

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230013152

APPLICANT REQUESTS:

- Issuance of notice of eligibility (NOE) for retirement (20-year letter)
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 2 August 2001
- DD Form 214, 9 October 2002
- DD form 214, 14 January 2014
- DD form 214, 3 October 2021
- DA Form 5016 (Chronological Statement of Retirement Points)

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:

a. He would like to request a 20-year letter be generated for him. Prior to entering active duty, he was in the U.S. Army Reserve (USAR) and served six good years. His Reserve time plus his 17 years of active-duty service is over 21 years of service. He was in the USAR from April 2000 through July 2006 and on active duty from August 2006 until October 2021.

b. Despite his service a total of 20 years in the military, a 20-year letter was never generated. After reaching out to the Army Reserve Retirement Services Office, he was advised to submit a request to the Board to generate a 20-year letter.

c. He was advised on 7 August 2023 by the Army Reserve Retirement Services Office that a 20-year letter should have been generated for his time in service. At the time of his 20 years in the Army, he was in an active-duty unit, and he imagines this action was not routinely tracked.

3. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the USAR on 15 April 2000.

b. DD Form 214 shows he entered active duty, as a member of the USAR, on 9 January 2001 and was honorably released on 2 August 2001. He had completed 6 months and 24 days of active-duty service with 8 months and 24 days of prior inactive service.

c. DD Form 214 shows he entered active duty, as a member of the USAR, on 18 October 2001 and was honorably released on 9 October 2002. He had completed 11 months and 22 days of active-duty service with 5 months and 1 day of prior active-duty service and 11 months and 26 days of prior inactive duty service.

d. DD Form 214 shows he entered active duty, as a member of the USAR, on 10 February 2003 and was honorably released on 14 January 2004. He had completed 11 months and 5 days of active-duty service with 1 year, 6 months, and 16 days prior active duty service and 1 year, 3 months, and 9 days of prior inactive duty service.

e. DD Form 4 shows he enlisted in the Regular Army on 1 August 2006 and remained in the Regular Army through immediate reenlistments.

f. Orders 06-278-00004, published by Headquarters, Headquarters Military Intelligence Readiness Command, 5 October 2006, honorably discharged him from the USAR effective 31 July 2006 as a result of his enlistment in the Regular Army on 1 August 2006.

g. DD Form 214 shows he entered the Regular Army on 1 August 2006 and was honorably discharged on 3 October 2021. He had completed 15 years, 2 months, and 3 days of active-duty service with 2 years, 7 months, and 16 days of prior active-duty service and 3 years, and 8 months of prior inactive duty service.

h. DA Form 5016 (Chronological Statement of Retirement Points), 1 July 2024, shows he was in the USAR from 15 April 2000 through 31 July 2006. He had 6 years, 3 months and 17 days qualifying for retirement.

4. On 3 April 2024, the Chief, Personnel Services Division, U.S. Army Human Resources Command provided an advisory opinion which states, the Gray Area Retirement Branch (GAR) reviewed the applicant's military records. To be eligible for a 20-year letter, a Soldier must have 20 years of qualifying time on his DA Form 5016. Currently he has 6 years, 3 months, and 17 days. He was discharged from active duty on 3 October 2021. According to Army Regulation (AR) 135-180 (Retirement for Non-Regular Service) states the NOE for retired pay at age 60 (20 year letter) will be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve. Therefore, it is the opinion of GAR the applicant is not eligible for a 20-year letter.

5. On 12 April 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. 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 relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and U.S. Army Human Resources Command- Personnel Services Division advisory opinion, the Board considered the advising official's recommendation stating the applicant is not eligible for his Memorandum Notification of Eligibility (NOE) for Retired Pay at Non-Regular Retirement (20-Year Letter). The opine noted the applicant has 6 years and 3 months and 17 days.

2. However, the Board determined there is sufficient evidence to support the applicant is eligible for issuance of Notification of Eligibility (NOE) for retirement (20-Year Letter) based evidence in the records showing the applicant had 15 years 2 months and 3 days active duty qualifying service in addition to the 6 years 3 months and 17 days of qualifying reserve time as indicated on his DA Form 5016. The applicant is entitled to a 20-year letter based on the computation of his active duty and qualifying reserve time. Furthermore, the Board recommends that U.S. Army Human Resource Command be directed to correct the applicant's DA Form 5016 to accurately show his qualifying years for his active duty period. It was not clear to the Board why AHRC did not correct the applicant's DA Form 5016 prior to issuing an advisory opinion. Based on this, the Board granted relief for issuance of the applicant's 20-Year Letter.

