

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230013373

APPLICANT REQUESTS:

- a. The order placing him on the Permanent Disability Retired List (PDRL) be corrected to show his total retirement points for the purpose of retirement as reflected on his NGB 23B, Army National Guard Retirement Points History Statement.
- b. A video/telephone appearance before the Board.

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

- DD Form 149, Application for Correction of Military Record
- Order D 266-64, September 2014
- NGB Form 23B, Army National Guard (ARNG) Retirement Points History Statement, 30 May 2023
- U.S. Army Human Resources Command (AHRC), Gray Area Retirements (GAR) Branch memorandum, 23 October 2023

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, in effect, that the retirement points listed on his PDRL order is incorrect and is preventing him from applying for Concurrent Retirement and Disability Pay (CDRP) under Title 10, U.S. Code, section 1414. The Title 10, U.S. Code, section 1405 service calculation on his PDRL orders does not match the total points for retired pay listed on his NGB 23B.
3. The applicant's NGB Form 22, Report of Separation and Record of Service, shows he enlisted in the ARNG on 27 January 1984.

4. On 20 August 2014, a Physical Evaluation Board found the applicant physically unfit and recommend he be retired due to permanent disability.
5. The U.S. Army Physical Disability Agency published Order D 266-64, 23 September 2014 which released the applicant from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permitted retirement for permanent physical disability. These orders show the applicant completed 9 years, 5 months, and 17 days for the purpose of disability retirement.
6. The applicant was assigned to the Retired Reserves effective 28 October 2014.
7. His record contains a NGB Form 23B, 30 May 2023, which shows he completed 3439 points for retired pay.
8. The applicant provides, and the record contains, a memorandum from the AHRC GAR Branch, 23 October 2023. This document informed the applicant that a review of his CRDP application revealed that there was an error with the order placing him on the PDRL and his NGB Form 23. Specifically, the Title 10, U.S. Code, section 1405 service calculation on his PDRL order did not match the total points for retired pay on his NGB Form 23. Therefore, the GAR Branch was not able to process his request for CRDP.
9. The Chief, Special Actions Branch, National Guard Bureau (NGB), provided an advisory opinion in this case on 24 May 2024. This official recommended approval of the applicant's request and stated, in effect:
 - a. On 23 October 2023, the Soldier received a letter from the AHRC GAR Branch in response to his application for CRDP under Title 10, U.S. Code, section 1414. He was informed that there was a mismatch error with his PDRL order and NGB 23. The GAR was unable to process his CDRP application until the PDRL order matches his total points for retired pay.
 - b. The applicant's PDRL order shows a creditable service length for disability retirement of 9 years, 5 months, and 17 days which equals 3,407 total points for retired pay. The Soldier provided his NGB Form 23B, which shows 3,439 total points for retired pay. Based on this information, the Soldier's PDRL order should indicate a creditable service length for disability retirement of 9 years, 6 months, and 19 days.
 - c. The error on the applicant's PDRL order occurred because when the Soldier was processed for disability retirement, the PDA used an NGB Form 23A, Current Annual Statement. The difference between these two forms is that the NGB Form 23A is utilized for current drilling members who accumulate points, and the NGB Form 23B is for prior service members who have completed their service and are no longer in an

active status. The applicant continued to drill and was still in an active status after the PDA calculated his disability retirement for his PDRL order.

d. Based on the evidence presented and collected, it is the opinion of this office that the PDA re-publish the applicant's PDRL order utilizing his NGB Form 23B to capture the missing 32 retirement points. His length of service should read: 9 years, 6 months, and 19 days.

3. The Alabama Army National Guard concurred with the opinion of the Chief, NGB.

10. The applicant was provided a copy of the advisory opinion on 3 June 2024. He did not provide a response.

11. National Guard Regulation 680-2, Personnel Information Systems- Automated Retirement Points Accounting Management, determines the service requirements to qualify for retirement for non-regular service to include the computation of retired pay - computation of years of service.

12. By regulation, the ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

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 the National Guard Bureau- Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for approval finding the applicant's PDRL order shows a creditable service length for disability retirement of 9 years, 5 months, and 17 days which equals 3,407 total points for retired pay. The opine noted, the applicant provided his NGB Form 23B, which shows 3,439 total points for retired pay.

2. The Board determined there is sufficient evidence to support the applicant's contentions for correction to the order placing the applicant on the Permanent Disability Retired List (PDRL) to show his total retirement points for the purpose of retirement as reflected on his NGB 23B, Army National Guard Retirement Points History Statement. The Board agreed, based on the advising opine, the applicant's PDRL order should

indicate a creditable service length for disability retirement of 9 years, 6 months, and 19 days. As such, the Board granted relief.

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:

Memorandum	For	By	Date	Page
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GRANT FULL RELIEF

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GRANT PARTIAL RELIEF

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GRANT FORMAL HEARING

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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 having the U.S. Army Physical Disability Agency re-publish the applicant's Permanent Disability Retired List (PDRL) order utilizing his National Guard Bureau (NGB) Form 23B to capture the missing 32 retirement points. His length of service should read: 9 years, 6 months, and 19 days.

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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, U.S. Code (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. National Guard Regulation 680-2, Personnel Information Systems- Automated Retirement Points Accounting Management, states for the purpose of computing retired pay of a person under Title 10, USC, section 12733 (Computation of retired pay: computation of years of service), the person's years of service and any fraction of such a year are computed by dividing 360 into the sum of the following:

- The person's days of active service.
- The person's days of full-time service under Title 32 USC sections 316, 502, 503, 504, and 505 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.
- One day for each point credited to the person under clause (B), (C), or (D) of Title 10 USC, section 12732(a)(2), 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.
- One day for each point credited to the person under subparagraph (E) of Title 10, USC, section 12732(a)(2).

3. Army Regulation (AR) 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 will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//