

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230013424

APPLICANT REQUESTS: reconsideration of his previous request for:

- correction to his retirement points and pay for duties performed
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Letter Request for Reconsideration
- DA Forms 1380 (Record of Individual Performance of Reserve Duty Training)
- Transaction Log, 18 March 2011
- Advance Operations Course Transcript
- Army Training Transcript
- Email Flu Shot Voucher
- Flu Shot Record with Flu Shot Voucher
- Email Advance Operations Course Pay
- Email Retirement Points Correction
- Letter of Lateness, 23 April 2019
- Email Advance Operation Course DA Form 1380
- Email Retirement Points Only Update
- Transaction Log, 15 September 2020
- Transaction Log, 5 April 2021
- Email Returned Without Action DA Forms 1380
- Letter of Lateness, 11 September 2021
- Title 32 U.S. Code (USC) 1342 Summary and Detail

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220000807 on 6 September 2022.
2. The applicant states, in his application and request for reconsideration:

a. He respectfully requests reconsideration of the ABCMR decision regarding case AR20220000807, boarded on 6 September 2022, and that he be granted compensation for performance of military duties. He added, as new evidence, Title 31 USC 1342, which was not taken into consideration. Military regulations should not be written or interpreted in a way that would allow violation of public law or open a window for the abuse of Reservists and Guardsmen.

b. If compensation cannot be with retirement points, he would like compensation by another method, such as military pay. The applicant explains the DA Forms 1380 that he submitted with this application, some of which are new requests.

c. Title 31 USC 1342 requires compensations to reservists and guardsmen for the performance of military duties, whether voluntary or involuntary. In essence, it is illegal for leadership and staff to direct Reserve component servicemembers to conduct tasks without compensation. Compensation could mean monetary, retirement points, or a combination of both. The Federal Government, including military leadership and staff, is barred from accepting voluntary (i.e. uncompensated) service by Title 31 USC 1342. Military regulations and policy should never allow an opportunity where a servicemember can be required to perform military duties without compensation. The potential for abuse of servicemembers where they complete duties without compensation should never happen. His request was submitted in a timely fashion but it has taken time to go through other attempts at resolution.

d. Army Regulation (AR) 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) paragraph 2-4(5) approves payment for electronic-based distributed learning (EBDL) courses to members of the Selected Reserve (Troop Program Unit (TPU)), subject to available funding. Should funding not be available, the servicemember gets nothing. This creates a scenario where command can order Soldiers to attend EBDL as part of their professional military education and not pay them (for example complete the Distributed Leader Course as a prerequisite for the Basic Leader Course). The regulation and process should provide a course of action to allow compensation by other means, when funds are not available. This would make it in compliance with public law.

e. AR 140-185 paragraph 3-3b presents an unrealistic requirement for a submission timeline. In order to deny compensation for military performance, all that needs to happen is a delay by the processing clerk, delay of determining there is no available funding, or a return for correction. Any denial of compensation for military performance is a violation of Title 31 USC 1342. Regulations also state that if duty is performed the last week of the month, it needs to be submitted the first week of the next month.

f. AR 14-185 paragraph 3-4c, creates an environment where commanders are required to put in writing that they can direct reservists to perform military duties without compensation (pending availability of funds) and accept voluntary uncompensated services. This is again in violation of Title 31 USC 1342. There needs to be a course of action that allows for other means of compensation when funds are not available. There should never be an opportunity where commanders can order reservists and guardsmen to perform military duties without compensation.

g. For his specific issues, most of his requests for compensation were submitted for pay. If he cannot be compensated with retirement points, he would like compensation by another method, such as military pay. Below is a table for the details and history:

Points	Date	Comments	Tracking
1	20021010	Originally submitted for pay	Original 1380 for Pay submitted in first application
2	20110316	Originally submitted for pay	Transaction log showing submitted for pay included in first application
2	20110317	Originally submitted for pay	Transaction log showing submitted for pay included in first application
2	20110318	Originally submitted for pay	Transaction log showing submitted for pay included in first application
2	20140528	Originally submitted for pay	Original 1380 for pay included in this application
12	2016	Originally submitted for pay	Multiple dates for correspondence; Email showing submitted for pay in first application
1	20180921	Originally submitted for pay	Email of submission to leader included in this application
2	20190621	Submitted for points within time frame	Signed 20190623; Transaction date 20190628

1	20210402	Submitted for points	Letter of lateness included per RPAC
---	----------	----------------------	--------------------------------------

