

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230014361

APPLICANT REQUESTS:

- service credit for attendance at the Uniformed Services University of Health Services (USUHS) from August 1995 – May 2000
- entitlement to retired pay
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum in Support of Application for Correction of Military Records
- USUHS letter, 1 November 1999
- Certificate, USUHS, 20 May 2000
- Office of the Assistant Secretary of Defense letter, 1 July 2002
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 25 June 2012
- Certificate, 12 July 2023
- ABCMR previous cases

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 represented by legal counsel provides in pertinent part that he attended the USUHS from 21 August 1995 – 20 May 2000 as a medical student. Following his graduation, the applicant was ordered to active duty where he remained until 25 June 2012. Following his active-duty service, the applicant continued his service in the U.S. Army Reserve for approximately 5 years. Counsel argues that the applicant's DD Form 214, is void of evidence of his service as a USUHS medical student. He notes that in accordance with Title 37, USC, Section 205 and Title 10, USC, section 2114 this time is creditable in the calculation of longevity and retirement pay. Counsel further

provides that the ABCMR should apply the precedent established in Docket Number AR20100010294, AR20090018144 and AR20100025194 where the Board determined that the servicemembers time as medical students at USUHS was creditable when computing retired pay. The applicant's case is materially similar to these cases and based upon the precedent set in the previous cases, his records should be corrected to reflect his creditable service at USUHS.

3. A review of the applicant's available service records reflects the following:

a. On or about 3 January 1995, the applicant endorsed a USUHS Program service agreement acknowledging the active-duty service obligation associated with his selection to enter the USUHS Program. The applicant acknowledged that he would incur an Active-Duty Service Obligation (ADSO) of 21 months for each year or portion thereof during the first 4 years spent in training.

b. On 1 June 1995, the U.S. Total Army Personnel Command issued Orders Number A-06-003627 ordering the applicant to active-duty as an obligated officer for a period of 4 years (USUHS) with a report date of 10 August 1995.

c. On 20 June 1995, the applicant was appointed a Reserve commission.

d. On or about 28 April 2000, the applicant completed his 4th and final year of medical school.

e. On 20 May 2000, the applicant's Doctor of Medicine degree was conferred by USUHS. He was subsequently appointed as a Medical Corps Officer within the active component.

f. On 14 December 2011, the applicant's unqualified resignation was approved. The applicant was identified as not having an ADSO or Military Service Obligation and further declined to submit a request for a Reserve appointment.

g. On 8 March 2012, the Joint Base Garrison, Joint Base Lewis-McChord issued Orders Number 068-0007 reassigning the applicant to the U.S. Army transition point pending separation processing.

h. On 25 June 2012, the applicant was honorably discharged from the Regular Army in accordance with Army Regulation 600-8-24 (Officer Transfers and Discharges), paragraph 3-5 (Unqualified Resignation). DD Form 214, item 12c. (Net Active Service this Period) reflects 12 years, 1 month, and 6 days.

4. The applicant provides the following a:

a. USUHS letter dated 1 November 1999, reflective of the Associate Dean of Student Affairs (ADSA) recommendation for the applicant to attend Graduate Medical Education training in the U.S. Army. The ADSA further provides a chronological account of the applicant's accomplishments during the previous three years of academic study.

b. Office of the Assistant Secretary of Defense letter dated 1 July 2002, reflective of guidance pertaining to attendance at the USUHS. Paragraph 2 provides that years of service at the USUHS as a medical student are creditable in computing retired pay. This document further provides examples of how the 4+ years attending USUHS would be added to the calculation of creditable service for persons who complete 20 years of service and receiving retired pay. Further, persons currently receiving retired pay should have their pay recalculated based upon this provision.

c. Certificate dated 12 July 2023, reflective of documentary evidence of the applicant's service on active duty as a medical student officer at USUHS from 21 August 1995 to 20 May 2000. It further provides that this period of active-duty service is not creditable in determining eligibility for retirement or longevity for pay, however it is fully creditable active-duty service in computing retired pay.

d. ABCMR previous cases (Docket AR20100010294, AR20090018144 and AR20100025194) reflective of the Board granting the requested relief in that these retired service members records were corrected to reflect the 4 years and 6 months that they attended USUHS as creditable service to be used in the calculation of their retired pay and for longevity purposes.

