

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20230013990

APPLICANT REQUESTS: in effect, correction of his record to show the submitted DA Forms 1380 (Record of Individual Performance of Reserve Duty Training) dated 28 September 2023, were accepted, and added to his record for the anniversary years of 15 July 2022 to 13 November 2022 and 14 November 2022 to 14 July 2023 (15 July 2022 to 14 July 2023).

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

- DD Form 149 (Application for Correction of Military Record)
- Office of the Assistant Secretary Manpower and Reserve Affairs Memorandum - Subject: Defining the Term "In Good Standing" for Reserve Component Soldiers Receiving Retirement Points Due to Attendance Restrictions Related to COVID-19, 31 October 2022
- Secretary of Defense Memorandum - Subject: Rescission of August 24, 2021, and November 30, 2021, Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces, 10 January 2023
- Secretary of the Army Memorandum - Subject: Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission, 24 February 2023
- Deputy Secretary of Defense Memorandum - Subject: Guidance for Implementing Rescission of August 24, 2021, and November 30, 2021, COVID-19 Vaccination Requirements for Members of the Armed Forces, 24 February 2023
- DA Forms 1380, 28 September 2023

FACTS:

1. The applicant states:

a. He was not allowed by his unit to attend the following Battle Assemblies (BA), second half of 6 August 2023 Multiple Unit Training Assembly (MUTA 1), 7 August 2022 (MUTA 2), 10 September 2022 (MUTA 2), 11 September 2022 (MUTA 2), 22 October 2022 (MUTA 2), 23 October 2022 (MUTA 2), 17 November 2022 (MUTA 2),

18 November 2022 (MUTA 2), 19 November 2022 (MUTA 2), 20 November 2022 (MUTA 2), 7 January 2023 (MUTA 2), 8 January 2023 (MUTA 2), 23 MUTA's in total, and therefore was unable to receive retirement points for those days and subsequently did not receive a "Good Year" towards his overall retirement for the period of 14 July 2022 - 14 July 2023.

b. He was told by his unit he was not allowed to attend these BAs due to the COVID restrictions during that time period. Even though he was in the midst of a medical exemption request appeal and should have been authorized to drill according to the memorandums published at that time and otherwise was in "Good Standing" with the unit.

c. He attempted multiple times to inform his chain of command of the additional vaccine mandate guidance but was told each time that there were no changes, and he was not allowed to attend. He still checked in every battle assembly with his chain of command to ask for updates as well as ask if he may attend. Under the following memorandums, it is to his knowledge that he should be awarded the appropriate amount of retirement points for the dates listed above to insure he receive a "Good Year" towards his overall retirement for the period of 14 July 2022 - 14 July 2023.

d. He provides the following memoranda to support his request, 31 October 2022, Department of the Army Office of the Assistant Secretary Manpower and Reserve Affairs SAMR (RN: 600A) Memorandum, Subject: Defining the Term "In Good Standing" for Reserve Component Soldiers Receiving Retirement Points Due to Attendance Restrictions Related to COVID-19; 10 January 2023, Secretary of Defense Memorandum, Subject: Rescission of August 24, 2021 and November 30, 2021 Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces, and 24 February 2023, Secretary of the Army Memorandum, Subject: Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission.

2. A review of the applicant's military records show the following:

a. He enlisted in the Regular Army on 15 July 2003.

b. On 17 January 2008, DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty and was transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement).

b. On 1 August 2008, the U.S. Army Human Resources Command published Orders Number C-08-814215, which released the applicant from the USAR Control Group (Reinforcement) and assigned him to his USAR unit in Virginia, effective 1 August 2008.

d. His record contains:

(1) DA Form 5016 (Retirement Accounting Statement) dated 13 August 2024, which shows his total career retirement points earned as – 638 Inactive Duty Training (IDT), 13 Extension Course, 251 Membership, 1891 Active Duty Training (ADT), 20 years Qualifying for Retirement, 2793 Points Earned, and 2793 Points Creditable. In relevant part, the form also shows for the completed anniversary years listed below, he earned the following retirement points:

- 15 July 2022 to 13 November 2022 – 1 IDT, 5 Membership, 6 Points Earned, and 6 Points Creditable
- 14 November 2022 to 14 July 2023 – 20 IDT, 10 Membership, 30 Points Earned, and 30 Points Creditable

(2) DA Form 5016 (Chronological Statement of Retirement Points) dated 18 August 2024, which does not show the anniversary year(s) in question.

