

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 July 2024

DOCKET NUMBER: AR20230014409

APPLICANT REQUESTS:

- Correction of his records to show he had 20 full years in the Army National Guard (ARNG) towards retirement
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 232-0049 Transfer for Separation Processing
- NGB Form 22 (Report of Separation and Record of Service)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Certificate of Retirement
- Orders 296-009 Retirement Orders
- Master Military Pay Account
- Excerpt from NGR 600-200 (Enlisted Personnel Management)

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 the Utah ARNG (UTARNG) has come to the decision he lacked one single day in 1996 for a full 20-year retirement. He has enclosed documentation for the Board's review. He would be in the Board's debt if they would transfer one day to the 1996 year to complete his many years of service. He was a member of 3/5 platoon. On many occasions, he went in several days ahead of the battalion to draw ammunition from the ammunition supply point in Toole, Utah to complete gunnery. Those service days were never counted toward his days in service. He served his country with great pride at a high cost to his physical and mental health as well as to his family.
3. The applicant provides the following documents:

a. Orders 232-0049, published by, Headquarters, United States Army Garrison, Fort Carson, 20 August 2014, transferred him for separation processing with a reporting date of 15 October 2014. They show his effective date of retirement was 15 October 2014 with placement on the retired list on 16 October 2014. His percentage of disability was 30 percent. He had 5 years, 1 month, and 22 days for disability retirement and 20 years, 3 months, and 5 days towards basic pay.

b. Orders 296-009, published by UTARNG, 23 October 2014 discharged him from the ARNG and assigned him to the Retired Reserve effective 15 October 2014. The assignment/loss code was medical, physical, or mental condition retention.

c. Excerpt from NGR 600-200, which states a Soldier having completed eighteen, but less than twenty, years of qualifying service for retired pay will not be involuntarily separated without the approval of the Secretary of the Army or his designated representative. All recommendations for involuntary separation of Soldiers in this category will be sent to National Guard Bureau (NGB) for consideration.

d. Medical documents, which show he has osteoarthritis of the lumbar spine and chronic hip strain which occurred while on active duty and while deployed to Afghanistan.

3. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the ARNG on 11 July 1994 and remained in the ARNG through oaths of extension of enlistment or reenlistment.

b. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 6 August 2014 shows he was evaluated for arthritis, degenerative of the left hip. The board found he was physically unfit and recommended a rating of 10 percent and that he be separated with severance pay. He did not fill out Section IX - Soldier's Election.

c. Order D 231-56, published by U.S. Army Physical Disability Agency (USAPDA), 19 August 2014, removed him from the Temporary Disability Retired List (TDRL) effective 22 June 2014. His disability rating was 10 percent, and he was entitled to severance pay.

e. DD Forms 214, show he entered active duty, as a member of the ARNG, on:

(1) 31 October 1994 and was released to his ARNG unit on 7 April 1995 with an uncharacterized characterization of service. He completed 5 months and 7 days of active duty with 3 months and 20 days of prior inactive service. He was released from active duty for completion of period of active-duty training.

(2) 20 July 2001 and was honorably released on 15 March 2002 (corrected by DD Form 215). He completed 7 months and 26 days of active-duty service (corrected by DD Form 215) with 5 months and 7 days of previous active duty service and 3 months and 20 days of previous inactive duty service. He had service in Southwest Asia from 25 July 2001 through 17 February 2002. He was released from active duty for completion of period of active duty.

(3) 1 August 2002 and was honorably released on 17 July 2003. He completed 11 month and 17 days of active duty with 5 month and 7 days of prior active-duty service and 7 years, 7 months, and 13 days of prior inactive duty service. He had service at Toole Army Depot from 1 August 2002 through 17 July 2003. He was released for completion of required active service.

(4) 2 January 2004 and was honorably released on 2 May 2005. He completed 1 year, 4 months, and 1 day of active duty with 2 years and 19 months of prior active-duty service and 7 years, 5 months, and 2 days of prior inactive duty service. He had service in Afghanistan from 7 April 2004 through 11 April 2005. He was released for completion of required active service.