1	20200908	Submitted for points within time frame	Transaction date 20200915 included in first application
1	20200909	Submitted for points within time frame	Transaction date 20200915 included in first application
1	20200910	Submitted for points within time frame	Transaction date 20200915 included in first application

1	20210329	Submitted for points	Letter of lateness included per RPAC
1	20210330	Submitted for points	Letter of lateness included per RPAC

1	20200922	Submitted for points within time frame	Signed 20201002; 1380 included in this application
1	20200923	Submitted for points within time frame	Signed 20201002; 1380 included in this application
1	20200924	Submitted for points within time frame	Signed 20201002; 1380 included in this application
1	20200925	Submitted for points within time frame	Signed 20201002; 1380 included in this application
1	20200926	Submitted for points within time frame	Signed 20201002; 1380 included in this application
1	20200927	Submitted for points within time frame	Signed 20201002; 1380 included in this application
1	20200928	Submitted for points within time frame	Signed 20201002; 1380 included in this application
1	20200929	Submitted for points within time frame	Signed 20201002; 1380 included in this application

1	20200818	Submitted for points	Signed 20200913; Transaction 20200915 Letter of lateness included in first application
1	20200820	Submitted for points	Signed 20200913; Transaction 20200915 Letter of lateness included in first application
1	20200825	Submitted for points	Signed 20200913; Transaction 20200915 Letter of lateness included in first application

h. He again respectfully requests to be granted compensation per Title 31 USC 1342 for the performance of eligible military performance for reconsideration of the ABCMR decision. Military regulations and policy should never allow an opportunity where a servicemember can be required to perform military duties without compensations. The potential for abuse of servicemembers where they complete military duties without compensation should never happen.

3. The applicant provides the following documents:

a. DA Forms 1380 (Record of Individual Performance of Reserve Duty Training) show he performed duty on:

- 10 October 2002, 4 hours, 1 retirement point
- 16 March 2011 through 18 March 20011, 8 hours per day, 2 retirement points per day (6 total retirement points)
- 28 May 2014, 8 hours, 2 retirement points
- 28 January 2016, 11 February 2016, 18 February 2016, 10 March 2016, 25 March 2016, 14 April 2016, 28 April 2016, 12 May 2016, 26 May 2016, 9 June 2016, 23 June 2016, and 14 July 2016, 4 hours per day, 1 retirement point per day, (12 total retirement points)
- 21 September 2018, 4 hours, 1 retirement point
- 21 June 2019, 8 hours, 2 retirement points
- 18 August 2020, 20 August 2020, and 25 August 2020, 4 hours per day, 1 retirement point per day, (3 total retirement points)
- 23 September 2020 through 29 September 2020, 4 hours per day, 1 retirement point per day (8 total retirement points)
- 29 March 2021 and 30 March 2021, 4 hours per day, 1 retirement point per day (2 total retirement points)
- 2 April 2021, 4 hours, 1 retirement point

b. Unit Transition Log, 18 March 2011, shows the source document is DA Form 1380 and the duty was from 16 March 2011 through 18 March 2011.

c. Advance Operation Course transcript from 25 January 2016 through 9 December 2016.

d. Army Training Transcript, 16 July 2017, shows he completed courses on 21 March 2014, 18 January 2017 and 9 December 2016.

e. Email from applicant, 21 September 2018, reference his flu shot and a flu shot record and voucher, which show he received his flu shot on 21 September 2018.

f. Email regarding Advance Operation Course Pay, 16 April 2019, states in effect there was not funding for fiscal year (FY) 2016 for EBDL. If pay was not available, the duty would have to be for points only. The entire email is available for the Board's review.

g. Email regarding retirement points corrections, 17 April 2019, a letter of lateness was needed to complete the process. The entire email is available for the Board's review.

h. Letter of lateness, 23 April 2019, states:

(1) Request the processing of the DA Form 1380, which required corrections and were being submitted late.

(2) The DA Form 1380 for the applicant's flu shot, 21 September 2018, was returned without action from the previous submission because the voucher from Walgreens did not have a date to validate the DA Form 1380. They attached the flu shot record as confirmation of the date. The voucher was sent to the unit for pay processing, but was not paid due to funds being unavailable.