3. In support of his request the applicant provides:

a. Office of the Assistant Secretary Manpower and Reserve Affairs Memorandum - Subject: Defining the Term "In Good Standing" for Reserve Component Soldiers Receiving Retirement Points Due to Attendance Restrictions Related to COVID-19, dated 31 October 2022, which states, in part, in accordance with references 1a and 1c above, Section 516 of Public Law 116-283 amended Sections 12732 and 12733 of Title 10 U.S.C. to allow one retirement point to be awarded for the purpose of computing years of service for non-regular retired pay for each day of active service or for each drill or period of equivalent instruction that was prescribed to be performed during the covered emergency period, defined below. Retirement points can be awarded if the Reserve Component (RC) member concerned was prevented from performing such duty due to travel or duty restrictions imposed by the President or the Secretary of Defense.

b. Secretary of Defense Memorandum - Subject: Rescission of August 24, 2021, and November 30, 2021, Coronavirus Disease 2019 Vaccination Requirements for Members of the Armed Forces, dated 10 January 2023, which states, the Secretary of Defense, rescinded his 24 August 2021 memorandum, "Mandatory COVID-19 Vaccination of the Department of Defense Service Members", and 30 November 2021 memorandum, "COVID-19 Vaccination for Members of the National Guard and the Ready Reserve."

c. Secretary of the Army Memorandum - Subject: Army Policy Implementing the Secretary of Defense Coronavirus Disease 2019 (COVID-19) Vaccination Mandate Rescission, dated 24 February 2023, which states, in part, on 10 January 2023, the

Secretary of Defense rescinded the COVID-19 vaccination mandate across the Department of Defense (DoD). Accordingly, the Secretary of the Army rescinded all Department of the Army policies specifically associated with the implementation of the COVID-19 vaccination mandate.

d. Deputy Secretary of Defense Memorandum - Subject: Guidance for Implementing Rescission of 24 August 2021 and 30 November 2021 COVID-19 Vaccination Requirements for Members of the Armed Forces, dated 24 February 2023, which provided additional guidance to ensure uniform implementation of Secretary of Defense Memorandum, Rescission of the 24 August 2021 and 30 November 2021 COVID-19 Vaccination Requirements for Members of the Armed Forces," 10 January 2023 (10 January 2023 memorandum).

e. DA Forms 1380 dated 28 September 2023, submitted for points only for the completed anniversary year(s) 15 July 2022 to 13 November 2022 and 14 November 2022 to 14 July 2023 (15 July 2022 to 14 July 2023). The forms were signed by the Company Commander and show the applicant's dates, hours, retirement points, location of duties, nature of duties, training, or instruction, as follows:

- 6 August 2022 – for 4 hours, N1 (nonpaid), "3-323rd Regiment, B Company; Totaling: 1 point
- 7 August 2022 – for 8 hours, N2 (nonpaid), 3-323rd Regiment, B Company; Totaling: 2 points
- 10 and 11 September 2022 – for 8 hours each day, N2 (nonpaid), 3-323rd Regiment, B Company; Totaling: 4 points
- 22 and 23 October 2022 – for 8 hours each day, N2 (nonpaid), 3-323rd Regiment, B Company; Totaling: 4 points
- 17 to 20 November 2022 – for 8 hours each day, N2 (nonpaid), 3-323rd Regiment, B Company; Totaling: 8 points
- 7 and 8 January 2023 – for 8 hours each day, N2 (nonpaid), 3-323rd Regiment, B Company; Totaling: 4 points

