

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230012011

APPLICANT REQUESTS:

- retired pay under Temporary Early Retirement Authority (TERA)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- NGB Form 22 (Report of Separation and Record of Service)

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 he served in various branches of the United States military, including the U.S. Marine Corps (USMC), U.S. Army Reserve (USAR) [REDACTED] Army National Guard ([REDACTED] ARNG), and in the Regular Army (RA). He served honorably in all components and his departure from the Army was marked by an honorable discharge with separation pay. At the time, he was dealing with significant stress and anxiety about leaving the Army, and severe post-traumatic stress disorder (PTSD). Due to his health, he was unable to contest the inaccuracies of his discharge records. Despite the challenges, he was able to obtain records that indicated he should have been retired with over 15 years of service. Upon attempting to rectify his discharge with the out-processing personnel at Fort Hood, he was informed that due to a lack of documentation to show he was in the ARNG during his ROTC program at [REDACTED] University, there was no action that could be taken. He was informed he had no other alternative but to leave the Army with separation pay.
3. The applicant provides his NGB Form 22 for his service in the [REDACTED] ARNG from 5 September 2003 through 17 November 2006.

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

a. Having had 4 years of prior service in the USMC, he enlisted in the USAR on 22 November 2002.

b. A DD Form 4 (Enlistment/Reenlistment Document) shows on 5 September 2003, the applicant enlisted in the [REDACTED] ARNG.

c. Orders 03-283-00002, dated 10 October 2003, reassigned the applicant from the Reserve Component to his current assignment due to enlistment with an effective date of 5 September 2003. The orders also noted a formal discharge would not be issued.

d. A DA Form 4187 (Personnel Action), dated 12 January 2006, shows the applicant's request to have his name changed in his official record was approved.

e. He was honorably discharged from the [REDACTED] ARNG on 17 November 2006. His NGB Form 22 shows he completed 3 years, 2 months, and 13 days of net service for the period with 4 years of prior active Federal service. It also shows in Block 13 (Authority and Reason) he was appointed as a commissioned or warrant officer.

f. An NGB Form 23B (Army National Guard Retirement Points History Statement), dated 24 March 2008 shows the applicant accumulated 1,738 total points towards retired pay.

g. He was appointed as a Reserve commissioned officer and executed an oath of office on 18 November 2006. He was ordered to active duty effective 20 November 2006 for a period of 6 years.

h. He was honorably discharged from active duty on 1 April 2015. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 8 years, 4 months, and 12 days of active service with 4 years and 18 days of total prior active service, and 4 years, 3 months, and 2 days of total prior inactive service. He was assigned separation code JCC and the narrative reason for his separation listed as "Early Separation."

5. On 12 January 2024, the Financial Management Specialist of the Compensation and Entitlements Branch at the Office of the Deputy Chief of Staff, G-1, rendered an advisory opinion in the processing of this case. She opined that after careful consideration this office did not recommend approval of the applicant's request for a recomputation of his retirement pay. The applicant was separated due to early separation and received full separation pay upon his discharge on 15 April 2015. He did not have an approved retirement under the TERA program according to the DD Form 214 and his separation orders. He would need to submit a DA Form 1506 which

reflected all creditable service for pay purposes to process any request for back pay due to incorrect pay dates.

6. On 16 January 2024, the advisory opinion was forwarded to the applicant for acknowledgment and/or response. The applicant provided the below listed documents:

- DD Form 214 (USMC) effective 31 August 2002
- DD Form 214 (RA) effective 1 April 2015
- Orders 008-061 dated 8 January 2007 – discharge from [REDACTED] ARNG effective 17 November 2006
- NGB Form 22 effective 17 November 2006
- DA Form 5016 (Statement of Service – For Computation of Length of Service for Pay Purpose) with a signature and no other information, to include a date.

7. An email response from the applicant, dated 24 January 2024 wherein he stated he has 16 total years of service from the USMC, USAR, RA, and ARNG. He believes it should qualify him under the TERA program. He was not provided the option in 2015 when he was out-processing from the Army.

8. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board noted that TERA is a discretionary authority and not an entitlement, and the Army was not obligated to offer TERA to a Soldier leaving active duty for other reasons. The Board concurred with the conclusion of the advisory official that the evidence does not support granting the requested relief. Based on a preponderance of the evidence, the Board determined the applicant's discharge with severance pay was not in error or unjust.

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 for correction of the records of the individual concerned.

12/19/2024

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

3. The FY 2012 National Defense Authorization Act (NDAA), Public Law 112-81, enacted 31 December 2011, authorized the military services to offer early retirement to Service members who have completed at least 15 years of active service. This is a discretionary authority and not an entitlement. The Army has elected to use this limited program as part of a comprehensive force management strategy to shape the force. It does not apply to Service members of the Army National Guard or the U.S. Army Reserve. The Army has ended the TERA program. Service members eligible for TERA must have submitted a request through their chain of command by 15 January 2018 for early retirement consideration. The authority to approve TERA was terminated on 28 February 2018.

//NOTHING FOLLOWS//