

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 June 2024

DOCKET NUMBER: AR20230011749

APPLICANT REQUESTS:

- correction to his retirement points
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Three DA Forms 1380 (Record of Individual Performance of Reserve Duty Training), 13 September 1998, 14 May 1999, and 16 May 1999
- Three Leave and Earnings Statement (LES), 25 September 1998, 26 May 1999, and 28 May 1999
- Orders Number 221-03, 9 August 1999
- W2 Forms 1998 and 1999
- Department of Veterans Affairs (VA) Statement in Support of Claim, 23 January 2012
- VA Letter, 25 January 2012
- SF 180 (Request Pertaining to Military Records), 10 May 2023
- U.S. Army Human Resources Command (HRC) Letter, 24 May 2023
- DA Forms 5350 (U.S. Army Reserve Drill Recording Form)

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 he requests correction to his retirement points, which affect his retirement pay. Duty performed does not reflect retirement points earned, which in turn would correct pay for retirement.
3. A review of the applicant's records show:

a. Having prior enlisted service in the Regular Army, the applicant was transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement) on 19 September 1977.

b. On 2 January 1980, Orders Number 01-100273 issued by the USAR Components Personnel and Administration Center reassigned the applicant from the USAR Control Group (Reinforcement) to a Troop Program Unit, effective 13 November 1979.

c. He reenlisted in USAR on 5 August 1980, and served continuously through multiple reenlistments until he was assigned to the Retired Reserve, effective 9 August 1999.

d. His record contains DA Form 5016 (Chronological Statement of Retirement Points), dated 28 May 2024, which shows he earned a total of 808 Inactive Duty Training (IDT) points, 328 membership points, 1480 Active Duty Training (ADT) points, 21 years, 10 months, and 21 days qualifying for retirement, and 2604 points creditable. In relevant part, it also shows for the anniversary year 20 September 1998 to 9 August 1999, he earned the following retirement points:

- 43 IDT
- 13 membership
- 10 months and 21 days qualifying for retirement
- 56 total points creditable

4. The applicant provides:

a. DA Form 1380, dated 13 September 1998, signed by a first sergeant, which shows:

- 11 September 1998 – for 4 hours, P-1 (paid), he performed instructor prep/admin duties; totaling 1 point
- 12 September 1998 – for 8 hours, P-2 (paid), he performed instructor prep/admin duties; totaling 2 points
- 13 September 1998 – for 8 hours, N-2 (nonpaid), he performed instructor prep/admin duties; totaling 2 points

b. LES, dated 25 September 1998, which shows, in pertinent part, total performance for fiscal year (FY) 1998: Unit Training Assembly (UTA) 48 and Unit Training Assembly 11 September 1998 1.

c. DA Form 1380, dated 14 May 1999, which contains no signature and shows:

- 12 May 1999 – for 4 hours, N-1 (nonpaid), he performed administrative instructor prep duties; totaling 1 point
- 13 May 1999 – for 8 hours, P-2 (paid), he performed administrative instructor prep duties; totaling 2 points

d. DA Form 1380, dated 16 May 1999, which contains no signature and shows:

- 14 May 1999 – for 8 hours, P-2 (paid), he performed administrative instructor prep duties; totaling 2 point
- 15 May 1999 – for 4 hours, P-1 (paid), he performed administrative instructor prep duties; totaling 1 point
- 15 May 1999 – for 4 hours, N-1 (nonpaid), he performed administrative instructor prep duties; totaling 1 point

e. LES, dated 26 May 1999, which shows, in pertinent part, total performance for FY 1999: UTA 40" and "Inactive Duty Training 13 May 1999 "1" 13 May 1999 "2." The LES has a yellow post-it attached stating UTA should say 45 drills.

f. LES, dated 28 May 1999, which shows, in pertinent part, total performance for FY 99: UTA 43" and "Inactive Duty Training 14 May 1999 "1" 14 May 1999 "2" 15 May 1999 "1." The LES shows a note written by the applicant which states Sergeant Major V\_ failed to submit final DA Form 1380 dated and faxed on 15 May 1999. "Drills 44 thru 49 were not recorded."

g. Orders Number 221-03, dated 9 August 1999, published by Headquarters, 95th Division (Institutional Training), which assigned the applicant to the Retired Reserve, effective 9 August 1999.

h. W2 Forms 1998 and 1999 showing the applicant's wages and taxes withheld.

i. VA Statement in Support of Claim, dated 23 January 2012, showing the applicant requested a copy of his 201 file and "SMRs."

j. VA Letter, dated 25 January 2012, which acknowledges receipt of the applicant's request for benefits.

k. SF 180, dated 10 May 2023, which shows the applicant requested a copy of his Official Military Personnel File, medical records, and dental records.

l. HRC congressional response letter, dated 24 May 2023, which states, in relevant part, the points listed on the applicant's LES have been accounted for on his current DA Form 5016. DA Forms 1380 must be processed within 30 days of the date points were earned. The applicant was referred to the ABCMR.

m. DA Forms 5350, various dates, showing the applicant's record of drill attendance.