5. The applicant did not provide nor does review of his available service records reflect service in the USAR following his honorable discharge from active duty in 2012.

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 and standard review based on law, policy and regulation. The Board determined there is insufficient evidence to support the applicant's contentions that he is due service credit for attendance at the Uniformed Services University of Health Services (USUHS) from August 1995 – May 2000.

2. The evidence does not demonstrate that the applicant retired from military service. The Board acknowledges that, if the applicant were a retired service member, his period of service while at the USUHS would be used to calculate his retired pay. However, that period of service may not be used in determining the applicant's eligibility for retirement. The applicant did not accumulate 20 years of service and is not entitled to retirement

pay; he is therefore not entitled to relief in this case. The Board considered the prior ABCMR cases cited by the applicant and noted that, in each of those cases, the applicant was a retired servicemember and those cases are therefore distinguishable from this case.

3. 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.

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. Department of Defense Financial Management Regulation, Volume 7B, paragraph 0103 (Service Creditable for Percentage Purposes), subparagraph 0103018(2) (Voluntary Retirement Commissioned Officers), provides for crediting of constructive service for medical and dental officers is not authorized after 14 September 1981 unless a member was already enrolled in such a program and later graduated and was commissioned as a medical or dental officer. However, after 14 September 1981 time is creditable in computing retired pay provided the officer is retirement eligible. Example: An O-6 with 20 years and 6 months service under Title 37, USC, section 205 (excludes time at USUHS), is receiving basic pay for an O-6 over 20 years. If this member served 4 years and 6 months at USUHS, then the member is to receive retired pay computed at 62.5 percent of basic pay as an O-6 upon retirement. Thus, the time at USUHS does not count toward computation of retirement eligibility for length of service but does count in the computation of the amount of retired pay.

3. Memorandum – Subject: Credit for Time Served at the Uniformed Services USUHS in Computing Military Retired and Retainer Pay provides guidance for computing military retired and retainer pay when a member was a medical student at USUHS. Section 2114(b) of Title 10, USC, section 2114(b)] provides that USUHS medical students "shall serve on active duty in pay grade O-1." Thus, such service must be credited under any provision of law based on active service unless such service is explicitly excluded. In this regard, Title 10, USC, section 2114(b) provides that the exclusions of Title 10, USC, section 2126 applicable to students in the Health Professions Scholarship Program are also applicable to USUHS medical students. These exclusions relate to (1) determination of the applicable rate of basic pay under 37 USC 205 longevity), and (2) determination of eligibility for retirement. There is no exclusion, in this or any other section of law. with respect to the computation of retired pay. Consequently, years of service at USUHS as a medical student are creditable in computing retired pay.

4. Army Regulation (AR) 600-8-24 (Officer Transfers and Discharges) applies to non-disability retirement of commissioned and warrant officers on active duty who have 20 years or more of Active Federal Service. There are different types of creditable military service. Each type is computed according to the applicable provisions of Federal law for the various types of retirement. Retired pay is computed according to pay formulas in Title 10, USC, chapters 71 and 371; provisions contained in the retirement law; and

according to Title 37 of U.S. Code. Upon appointment in the Regular Army (RA), certain commissioned officers are credited with constructive service. The Secretary of the Army is the approval authority for retirements. The Secretary of the Army has delegated approval authority for voluntary retirements (waiver/nonwaiver) to CG, HRC-Alexandria. CG-HRC-Alexandria may approve, disapprove, or delay/defer the requested retirement date of an officer who has completed 20 but less than 30 years of active Federal service. Constructive service as defined in paragraph 6-2c is not creditable for a voluntary retirement or for retired pay purposes after a voluntary retirement. Paragraph 6-14 (Service for Determining Retirement Eligibility) provides voluntary retirement eligibility is determined by AFS (10 USC 3926). To determine whether an officer may be retired voluntarily, the years of AFS are computed by adding all active service in the Army.

5. AR 135-180 (Retirement for Non-Regular Service) provides that to be eligible for retired pay an individual need not have military status at the time of application but must have completed a minimum of 20 years of qualifying service computed under Title 10, USC, section 12732. Under Title 10, USC, section 12731a Reserve Component Soldiers who complete the eligibility requirements will be notified in writing within 1 year after completion of the required service. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve.

6. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//