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

XX	XX	XX	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:

- amending U.S. Army Installation Management Command, Headquarters, U.S. Army Garrison, Fort Stewart/Hunter Army Airfield Orders 146-0004, dated 26 May 2021 to show the applicant was assigned to the U.S. Army Reserve Control Group (Reinforcement) [to allow for calculation and amendment of the applicant's DA Form 5016 (Chronological Statement of Retirement Points)]
- upon transfer to the U.S. Army Reserve Control Group (Reinforcement), correction to the applicant's DA Form 5016 (Chronological Statement of Retirement Points), by adding 15 years 02 months and 03 days of active duty service
- upon correction of his DA Form 5016, issuing reassignment orders from the U.S. Army Reserve Control Group (Reinforcement) to the Retired Reserve
- upon reassignment to the Retired Reserve, issuance of a Notification of Eligibility (NOE) for Retired Pay at Non-Regular Retirement (20-Year Letter)

**X** //signed//

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 (AR) 15–185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. The ABCMR is not an investigative agency. 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. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) contains Army policy for U.S. Army Reserve (USAR) 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 (RC) 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 3-5 (DA Form 5016) provides that, these statements — (1) Provide a permanent record of the total retirement points Soldiers earn during an anniversary year. (2) Inform Soldiers whether they earned sufficient points for a qualifying year for retirement or retention in an active status. (3) Provide Soldiers an opportunity to review their retirement points to request corrections. The DA Form 5016 is initiated and prepared by HRC from the processing of data furnished manually and utilizing automation. Prepared for Soldiers under HRC command to include obligated enlisted Soldiers who have earned at least one retirement point. Prepared to cover a full anniversary year of active duty for training or active duty. Prepared for all Soldiers regardless of the number of points awarded. Issued annually and upon correction to a record.

4. AR 135-180 (Retirement for Non-Regular Service) implements statutory authorities governing the granting of retired pay for non-regular service to Soldiers in the Army National Guard (ARNG), Army National Guard of the United States (ARNGUS) or the USAR.

a. Paragraph 2-2 (Basic qualifying service requirements) states, to be eligible for retired pay at or after the age (60 years of age) specified in paragraph 2-1 (Age requirements), an individual need not have military status at the time of application, but must have completed one of the following: (1) A minimum of 20 years of qualifying service computed under Title 10, U.S. Code (USC), section 12732; or, (2) Fifteen (15) years of qualifying service, and less than 20, computed under Title 10, USC, section 12732, if the individual is to be separated because the Soldier has been determined unfit for continued Selected Reserve service, and none of the conditions in 10 USC 12731b(b) exist.

b. Paragraph 2-4 (Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter)) states, (1) Under Title 10, USC, section 12731a, RC Soldiers who complete the eligibility requirements in section I will be notified in writing within 1 year after completion of the required service in accordance with AR 140-185. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued by HRC for all USAR Soldiers except for those who are within 2 years of qualifying for an active-duty retirement and can remain on active duty to complete the required service. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format determined by HRC. After a Soldier has been notified of their eligibility for retired pay for non-regular service, the Soldier's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed, unless it resulted directly from the fraud or misrepresentation of the individual concerned. However, the number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination, and when such a correction is made the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date they are granted retired pay.

5. Title 10, USC, section 12731 (Age and service requirements), provides that, a person is entitled, upon application, to retired pay computed under section 12739 (Computation of retired pay) of this title, if the person has attained the eligibility age of 60 years and has performed at least 20 years of service computed under section 12732 (Entitlement to retired pay: computation of years of service) of this title. In the case of a person who completed the service requirements of paragraph (2) (20 years of service computed under section 12732) before 25 April 2005, performed the last six years of

qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before 5 October 1994, the number of years of such qualifying service under this paragraph shall be eight.

//NOTHING FOLLOWS//