

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 April 2025

DOCKET NUMBER: AR20230013967

APPLICANT REQUESTS: in effect, issuance of a 20-year Notification of Eligibility (NOE) for retirement, and retroactive retirement effective on 3 August 2012

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

- DD Form 149 (Application for Correction of Military Record)
- The applicant's certificate of birth, [REDACTED]
- DD Form 214 (Report of Separation From Active Duty), for the period ending 8 November 1977
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 6 November 1992
- DA Form 2166-5 (Enlisted Evaluation Report) this is an illegible document
- Four awards, commendations, and training certificate
- Certificate of marriage, [REDACTED]
- Certificate of birth (applicant's child), [REDACTED]
- Divorce, [REDACTED]
- DA Form 2166-3 (Enlisted Evaluation Report), March 1998
- Orders 035-030, 29 April 1993
- Orders 041-003, 7 May 1993
- DA Form 2166-7 (Noncommissioned Officer (NCO) Evaluation Report), November 1993
- Orders 055-022, 5 January 1994
- Orders C-06-429258, 28 June 1994
- Order 225-012, 24 August 1994
- Order 236-079, 12 September 1994
- DARP Form 249-2-E (Chronological Statement of Retirement Points), 20 January 1995
- Order 090-031, 17 February 1995
- Orders T-05-515572, 15 May 1995
- DARP Form 249-2-E, 8 September 1995
- Five Wage and Tax Statement Forms (W2)
- Orders 009-007, 9 January 1996
- A letter issued by Department of Veterans Affairs (VA) on 16 July 2002

- Death Certificate (Applicant's Former Spouse), [REDACTED]
- A letter issued by VA Letter on 7 January 2011
- DD Form 108 (Application for Retired Benefits), 6 May 2023
- DD Form 2656 (Data for Payment of Retired Personnel), 6 May 2023
- Email from the U. S. Army Human Resources Command (HRC) on 11 May 2023
- Character reference
- A letter issued by HRC
- DA Form 5016 (Chronological Statement of Retirement Points), 24 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, she served 18 years in the Regular Army, and two years and 11 months in the U. S. Army Reserve (USAR), so she can meet retirement requirements. During her service in the USAR, she was unaware that in order to be eligible for retirement, as prescribed in Army Regulation 135-180 (Retirement for Non-Regular Service), she would need to complete six years of service with the USAR. She is requesting to be made retirement eligible, the issuance of her NOE, and retroactive retirement effective on 3 August 2012.
3. The applicant provides and the service record shows:
 - She enlisted in the Regular Army on 3 January 1975 and was honorably discharged on 8 November 1977; She completed 2 years, 10 months, and 6 days of active federal service
 - On 9 November 1977, she reenlisted in the Regular Army and was honorably discharged on 6 November 1992; She completed 14 years, 11 months, and 28 days of active federal service
 - On 7 November 1992, she reenlisted in the USAR
 - On 2 January 1995, the applicant had a total 20 years of combined service
 - On 9 January 1996 she was honorably discharged from the USAR
 - The applicant has completed 21 years, and 6 days of qualifying service for retirement
 - On [REDACTED], the applicant reached the age of 60
 - She has a total of 6,604 active duty points
 - She has 6,772 total points for retired
 - The applicant served a total of 17 years, 10 months and 4 days on active duty
 - She served a total of 3 years, 2 months and 2 days in the USAR

- The applicant applied for retired pay benefits with the Army Service Center, HRC; Her application was received on 11 May 2023
- HRC denied her application for retired pay benefits; She completed 18 years in the Regular Army, and 2 years, 11 months, and 9 days of qualifying service in the USAR, which makes her ineligible for retired pay