5. On 15 February 2024, the HRC, Chief, Army Service Center provided an advisory opinion for this case and stated:

a. Attached is the applicant's DA Form 5016, Chronological Statement of Retirement Points which is correct as issued. Missing points were not added from his DA Forms 1380 because one form was signed by a first sergeant with no signature authority and the other was not signed at all. Neither form came with a letter of lateness explaining why the forms were turned in late.

b. Current points for these periods of time are:

- 1999/05/15 1999/05/15 X- PERFORMANCE OF IDT INACTIVE 1
- 1999/05/14 1999/05/14 X- PERFORMANCE OF IDT INACTIVE 2
- 1999/05/13 1999/05/13 X- PERFORMANCE OF IDT INACTIVE 2
- 1999/05/02 1999/05/02 X- PERFORMANCE OF IDT INACTIVE 2
- 1999/05/01 1999/05/01 X- PERFORMANCE OF IDT INACTIVE 2
- 1998/09/11 1998/09/11 X- PERFORMANCE OF IDT INACTIVE 1

6. On 20 February 2024, the applicant was provided a copy of the HRC advisory opinion for comment or rebuttal. He did not respond.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board reviewed and non-concurred with the U.S. Army Human Resource Command's advising official and determined the evidence supports the applicant receiving credit toward a non-regular retirement. Specifically, the Board determined the applicant's submitted DA Forms 1380 reflect duty performed by the applicant for qualifying retirement points.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that so much of the request pertaining to awarding the applicant paid retirement points as submitted on the DA Forms 1380. The Board concluded that those submitted points for duty shall be converted to non-paid retirement points.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record 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.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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 awarding the applicant the following retirement points, provided all other criteria is met.

- 11 September 1998, 4 hours, one non-paid retirement point
- 12 September 1998, 8 hours, two non-paid retirement points
- 13 September 1998, 8 hours, two non-paid retirement points
- 12 May 1999, 4 hours, one non-paid retirement point
- 13 May 1999, 8 hours, two non-paid retirement points

2. The Board further determined that 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 granting the applicant paid retirement points.

7/10/2024

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, 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. Title 31 USC, section 3702, also known as the barring act, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, USC, is relieving the government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

3. Army Regulation (AR) 15-185 (ABCMR), states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states that 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.

4. AR 140-1 (Mission, Organization, and Training) provides policy guidance on the mission, organization, and training of the U.S. Army Reserve. Paragraph 3-26 (Training of individual Soldiers in a non-pay status) states, Soldiers in an active status may take part in individual inactive duty training (IDT) in a non-pay training status when authorized by the appropriate commander. In pertinent part, individual training opportunities with retirement point credit are shown below:

- attachment to appropriate Reserve Component Troop Program Units (TPU)
- attachment to Active Army units
- attachment to reinforcement training units as appropriate
- participation in approved training projects or using administrative skills in support of TPU and USAR activities
- attendance at Army service or Army area school training
- enrollment in appropriate extension courses
- attendance at authorized conventions, professional conferences, or appropriate trade association meetings related to the individual's mobilization specialty
- conducting or reviewing medical examinations, and related medical duties
- recruiting duties as described in AR 140–185

5. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) contains Army policy for U.S. Army Reserve training and retirement point credit. It also prescribes guidance for USAR unit level strength accounting.

a. Paragraph 1-7 (Service requirement for a satisfactory year of service for non-regular retirement) states, a qualifying year of service for non-regular retired pay is a full year during which a Reserve Component member is credited with a minimum of 50 retirement points. Except as otherwise provided by law, an accumulation of 20 such years is one requirement necessary to qualify for non-regular retired pay.

b. Paragraph 2-1 (Criteria for crediting retirement points) states, IDT will be either 4 hours in length for one (1) retirement point or 8 hours in length for two (2) retirement points.

c. Chapter 3 (Records Source Documents), paragraph 3-1, provides that, the Army Training Requirements and Resources System (ATRRS) training transcript, DD Form 214 (Certificate of Release or Discharge from Active Duty), DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty), DD Form 220 (Active Duty Report), master military pay account, DFAS Form 702 (Defense Finance and Accounting Service Military Leave and Earnings Statement), DA Form 1379 (U.S. Army Reserve Components Unit Record of Reserve Training), DA Form 1380 (Army Reserve Record of Individual Performance of Reserve Duty Training), DA Form 5016, and the Reserve retirement repository are used to maintain and record the award and entitlement of retirement points described in paragraphs 3-2 through 3-7. Units of assignment are responsible to ensure source documents are uploaded into iPERMS prior to submission of action to adjust a Soldier's retirement points. This will ensure proper validation of retirement points throughout a Soldier's career.

d. Paragraph 3-3 (DA Form 1380) states in:

(1) Paragraph 3-3a, the purpose of this form is to record IDT by — (a) TPU Soldiers performing IDT assemblies when pay is authorized, and the Soldier is not present to sign the IDT attendance roster. (b) TPU Soldiers attached to another USAR unit for 89 or fewer days. In such cases the unit of attachment will prepare DA Form 1380 and forward to unit of assignment for recording attendance. (c) Non-unit Soldiers under the jurisdiction of HRC who are attached for retirement points only to USAR TPUs, ARNG units, or to another Service or component for training per AR 140–10.

(2) Paragraph 3-3b, the DA Form 1380 will be prepared for a unit Soldier who performs equivalent training or additional training with their unit subsequent to the scheduled Battle Assembly. Troop Program Units will retain one copy of the DA Form 1380 to post the appropriate entry into Automated Drill Attendance Reporting Software

(ADARS) for the month's report and then place in the appropriate Army records information management system file. Nonpaid DA Forms 1380 will not be entered into ADARS and will be forwarded to U.S. Army Human Resources Command for award of retirement points no later than the end of each duty month.

//NOTHING FOLLOWS//