

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230014348

APPLICANT REQUESTS:

- correction of service records to reflect 20 qualifying years of service for retired pay
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number D 343-01, 9 December 2011
- Memorandum – Subject: Permanent Physical Disability Retirement, 9 December 2011
- U.S. Army Human Resources Command (AHRC) letter, 30 May 2023
- National Guard Bureau (NGB) Form 23B (Army National Guard (ARNG) Retirement Points History Statement), 8 June 2022
- Defense Joint Military Pay System – Reserve Component (DJMS-RC) Leave and Earnings Statement (LES) history

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 pertinent part that he was medically discharged from the OKARNG with 18 years of service credit. He contests that this was incorrect as he is certain he completed 20 years prior to being discharged. During the period of 2009-2012, he was performing drills for "points only" and the Unit Administrator was coding the sign in sheets accordingly during this period. He has attempted to retrieve the supporting documentation from his former unit however they no longer have the records pertaining to that period. He also requested copies of his pay records for this period, but unfortunately since the duty performed was for points only, these documents provide no evidence of his drill attendance, despite receiving pay entitlements based on 21 years of

service. He is attempting to receive Concurrent Retirement and Disability Pay (CRDP) but is unable to do so because his records do not reflect 20 qualifying years of service.

3. A review of the applicant's service records show:

a. On 1 June 1993, the applicant enlisted in the ARNG.

b. On 31 May 1998, the applicant was honorably discharged from the OKARNG. He completed 5 years and 1 day of net service with 11 years and 1 day total service for pay.

c. On 27 September 2001, the applicant enlisted in the OKARNG.

d. On 26 September 2002, he was honorably discharged from the OKARNG. He completed 1 year of net service for a total of 12 years and 1 day total service for pay.

e. On 28 January 2003, the applicant enlisted in the OKARNG.

f. On 27 October 2011, a Physical Evaluation Board (PEB) convened finding the applicant physically unfit for continued military service with a recommendation that he be permanently medically retired with a disability rating of 70 percent. The applicant concurred with the board's recommendation and waived his rights to a formal hearing.

g. On 9 December 2011, the U.S. Army Physical Disability Agency issued Orders Number D 343-01 releasing the applicant from assignment and duty due to a physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability on 14 January 2012 with a disability rating of 70 percent. These orders further provide the following:

- Disability Retirement – 5 years, 4 months, and 12 days
- Basic Pay – 20 years, 11 months, and 16 days

h. On 10 January 2012, the OKARNG issued Orders Number 010-043 honorably discharging the applicant from military service and transferring him to the Retired Reserve, effective 14 January 2012.

i. On 14 January 2012, the applicant was permanently medically retired from military service. NGB Form 22 (Report of Separation and Record of Service), item 10a (Net Service this Period) reflects 8 years, 11 months, and 17 days; item 10b (Prior Reserve Component Service) reflects 12 years; item 10d (Total Service for Pay) reflects 20 years, 11 months, and 17 days; item 10e. (Total Service for Retired Pay) reflects 18 years.

j. On 8 June 2022, the applicant was issued a Notification of Eligibility for Retired Pay for Non-Regular Service (15 Years) letter. NGB Form 23B (ARNG Current Annual Statement) provided at this time reflects 18 years of qualifying service (1953 points).

k. On 30 May 2023, the U.S. Army Human Resources Command replied to the applicant's request for retired pay noting that to be eligible for CRDP, the service member must have completed a minimum of 20 qualifying years of service. An audit of his military records only reflects 18 years of qualifying service therefore his request to receive retired pay was denied.