4. On 28 May 2024, the Headquarters, U.S. Army Reserve Command (USARC), STL, Military Services Office, provided an advisory opinion for this case and recommended granting full administrative relief. The advisory official stated USARC reviewed the applicant's documents and determined he should be awarded 23 points in accordance with the Office of the Chief of Army Reserve policy memorandum, "U.S. Army Reserve Implementation Guidance for Service Credit for Non-Regular Retirement" dated 14 February 2024, paragraph 4.b.(5). One (1) point may be awarded for each day of drill the Soldier was unable to perform due to restrictions imposed by the Secretary of Defense during the period 1 March 2020 thru 10 April 2023. A favorable adjudication from the Army Review Boards Agency would allow the Readiness Division to update the points.

5. On 14 June 2024, the applicant was provided with a copy of the USARC advisory opinion for comments or rebuttal. He did not respond.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendation of the USARC advisory opinion, the Board concluded there was sufficient evidence of an error or injustice warranting correction of the applicant's record to show the submitted DA Forms 1380, dated 28 September 2023, were accepted, and added to his record for the anniversary years of 15 July 2022 to 13 November 2022 and 14 November 2022 to 14 July 2023 (15 July 2022 to 14 July 2023).

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 the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by awarding 23 points in accordance with the Office of the Chief of Army Reserve policy memorandum, "U.S. Army Reserve Implementation Guidance for Service Credit for Non-Regular Retirement" dated 14 February 2024, paragraph 4.b.(5).

2/13/2025

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. OCAR Memorandum - Subject: USAR Implementation Guidance for Service Credit for Non-Regular Retirement, dated 14 February 2024, integrates the most recent changes to award retirement points for drill or training foregone due to emergency travel or duty restrictions. Award one (1) retirement point for each day of active service or each drill period or period of equivalent instruction if the Reserve Component member concerned was unable to perform such duty due to travel or duty restrictions imposed by the President, the Secretary of Defense, or the Secretary of Homeland Security during the covered emergency period.

a. This memorandum is applicable to Army Reserve Troop Program Unit, Individual Ready Reserve, and Individual Mobilization Augmentee Soldiers.

b. The covered emergency period is the period beginning on 1 March 2020 thru 10 April 2023 with the signing of H.J. Res. [House Joint Resolution] 7, which terminated the Coronavirus national emergency.

c. Under this authority, do not broadly award retirement points to all Army Reserve Soldiers. The following restrictions apply: (1) The Army Reserve Soldier must not have been an unsatisfactory participant on 1 March 2020, as defined by reference 1e (Army Regulation (AR) 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Provisions), paragraph 4-14a. (2) Do not credit the Army Reserve Soldier with more than 35 retirement points in a 1-year period. (3)

Authorized days of scheduled active service, periods of Battle Assembly, or equivalent instruction must have been scheduled to be performed during the period of 10 March 2020 and on or before 10 April 2023. (4) Travel or duty restrictions imposed by the national emergency declared in Proclamation 9994 resulted in the cancellation of active service or periods of drill or equivalent instruction. (5) The Army Reserve Soldier need such retirement points to reach the minimum required number of points creditable toward retirement for that Army Reserve Soldier's anniversary year. (6) Rescheduled and performance of the cancelled days of active service or periods of drill or equivalent instruction is unauthorized. (7) No inactive duty pay or basic pay may be paid for the periods for which these retirement points are granted.

d. Request retirement points on a DA Form 1380 (Record of Individual Performance of Reserve Duty Training) following the instructions for non-paid retirement points.

2. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) contains Army policy for U.S. Army Reserve 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 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 2-1 (Criteria for crediting retirement points) states, IDT will be either four (4) hours in length for one (1) retirement point or eight (8) hours in length for two (2) retirement points.

c. 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 HRC 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.

d. 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 months 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 Soldiers integrated Personnel Electronic Records Management System by the unit of assignment per AR 600-8-104 (Army Military Human Resource Records Management).

//NOTHING FOLLOWS//