(3) DA Form 1380 for January through July 2016 for EBDL was returned from the previous submission because "effective 15 April 2016 U.S. Army Human Resources Command (AHRC) was not authorized to process retirement points for any correspondence courses/distance learning, as it was removed from AR 140-185. For TPU Soldiers, the unit could contact the EBDL policy point of contact and if the course that was completed is on the EBDL course list, then the Soldier would complete a DA Form 1380 and the unit would submit it to finance." The course was on the EBDL, requirements were completed, and the DA Form 1380 was submitted to finance. Funds were not available for pay for that FY. Guidance from the Reserve Personnel Action Center, at that time, was, if funds were not available, to resubmit for points.

i. Email regarding DA Form 1380 returned without action, 24 July 2019, wherein they were going to resubmit the DA Form 1380. The entire email chain is available for the Board's review.

j. Email regarding retirement points update, 24 July 2019, per the unit's letter of lateness, the DA Form 1380 was submitted for EBDL pay when it was first completed. It was not paid, at the time, because EBDL funds were expended for that FY. Please update his retirement points. The entire email is available for the Board's review.

k. Transaction Log, 15 September 2020, shows the source document as DA Form 1380 and period of duty was 18 August 2020, 20 August 2020, 25 August 2020, and 8 September 2020 through 10 September 2020.

l. Transaction Log, 5 April 2021, shows the period of duty was 21 June 2019, 18 August 2020, 20 August 2020, 25 August 2020, and 8 through 10 September 2020.

m. Email from AHRC, 9 July 2021, states the DA Forms 1380 were returned without action due to errors. The email lists the errors on the DA Forms 1380. The entire email is available for the Board's review.

n. Letter of lateness, 11 September 2021, states the applicant submitted a late DA Form 1380 and was requesting non-pay, retirement points only for completion of command and administrative functions. The documents were submitted on time, but

were returned for corrections, making resubmission beyond the end of the month the duty was performed.

o. Title 31 USC 1342 (Limitation on voluntary service) summary and detailed statute. It states an officer or employee of the United States Government or the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. The entire document is available for the Board's review.

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

a. DA Form 71 (Oath of Office - Military Personnel) shows the applicant took the oath of office as a Reserve commissioned officer on 6 May 1999.

b. Memorandum Notification of Eligibility for Retired Pay at Non-Regular Retirement (20 Year Letter), 6 July 2018 informed him he had completed the required years of qualifying Reserve service and was eligible for retire pay, upon application, at age 60.

c. DA Form 5016 (Chronological Statement of Retirement Points), 3 July 2024, shows he has 25 years, 9 months, and 5 days qualifying for retirement. His points show from:

- 29 May 2002 through 28 May 2003, 24 inactive duty points, 14 extension course points, 15 membership points, and 158 active duty points
- 29 May 2010 through 28 May 2011, 54 inactive duty points, 15 membership points, and 25 active duty points
- 29 May 2013 through 28 May 2014, 42 extension course points and 15 membership points
- 29 May 2015 through 28 May 2016, 44 inactive duty points, 15 membership points, and 21 active duty points
- 29 May 2018 through 28 May 2019, 44 inactive duty points, 15 membership points, and 40 active duty points
- 29 May 2019 through 28 May 2020, 73 inactive duty points, 15 membership points, and 50 active duty points
- 29 May 2020 through 28 May 2021, 93 inactive duty points, 15 membership points, and 70 active duty points

5. On 6 September 2022, the ABCMR rendered a decision regarding the applicant's request for retirement points only in AR20220000807, which states:

a. After reviewing the application, all supporting documents, and the evidence found with the military record, the Board found that relief was not warranted. By regulation, DA

Forms 1380 should be forwarded to AHRC for award of retirement points no later than the end of each duty month. Therefore a digital signature date that exceeds the end of the duty month will not be in compliance with regulation. The applicant is requesting retirement points from past years. There is a substantial time lapse in this case.

b. The evidence presented did 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 applicant and his request was denied.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.
2. The Board found the applicant provided substantial evidence confirming he performed the service documented on the DA Forms 1380 he provided in support of his application. Based on a preponderance of the evidence, the Board determined the applicant's record should be corrected by processing the DA Forms 1380 and updating his retirement points accordingly.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20220000807 on 6 September 2022. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by processing the DA Forms 1380 provided in support of his application and updating his retirement points accordingly.

