entitled to retirement point credit only.

f. Paragraph 3-4 (EBDL), Soldiers may only receive compensation and retirement credit for EBDL courses listed in ATRRS after command pre-approval. Additional EBDL for Reserve compensation are authorized only for SELRES Soldiers in the paid drill strength of the Army Reserve, including drilling IMA Soldiers. Periods of duty used to complete EBDL courses in lieu of regularly scheduled IDT periods will not exceed four periods per fiscal year. The commander, USARC reserves the right to authorize additional drill assemblies while the mandate is unfunded. No more than 12 total additional training assemblies will be performed by any one individual per calendar year. Commanders will ensure that coursework authorized for additional training periods for EBDL is not completed during any other type of training or duty periods. Each 4-hours of successfully completed qualifying EBDL coursework in lieu of regularly scheduled IDT periods will earn a Soldier credit for completion of one additional training period, paid, and one Reserve retirement point. For all training assemblies in excess of 12, a

Soldier will earn one additional paid training period and one Reserve retirement point for each 8-hours of successfully completed qualifying EBDL coursework. These are categorized as IDT points and are subject to the annual limit on Reserve retirement points that may be credited in an anniversary year toward retired pay. For EBDL work that totals fewer than 4-hours (in lieu of regularly scheduled IDT periods) or 8-hours (ATA), Soldiers should aggregate the EBDL in multiples of 4-hours or 8-hours to establish IDT periods and determine eligibility for Reserve compensation and Reserve retirement points. Initiate payment only when a Soldier satisfactorily completes a directed EBDL course. Soldiers will not be awarded payment for EBDL completion until the Soldier is issued a DA Form 87 (Certificate of Training) or equivalent proof of completion. All EBDL courses list academic hours in ATRRS, which should be used to calculate compensation. Soldiers are awarded the academic hours listed in ATRRS regardless of the time actually required by the Soldier to complete the EBDL course. Units will record EBDL completion for which a Soldier is compensated on a DA Form 1380 as paid IDT.

4. Department of Defense Instruction (DoDI) 1215.07 (Service Credit for Non-Regular Retirement) states inactive duty may be credited for each attendance at an inactive duty training period. A maximum of 2 retirement points for attendance at inactive duty training periods or equivalent training, in any 1 calendar day. The Service member's participation is without payment other than the pay to which the Service member is entitled as a Reserve Component member. Credit no more than one retirement point for fewer than 8 hours. One retirement point for members of the Selected Reserve after successfully completing non-resident training and education in an active status for each 4-hours of pay received. A period of non-resident training and education using electronic-based distributed learning methodologies must last at least 4-hours. The Service member must certify that he or she completed it.

5. Title 37 USC, section 206 (Reserves; members of National Guard: inactive-duty training), d (2), a member of the Selected Reserve of the Ready Reserve may be paid compensation under this section at a rate and under terms determined by the Secretary of Defense, but not to exceed the rate otherwise applicable to the member, upon the member's successful completion of a course of instruction undertaken by the member using electronic-based distributed learning methodologies to accomplish training requirements related to unit readiness or mobilization, as directed for the member by the Secretary concerned. The compensation may be paid regardless of whether the course of instruction was under the direct control of the Secretary concerned or included the presence of an instructor. A member of the National Guard or of a reserve component of the uniformed services may not be paid under this section for more than four periods of equivalent training, instruction, duty, or appropriate duties performed during a fiscal year instead of the member's regular period of instruction or regular period of appropriate duty during that fiscal year.

6. DoDI 1215.21 (Reserve Component (RC) Use of EBDL Methods for Training), Establishes policy, assigns responsibilities, and provides procedures for members of the Selected Reserve to use electronic-based distributed learning (DL) methods to conduct training away from scheduled unit training assemblies or apart from other collective training time. To be considered for compensation, the proposed qualifying DL training courses must: (1) Be delivered via DL methodologies. (2) Support required training related to unit readiness or mobilization. Training requirements related to unit readiness or mobilization may include courses supporting completion of specific occupational skill qualification, expeditionary, or combat skills training, and annual ancillary/general military training.

//NOTHING FOLLOWS//