

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230013125

APPLICANT REQUESTS: in effect, the correction of Orders Number D 240-12 to reflect the correct number of years of service in order to be paid the correct disability severance pay.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 5016 (Draft-only Retirement Accounting Statement)
- DA Form 5016 (Chronological Statement of Retirement Points)
- U.S. Army Physical Disability Agency (USAPDA) Memorandum, Subject: Physical Disability Separation, Staff Sergeant (SSG) M- T- (the applicant)
- Headquarters (HQs), USAPDA Orders Number D 240-12
- Leave and Earnings Statement (LES)

FACTS:

1. The applicant states in effect, she served 15-years in the U.S. Army Reserve (USAR) and her DA Form 5016 shows she served 13-years; however, her discharge orders show her disability severance pay is based on 6-years of service with her service time computed as 4-years.

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

a. On 2 June 2008, the applicant enlisted in the USAR and served continuously through reenlistments.

b. On 4 June 2008, Orders Number 8156033, issued by the Raleigh Military Entrance Processing Station, the applicant was ordered to initial active duty for training, effective 18 June 2008.

c. On 17 October 2008, the applicant was honorably released from active duty. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 4-months of active service.

d. On 1 May 2019, Orders Number UD-121-0002, issued by the 143rd Sustainment Command (Expeditionary), the applicant was ordered to active duty in support of Operation Enduring Freedom (Spartan Shield), effective 6 June 2019.

e. On 8 July 2020, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 1-year, 1-month, and 3-days of active service.

f. On 5 June 2023, the Informal Physical Evaluation Board (IPEB) found the applicant physically unfit for retention with a 10 percent disability rating and recommended she be discharged with severance pay. The applicant concurred with the boards findings and recommendations and elected to a discharge and entitlement to received disability severance pay.

g. On 26 July 2023, the USAPDA notified the 81st Readiness Division the IPEB found the applicant physically unfit for retention and she would be reassigned to the USAR Control Group (Retired Reserve) and was entitled to apply for retirement benefits at age sixty.

h. On 28 August 2023:

(1) The USAPDA notified the 81st Readiness Division the memorandum with directed the applicant to be reassigned to the USAR Control Group (Retired Reserve) was rescinded as the applicant changed her election and has chosen to take severance pay in lieu of assignment to the USAR Control Group (Retired Reserve).

(2) Orders Number D 240-12, issued by the USAPDA, the applicant was discharged from the USAR, effective 27 September 2023, with a 10 percent disability rating due to a disability incurred in a combat zone or incurred during the performance of duty in a combat related operation. The additional instructions stated the applicant was authorized disability severance pay in the grade of E-6 with 6-years of service in accordance with Title 10 United States Code (USC), section 1212. Her service time under Title 10 USC, section 1208 was computed as 4-years, 0-months, and 8-days.

3. The applicant provides:

a. Draft only - DA Form 5016 (Retirement Accounting Statement) shows the applicant had 13 qualifying years for retirement with 1,446 creditable retirement points.

b. DA Form 5016 (Chronological Statement of Retirement Points) shows the applicant had 13 qualifying years for retirement with 1,425 creditable retirement points.

c. HQs, USAPDA Memorandum, Subject: Physical Disability Separation, SSG M-T- (the applicant) states in effect, the discharge order attached authorized the applicant's

discharge with severance pay and action was to be taken to ensure she was paid her severance pay.

e. LES dated 13 September 2023 shows the applicant was paid with 15-years of service.

4. On 21 February 2024, in the processing of this case, the USAPDA, provided an advisory opinion regarding the applicant's request for the correction of her years of service as it applies to her disability with severance pay. The advisory official stated based on the evidence of record, a full administrative relief is not warranted as the applicant's time in service was properly calculated. An IPEB convened on 5 June 2023 and found the applicant to be physically unfit for retention with a disability rating of 10 percent. The applicant concurred with the findings and elected to be separated with benefits. The discharge orders noted the applicant had service time of 4-years, 0-months, and 8-days as computed under Title 10, USC, section 1208 as a member of the U.S. Army Reserve. However, the applicant was separated with severance in the pay of an E-6 based on 6-years of service in accordance with Title 10, USC, section 1212 due to the determination that her disability was incurred in the line of duty in a combat zone. Her DA Form 5016 reflects she earned 1,448 retirement points as a member of the Army Reserve. This sum is divided by 360 which gives the time on the orders of 4-years, 0-months, and 8-days. However, she was credited with 6-years of service instead because her disability was related to combat.

5. On 1 March 2024, the Army Review Boards Agency, Case Management Division, provided the advisory opinion for review or comment. The applicant has not responded.

#### BOARD DISCUSSION:

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. The applicant contends that a correction of her years of service is needed, as it applies to her disability with severance pay. The evidence shows an informal PEB convened and found the applicant to be physically unfit for retention with a disability rating of 10%. Her disposition was separation with severance pay and her discharge order noted that she had 4 years and 8 days of service as computed under 10, USC, section 1208 as a member of the USAR. The Board reviewed and agreed with the advisory official's finding the applicant was separated with severance in the pay of an E-6 based on 6-years of service in accordance with Title 10, USC, section 1212 due to the determination that her disability was incurred in the line of duty in a combat zone. Her DA Form 5016 reflects she earned 1,448 retirement points as a member of the USAR. This sum is divided by 360 which gives the time on the orders of 4-years, 0-months, and 8-days. However, she was credited with 6-years of service instead because her

disability was related to combat. Therefore, the Board determined payment of severance pay is neither in error nor 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.

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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 1208 (Computation of service), (b)A member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under Title 10 USC, section 12733.

2. Title 10 USC, section 1212 (Disability severance pay), (a) upon separation from his armed force a member is entitled to disability severance pay computed by multiplying (1) the member's years of service computed by (2) the highest of the following amounts: (A)twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated. (b) for the purposes of subsection (a), a part of a year of active service that is 6-months or more is counted as a whole year, and a part of a year that is less than 6-months is disregarded. (c) (1)The minimum years of service of a member for purposes of subsection (a)(1) shall be as follows:

- (A) 6-years in the case of a member separated from the armed forces for a disability incurred in line of duty in a combat zone or incurred during the performance of duty in combat-related operations
- (B)Three years in the case of any other member

(2)The maximum years of service of a member for purposes of subsection (a)(1) shall be 19-years. The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Department of Veterans Affairs. No deduction may be made under paragraph (1) in the case of disability severance pay received by a member for a disability incurred in line of duty in a combat zone or incurred during performance of duty in combat-related operations.

3. Title 10 USC, section 12733 (Computation of retired pay: computation of years of service), 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:

- person's days of active service
- person's days of full-time service while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned
- 1-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
- 1-day for each point credited to the person under subparagraph (E) of section 12732(a)(2) of this title

4. Army Regulation 600-8-105 (Military Orders) prescribes the policies and mandated operating tasks for the orders program of the military personnel system. Paragraph 2-25 (Amendments, revocations, and rescissions) states only the organization that published the original order may amend, rescind, or revoke the order. Commanders may revoke award orders if issued by another headquarters only when authorized under AR 600–8–22.

5. Title 10, USC, section 1552 states, The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

//NOTHING FOLLOWS//