4. The applicant provide:

a. Memorandum – Subject: Permanent Physical Disability Retirement dated 9 December 2011, reflective of the applicant being notified of the PEB results in that his retired pay would be computed based on the effective date of his retirement.

b. NGB Form 23B dated 8 June 2022, reflective of the applicant's qualifying service completed between May 1983 and January 2012. During this timeframe, the applicant was awarded 18 qualifying years of service and a total of 1953 retirement points. Between 2009 – 2012, the applicant was awarded the following:

- 28 January 2009 – 27 January 2010: 26 points (11 Inactive Duty Training (IDT) and 15 membership points)
- 28 January 2010 – 27 January 2011: 15 points (15 membership points)
- 28 January 2011 – 14 January 2012: 21 points (1 IDT, 14 membership and 6 Active Duty Training (ADT) points)

c. DJMS-RC LES history, reflective of the applicant's pay and entitlements received between 2009 – 2011. These documents are void of any information pertaining to qualifying service performed in a "non-pay" status.

5. On 17 June 2023, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending denial of the applicant's request noting that the OKARNG did a review of his service records and concluded that he only has 18 years of creditable service towards retired pay. The final 3-years of service from 28 January 2009 - 14 January 2012 reflected he missed several drills which prevented him from having three additional years of creditable service. The OKARNG also stated that since he was drilling for points only this would be hard to verify, and that the Defense Finance and Accounting Service nor the Reserve pay system would capture this information, and that the only way to verify this information was to get sworn statement from leaders during the time period the applicant is referencing which is not possible. Therefore, the applicant's NGB Form 23B correctly reflects his qualifying years of service as 18 years.

6. On 21 June 2024, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments. As of 30 July 2024, the applicant has not responded.

BOARD DISCUSSION:

1. 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 reviewed and concurred with the National Guard Bureau's advising official finding the applicant served 18 years of creditable service for retired pay. The final 3 years of his service from 28 January 2009 through 14 January 2012 reflect the applicant missed battle assemblies preventing him from receiving creditable service toward retirement. The Board noted the applicant's contention that he was only given credit for 18 years of service vice 20 years of service toward his retired pay and that during 2009 to 2012, he was only drilling for retirement points. The Board concluded the applicant did not complete 20 qualifying years for retirement pay and therefore denied relief.

2. 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:

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.

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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, 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. 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.

a. Paragraph 2-9 states 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

3. National Guard Regulation 680-2 (Automated Retirement Points Accounting Management) sets responsibilities and procedures to establish and maintain retirement records, establish the anniversary year, determine service requirements to qualify for retirement for non-regular service, prepare and issue notifications of eligibility for retired pay for non-regular service, make elections for Survivor Benefit Plan (SBP)/Reserve Component Survivor Benefit Plan (RCSBP), apply for retired pay for non-regular service, determine eligibility for reduced retirement age for members who served on active service under certain authorities, and explains the statute of limitations on applying for retired pay.

a. Paragraph 2-4 (Minimum Retirement Points Required for a Year of Satisfactory Service) provides that Soldiers must earn a minimum of 50 retirement points, regardless of source, in each full anniversary year to have that year creditable towards verification of the total years of qualifying service for non-regular retired pay. A partial qualifying year is any period of less than 12 full months, during which the Soldier earns the pro-rated share of 50 points for that period. When Soldiers accrue the required qualifying years for issuance of a notification of eligibility for retired pay, use all creditable retirement points in the RPAM record whether the year in which the retirement points were earned was creditable or not, subject to the limits in paragraph 2-3 and table 2-1 above, to determine retired pay.

b. Paragraph 3-2 (Basic Qualifying Service Requirement) provides that to qualify for non-regular retired pay at or after the age specified in paragraph 3-1, a Soldier or former

Soldier must have completed at least 20 years of qualifying service. However, ARNG Soldiers in an active status with at least 15, and fewer than 20, years of qualifying service who are disqualified from continued service due to physical disability and meet all other eligibility criteria may be retired.

c. Paragraph 3-5 (Notification of Eligibility (NOE)) provides that each Soldier who completes the eligibility requirements will be notified in writing within one year after completion of the required service. The NOE is issued in two versions for Soldiers who meet all of the criteria for issuance. The first is issued for those with 20 or more years. The second is issued for those with 15 but fewer than 20 years. A Soldier who qualifies for a 15-year NOE based on the procedures in paragraph 3-2b cannot qualify for a 20-year NOE.

//NOTHING FOLLOWS//