

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 June 2024

DOCKET NUMBER: AR20230012596

APPLICANT REQUESTS: in effect,

- Correction of his record to show he completed 20 years of service to qualify for a non-regular retirement
- personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- DD Form 265A (Honorable Discharge Certificate), 1 September 1975
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service)
- NGB Form 55 (Honorable Discharge Certificate)
- DA Form 638 (Recommendation for Award of Army Achievement Medal, Army Commendation Medal, and Meritorious Service Medal)
- DD Form 265A, 16 January 1996
- SF 1199A (Direct Deposit Sign-Up Form)
- DA Form 5016 (Chronological Statement of Retirement Points), 9 January 2020
- Medical Records

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 effect, while he was on active duty and stationed in Korea, he was diagnosed with a purified protein derivative. His service took courage, strength and dedication to keep us safe. He grew up in a military family and he knows the sacrifices that countless men and women had made. The applicant provides:

a. DD Form 256A which shows the applicant was honorably discharged from the USAR effective 1 September 1975.

b. NGB Form 55 which shows the applicant was honorably discharged from the ARNG and Reserve of the Army effective 1 March 1977.

c. DA Form 638 which shows the applicant was awarded the Army Achievement Medal for meritorious achievement in support of Operation Desert Shield and Desert Storm during the period of 9 through 28 December 1990.

d. DA Form 256A which shows the applicant was honorably discharged from the USAR effective 16 January 1996.

e. SF 1199A showing his account information.

f. DA Form 5016 dated 9 January 2020 which shows the applicant completed during his of service from 18 September 1969 through 16 January 1996: 606 inactive duty points, 90 extension course points, 357 membership points and 1,192 active duty points for a total of 17-years and 1-day of qualifying service for retirement and a total of 2,137 creditable points for retirement.

g. Six pages of medical records.

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

a. The applicant was born on XX M____ 1952. He turned 60 years of age on XX M____ 2012.

b. He enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) on 18 September 1969. On 13 October 1969, the applicant was released from the DEP for enlistment in the Regular Army.

c. The applicant's DA Form 20 (Enlisted Qualification Record) shows the applicant service in Korea during the period of 8 June 1970 through 16 June 1971.

d. On 21 April 1972, the applicant was honorably released from active duty and assigned to the USAR Control Group (Annual Training). DD Form 214 shows the applicant completed 2-years, 6-months, and 6-days of active service.

e. On 20 August 1975, Letter Orders Number 08-1263791, issued by the USAR Components Personnel and Administration Center, the applicant was honorably discharged from the USAR Control Group (Reinforcement), effective 1 September 1975 for expiration term of service.

f. The applicant's NGB Form 22 shows the applicant enlisted in the Army National Guard (ARNG) on 2 March 1975. He was honorably discharged from the ARNG on 1 March 1977. His NGB Form 22 shows he completed 2-years of service in the ARNG. It also shows he had 7-years, 4-months, and 17-days of service for pay purposes.

g. On 27 March 1977, the applicant enlisted in the USAR for a period of 4-years. He reenlisted in the USAR on 24 March 1981, 28 February 1984, and 3 December 1989.

h. On 16 January 1996, Orders Number D-01-603202, issued by the USAR Personnel Center, the applicant was honorably discharged from the USAR.

i. DA Form 5016 dated 20 May 2024, shows the applicant completed during his period of service from 18 September 1969 through 16 January 1996: 606 inactive duty training points, 90 extension course points, 357 membership points and 1,192 active duty points for a total of 17-years and 1-day of qualifying service for retirement and a total of 2,137 creditable points for retirement.