12/26/2024

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. AR 140-185 prescribes the types of training and activities for which retirement points are authorized and the procedures for recording retirement point credits and training for U.S. Army Reserve (USAR) Soldiers.

a. Paragraph 2–2, states retirement points may be earned by USAR Soldiers for active duty (AD), or while in an active Reserve status, for active duty for training (ADT), initial active duty for training (IADT), involuntary active duty for training (involuntary ADT), annual training (AT), and IDT. Types of IDT are:

- regularly scheduled unit training includes Unit Training Assemblies (UTA), and Multiple Unit Training Assemblies (MUTA)
- Regularly Scheduled Training (RST) other than UTA/MUTA
- make up assemblies for missed UTA/MUTA due to AT
- Equivalent Training (ET) in lieu of scheduled UTA/MUTA or RST
- additional training assemblies (ATA)
- two-hour unit training assemblies
- training of individual Soldiers in non-pay status

b. Paragraph 2–4 states, personnel on AD, ADT, IADT, involuntary ADT, or AT are awarded 1 point for each calendar day they serve in one of these categories and may not be awarded additional points for other activities while in such status. Most types of IDT are covered by one of the following rules on required duration of IDT and calendar day limitations on points:

- one point for each scheduled 4-hour period of IDT at UTA, RST, ET, ATA, or make up assembly maximum of 2 points in 1 calendar day
- one point for each 2 hour or greater period
- two-hour aggregates of shorter periods may be used, except in the case of 2-hour unit training assembly's maximum of 1 point in 1 calendar day
- one point for each 2 hour or greater period
- two-hour aggregates of shorter periods may be used except in the case of 2-hour unit training assemblies
- award of a second point in the same day requires additional hours to bring the day's total to a minimum of 8, maximum of 2 points in 1 calendar day
- points may not be awarded under more than one of the rules above during any single calendar day

c. Paragraph 2-4b(5) (Criteria for awarding retirement points) states, in accordance with the eight-hour rule, approved EBDL courses will be awarded to members of the Selected Reserve (TPU). Subject to available funding, and as pre-approved, Soldiers may earn one retirement point and be paid for one IDT for every 8 hours of distance learning completed.

d. Paragraph 3-3 (DA Form 1380) states, the purpose of this form is to record IDT by —

(1) TPU Soldiers performing IDT assemblies when pay is authorized, and the Soldier is not present to sign the IDT attendance roster.

(2) TPU Soldiers attached to another USAR unit for 89 or fewer days. In such cases the unit of attachment will prepare DA Form 1380 and forward to unit of assignment for recording attendance.

(3) Non-unit Soldiers under the jurisdiction of the U.S. Army Human Resources Command who are attached for retirement points only to USAR TPUs, Army National Guard units, or to another Service or component for training per AR 140–10. Only attached Soldiers are authorized to perform IDT with the exception of one annual physical health assessment each for medical and dental readiness when authorized by the command prior to the event. Note: Non-unit Soldiers attached for retirement point credit to IMA detachments are reported on DA Form 1379 for those units.

(4) Non-unit Soldiers performing other inactive duty training for retirement point credit as outlined in Table 2–3 (Award of inactive duty training retirement points).

e. Paragraph 3-3b states, DA Form 1380 will be prepared for a unit Soldier who performs equivalent training or additional training with their unit subsequent to the scheduled Battle Assembly. TPU units will retain one copy of the DA Form 1380 to post

the appropriate entry into Automated Drill Attendance Reporting Software (ADARS) for the month's report and then place in the appropriate Army records information management system file. Nonpaid DA Forms 1380 will not be entered into ADARS and will be forwarded to HRC for award of retirement points no later than the end of each duty month. DA Form 1380 will be scanned into the Soldier's integrated Personnel Electronic Records Management System by the unit of assignment per AR 600-8-104 (Army Military Human Resource Records Management).

2. AR 140-1 (Mission, Organization, and Training) provides policy guidance on the mission, organization, and training of the U.S. Army Reserve (USAR). Paragraph 3-26 (Training of individual Soldiers in a non-pay status) states, Soldiers in an active status may take part in individual inactive duty training (IDT) in a non-pay training status when authorized by the appropriate commander. In pertinent part, individual training opportunities with retirement point credit are shown below:

- attachment to appropriate Reserve Component Troop Program Units (TPU)
- attachment to Active Army units
- attachment to reinforcement training units as appropriate
- attachment to Reserve Component Training Institutions as students or as augmentation staff or faculty
- attendance at Army service or Army area school training
- participation in approved training projects or using administrative skills in support of TPU and USAR activities
- enrollment in appropriate extension courses
- attendance at authorized conventions, professional conferences, or appropriate trade association meetings related to the individual's mobilization specialty
- conducting or reviewing medical examinations, and related medical duties
- recruiting duties as described in AR 140-185

3. Title 31 USC 1342 (Limitation on voluntary service) summary and detailed statute. It states an officer or employee of the United States Government or the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. The entire document is available for the Board's review.

4. Army Regulation 15-185 (Army Board for Correction of Military Records) 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. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states

applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//