

IN THE CASE OF: ██████████

BOARD DATE: 8 August 2024

DOCKET NUMBER: AR20230014264

APPLICANT REQUESTS: in effect, his discharge order to be revoked and assignment to the U.S. Army Reserve (USAR) Control Group (Retired Reserve).

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

- DD Form 149 (Application for Correction of Military Record)
- State of Nevada Office of the Military Office of the Adjutant General Memorandum, Subject: Notification of Eligibility for Retired Pay at Age 60
- Camp Atterbury Permanent Orders Number 115-022
- DD Form 214 (Certificate of Release or Discharge from Active Duty) service ending 4 June 2008

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, he received his notification of eligibility for retired pay at age 60 from the Nevada Army National Guard (ARNG) on 20 May 2002 and he completed 24-years, 8-months, and 14-days of inactive service per his DD Form 214. He became a contractor who worked in Afghanistan and was unable to perform his reserve service obligation but was informed by his chain of command it would not be an issue. However, he was discharged for unsatisfactory participation and was reduced to the rank of private (PVT)/E-1 and issued an other than honorable conditions characterization of service. He requests the Headquarters (HQs), 63rd Regional Support Command (RSC) Orders Number 11-137-00032 be revoked so he can qualify for a non-regular retirement and be assigned to the USAR Control Group (Retired Reserve).

3. A review of the applicant's service record shows:

- a. On 22 April 1982, the applicant enlisted in the USAR. His DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows in item 7 (Date of Birth) [REDACTED]. The applicant turned 60 years of age on [REDACTED].
- b. The applicant's DD Form 214 shows the applicant was ordered to active duty for training on 3 August 1982. He was honorably released from active duty on 11 November 1982 after completion of 3-months and 9-days of active service.
- c. On 15 August 1983, the applicant enlisted in the Army National Guard (ARNG) and he served continuously through extensions or reenlistments.
- d. The applicant's NGB Form 22 (Report of Separation and Record of Service) shows the applicant was honorably released from the ARNG on 31 May 2004 for non-retention on the Qualitative Retention Board and assigned to the USAR Control Group (Reinforcement). It also shows the applicant completed 20-years, 9-months, and 16-days of service and 22-years, 1-month, and 9-days of total service for retired pay.
- e. On 23 October 2006, the applicant enlisted in the USAR.
- f. On 9 March 2007, Orders Number C-03-707720, issued by the U.S. Army Human Resources Command, the applicant was assigned to a USAR Troop Program Unit, effective 8 March 2007.
- g. On 23 March 2007, Orders Number 07-082-00004, issued by HQs, 314th Combat Sustainment Support Battalion, the applicant was ordered to active duty in support of Operation Iraqi Freedom, effective 19 April 2007.
- h. On 4 June 2008, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 1 year, 1 month and 16 days of active service. DD Form 214, item 12e (Total Prior Inactive Service) shows 24 years, 8 months, and 14 days.
- i. The applicant's service record was void of the separation packet. On 17 May 2011, Orders Number 11-137-00032, issued by HQs, 63rd RSC, the applicant was reduced in rank from sergeant to PVT, effective 17 May 2011 and discharged from the USAR, effective 22 May 2011 with an under other than honorable conditions character of service, under the provisions of Army Regulation (AR) 135-178 (Enlisted Administrative Separations).
- j. The applicant's DA Form 5016 (Retirement Accounting Statement) formerly called the Chronological Statement of Retirement Points shows the applicant obtained in retirement years ending:

- 21 April 2009 – four Inactive Duty Training (IDT) points, 15 membership points, and 44 Active Duty Training (ADT) points for a total of 63 creditable points
- 21 April 2010 – zero IDT points, 15 membership points, and zero ADT points for a total of 15 creditable points
- 22 May 2011 – zero IDT points, one membership point, and zero ADT points for a total of one creditable point

4. The applicant provides:

a. State of Nevada Office of the Military Office of the Adjutant General Memorandum, 20 May 2002, Subject: Notification of Eligibility for Retired Pay at Age 60, informed the applicant he completed the required years of service and would be eligible for retired pay at age 60. His retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation or administrative determination of years of creditable service performed unless it resulted directly from fraud or misrepresentation on his part.

b. Camp Atterbury Permanent Orders Number 115-022 which shows the applicant was released from active duty, effective 4 June 2008, and assigned to the 314 Combat Sustainment Support Battalion.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's separation packet is unavailable for review. His service record contains Orders Number 11-137-00032, issued by the 63rd Regional Support Command reducing him to private effective 17 May 2011 and discharging him from the USAR, effective 22 May 2011 with an under other than honorable conditions character of service, under the provisions of AR 135-178. Without the separation packet, the Board found it difficult to establish if an error or injustice occurred in his discharge from the USAR. The applicant is advised to request his separation packet from his former unit or higher headquarters and re-apply to this Board for reconsideration

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.

8/8/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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, 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. AR 135-180 (Qualifying Service for Retired Pay Non-Regular Service) in effect at the time, implements statutory authorities governing the granting of "retired pay" to Soldiers and former Reserve components Soldiers.

a. Paragraph 2-1 (Eligibility), a. To be eligible for retired pay, an individual need not have a military status at the time of application, but must have:

- Attained age 60
- Completed a minimum of 20 years of qualifying service
- Served the last 8-years of his or her qualifying service as a Reserve component Soldier

In addition, an applicant must:

- Not be entitled to retired pay from the Armed Forces under any other provision of law
- Not have elected to receive disability severance pay in lieu of retired pay at age 60

b. Paragraph 2-3 (Notification of Retired Pay Eligibility), b. 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.

c. Paragraph 2-9 (Service not creditable as qualifying service) states service in the Inactive National Guard is not creditable as qualifying service.

3. AR 135-178 (Enlisted Administrative Separations) in effect at the time states in Chapter 13 (Unsatisfactory Participation in the Ready Reserve) is a Soldier who is

subject to discharge for unsatisfactory participation when it is determined the Soldier is unqualified for further military service because:

- The Soldier is an unsatisfactory participant as prescribed by AR 135-91, chapter 4; and
- Attempts to have the Soldier respond or comply with orders or correspondence have resulted in:
 - The Soldier's refusal to comply with orders or correspondence; or
 - A notice sent by certified mail was refused, unclaimed, or otherwise undeliverable; or
 - Verification that the Soldier has failed to notify the command of a change of address and reasonable attempts to contact the Soldier have failed

Characterization of service normally will be Under Other Than Honorable Conditions, but characterization as General (under honorable conditions) may be warranted.

//NOTHING FOLLOWS//