5. On 9 January 2020, the U.S. Army Human Resources Command notified the applicant his application for Retired Pay Benefits was denied due to his ineligibility to receive retired pay with 17-years and 1-day of qualifying service for retirement. To be eligible for retired pay at age 60 under Title 10 United States Codes (USC), section 12731 through 12737, a Reserve Soldier must have completed a minimum of 20 qualifying years of service to be creditable for retirement. If he found his record to be incorrect, he could re-apply by providing appropriate documentation such as DD Form 214; unit drill point cards (DA Form 1380); pay vouchers; NGB Form 23, certification of completion of 20 qualifying years (20 year letter). The National Guard will need to update the annual guard statement NGB Form 23B for any increased time while serving with the state, to substantiate qualifying service for retirement eligibility.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. By law (10 USC sections 12731 through 12737), to be eligible for retired pay at age 60, a Reserve Soldier must have completed a minimum of 20 qualifying years of service to be creditable for retirement. The Board noted that the applicant completed 17 qualifying years towards non-regular retirement. Therefore, the Board determined he does not meet the statutory requirements for retirement at age 60. Additionally, a Notification of

Eligibility for Retired Pay at Age 60 (15-Year letter) is issued to Reserve Component Soldiers who have completed more than 15 but less than 20 years in the Selected Reserve qualifying service and were separated due to medical disqualification. The applicant was not separated due to medical disqualification. The Board also determined he also does not meet the statutory or regulatory requirements for a 15-Year letter.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, 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.



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.

ADMINISTRATIVE NOTE(S):

1. Reference the enclosed request for correction of military records from the subject individual to correct his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending April 21, 1972, by adding the Korea Defense Service Medal.

2. A review of the records listed below (enclosed) is sufficient to substantiate correction of the DD Form 214 without action by the Board.

- DD Form 214 service ending April 21, 1972
- DA Form 20 (Enlisted Qualification Record)

3. Please correct the applicant's DD Form 214 by adding the award shown in paragraph 1 above. Provide the applicant a copy of the corrections, and as applicable the medal. Please ensure that the correction is recorded in the applicant's official military personnel record.

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 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's 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. Title 10 USC, section 12731 (Age and service requirements), states a person is entitled to retired pay if the person has attained the eligibility age and has performed at least 20-years of service computed under section 12732 of this title. If the service was completed prior to 25 April 2005, performed the last 6-years of qualifying service while a member of any category but not while a member of a regular component.

4. Title 10 USC, section 12732 (Entitlement to retired pay: computation of years of service), states for the purpose of determining whether a person is entitled to retired pay, the person's years of service are computed by adding the following:

a. Each one-year period, after 1 July 1949, in which the person has been credited with at least 50 points on the following basis:

- one point for each day of: active service; or full-time service while performing annual training duty or while attending a prescribed course of instruction

- 1 point for each attendance at a drill or period of equivalent instruction that was prescribed for that year & conformed to requirements prescribed by law
- points at the rate of 15 a year for membership
- points credited for the year
- one point for each day on which funeral honors duty is performed for at least 2-hours unless the duty is performed while in a status for which credit is provided

b. The following service may not be counted:

- service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve
- service (other than active service) after 30 June 1949, while on the Honorary Retired List of the Navy Reserve or of the Marine Corps Reserve
- service in the inactive National Guard
- service in a non-federally recognized status in the National Guard
- service in the Fleet Reserve or the Fleet Marine Corps Reserve
- service in any status other than that as commissioned officer, warrant officer, or enlisted member

5. Title 10 USC, section 12733 (Computation of retired pay: computation of years of service) states, for the purpose of computing the retired pay of a person under this chapter, the person's years of service and any fraction of such a year are computed by dividing 360 into the sum of the following: (1) person's days of active service; (2) person's days of full-time service while performing annual training duty or while attending a prescribed course of instruction, and (3) one day for each point credited to the person but not more than:

- 60-days in any one year of service before the year of service that includes 23 September 1996;
- 75-days in the year of service that includes 23 September 1996, and in any subsequent year of service before the year of service that includes 30 October 2000;
- 90-days in the year of service that includes 30 October 2000, and in any subsequent year of service before the year of service that includes 30 October 2007; and
- 130-days in the year of service that includes 30 October 2007, and in any subsequent year of service

//NOTHING FOLLOWS//