4. The service record does not reflect an NOE.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board majority concluded the applicant served 18 years in the Regular Army and 2 years, 11 months and 9 days of qualifying service in the U.S. Army Reserve; however, she did not complete either the qualifying number of Active Duty years of service or combination of six years Reserve service combined with her eighteen years of Active Duty required to be eligible for a 20-year letter and retired pay. The Board minority determined the applicant served over 20 qualifying years and therefore was eligible for a Notification of Eligibility for non-regular retirement pay. The Board majority agreed with the Chief, Gray Area Retirements Branch that AR 135-180 represents that for USAR Soldiers who completed their years of qualifying service on or after 5 October 1994 but before 25 April 2005, the last 6 years of qualifying service must have been in a component other than the Regular Army. Applicant was Honorably discharged from the USAR on 9 January 1996 with unfortunately less than the requisite 6 years of Reserve service to combine with her Active Duty service in order to qualify for a "gray area" retirement. The Board majority concluded that based on law and policy at the time of her separation from the U.S. Army Reserve, the applicant did not complete 20 qualifying years for retirement pay and therefore denied relief.

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.

5/5/2025

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. Title 10 (Armed Forces), 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 Army Board for Correction of Military Records (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), currently in effect, 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 applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Title 10 (Armed Forces), U.S. Code, section 12731 provides age and service requirements for all eligible Soldiers to receive this notification letter within 1 year after completing 20 qualifying years of service for retired pay purposes. Issuance of the Notification of Eligibility for Retired Pay identifies Soldiers entitled to receive retired pay at non-regular retirement. In the case of a person who completed the service requirements before 25 April 2005, performed the last six years of qualifying service the number of years of such qualifying service under this paragraph shall be eight.
4. Title 10 (Armed Forces), U.S. Code, section 12732 provides entitlement to retired pay: computation of years of service. Each one-year period, after 1 July 1949, in which the person has been credited with at least 50 points (one point for each day) for active service; full-time service under sections 316, 502, 503, 504, and 505 of title 32 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.
5. Army Regulation 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 U.S. Army Reserve (USAR).
 - a. Chapter 2-2 (Basic qualifying service requirements):
 - (1) To be eligible for retired pay at or after the age specified in paragraph 2 – 1, an individual need not have military status at the time of application, but must have completed one of the following:
 - (2) A minimum of 20 creditable years of qualifying service computed under 10 USC 12731(f); or,

(3) At least 15 and less than 20 years of qualifying service, computed under 10 USC 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. Chapter 2–3. Other service requirements:

(1) Additional Army RC service requirements include:

(2) For Soldiers who completed the years of qualifying service in paragraph 2-2 before 5 October 1994, the last 8 years of qualifying service must have been in a component other than a Regular Component, the Fleet Reserve, or the Fleet Marine Corps Reserve.

(3) For Soldiers who completed the years of qualifying service on or after October 1994, but before 25 April 2005, the last 6 years of qualifying service must have been in a component other than a Regular Component, the Fleet Reserve, or the Fleet Marine Corps Reserve.

(4) For Soldiers who completed the years of qualifying service on or after 25 April 2005, there is no minimum RC service requirement.

(5) The service required in paragraphs 2–3a(1) and 2–3a(2) does not need to be continuous years of qualifying service.

(6) Any period of service as a member of a Regular Service Component between periods of Reserve service counted toward the 8 or 6-years requirement will be included in the determination of the Soldier's years of qualifying service in paragraph 2 – 2 toward eligibility for non-regular retired pay but will not count toward the last 8 or 6 years. Any Reserve service served in conjunction with regular service will not count toward the last 8 or 6 years (that is, partial year credit).

6. Title 10 (Armed Forces), United States Code (USC), section 1552 (c)(1) states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

7. Title 31 (Money and Finance), United States Code (USC), section 3702, is the 6-year barring statute for payment of claims by the Government. In essence, if an individual brings a claim against the Government for monetary relief, the barring statute states the

Government is only obligated to pay the individual 6 years in arrears from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the Court held that the Board for Correction of Military Records is not bound by the barring act. The Board for Correction of Military Records decision creates a new entitlement to payment and the 6-year statute begins again. Payment is automatic and not discretionary when a Board for Correction of Military Records decision creates an entitlement.

//NOTHING FOLLOWS//