(5) 15 January 2012 and was honorably transferred to U.S. Army Reserve Control Group (Retired Reserve) on 15 October 2014. He had completed 2 years, 9 months, and 1 day of active duty with 3 years, 4 months, and 21 days of prior active-duty service and 14 years, 1 month, and 13 days of prior inactive duty service. He had service in Afghanistan from 8 May 2012 through 24 December 2012. He was released from active duty for disability, permanent (enhanced).

f. NGB Form 22 (Report of Separation and Record of Service) shows he was honorably transferred to the Retired Reserve on 15 October 2014. His net service was 20 years, 3 months, and 5 days, total service for pay was 20 years, 3 months, and 5 days, and total service for retired pay was 19 years, 3 months, and 5 days.

g. NGB Form 23B (ARNG Retirement Points History Statement), 31 May 2024, shows he did not have a good year from 11 July 1996 through 10 July 1997 and from 11 July 2014 through 15 October 2014. He had 19 years, 3 months, and 5 days creditable service for retired pay.

h. His service record was void of an order placing him on the TDRL.

4. On 12 June 2024, the Chief, Special Actions Branch, NGB provided an advisory opinion which states:

a. The applicant claims the UTARNG has come to the decision he lacks one day of service in 1996 that prevents him from having 20 years creditable service for retired

pay, and therefore would like the ABCMR to correct his records to reflect 20 years of creditable service for retired pay. NGB recommended disapproval.

b. A review of his pay history, during the period of 11 July 1996 through 10 July 1997 shows he has 31 points of inactive duty training, which also account for the time he claims he came in to draw ammunition that was not accounted for. He also, during that period of service, has 15 membership points and 3 points of active-duty time, which amount to 49 points and short of the 50 points needed for a good year of creditable service for retired pay. All the training has been verified per his Annual Statement and coincide with his pay records.

c. A review of his military records show he had gone through the Medical Evaluation Board (MEB) and the PEB process and was found unfit for duty and therefore medically retired with a disability rating of 30 percent. His physical disability information report showed he had 18 years, 6 months, and 4 days for a disability retirement; however, that is based on the information the USAPDA had, at the time. His report of separation and record of service and close out NGB Form 23B, at the time of his discharge, shows he had 19 years, 3 months, and 5 days of total service for retired pay.

d. He claims that because he had completed over eighteen, but less than twenty years of qualifying service for retired pay he should not have been involuntarily separated without the approval of the Secretary of the Army or his designated representative per NGR 600-200. Per Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation) the USAPDA makes the final decision for the Secretary of the Army concerning a Soldier's unfitness for duty for continued service, except for when such decisions are reserved for higher authority.

e. Additional documents provided by the PEB, show he had been briefed on the Continuation in the Active Reserve (COAR) application process and should have been aware that if he did not have twenty years creditable service for retired pay, he should have applied for this option, however, he failed to submit a COAR application packet.

f. After further review and discussion with the ARNG Medical Retirement Section, it is the conclusion of NGB that his years of service were computed correctly and he is short of having twenty years of creditable service for retirement due to missing individual training, during the period of 11 July 1996 through 10 July 1997. It should also be noted Soldiers who are no longer in the Integrated Disability Evaluation System process and no longer in service cannot go back and request a COAR.

5. NGB provided the following documents, not previously considered, with the advisory opinion:

a. Memorandum for PEB, 17 March 2014, states the applicant, who was referred for PEB by the MEB had not signed his DA Form 5893 (MEB). He verbally concurred with the DA form 5893 but was unable to return the documents.

b. DA Form 199, 10 April 2014 (not contained in his service record) shows he was evaluated for posttraumatic osteoarthritis of the right ankle with instability and given a 20 percent disability rating and osteoarthritis of the lumbar spine and given a 10 percent disability rating. The board found him physically unfit for duty and recommended a rating of 30 percent and that he be retired for permanent disability. He did not concur with the findings and did not submit a written appeal. He requested the Department of Veterans Affairs reconsider his disability rating.

6. On 18 June 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. Upon review of the applicant's petition, available military records and National Guard Bureau- Special Actions Branch advisory opinion, the Board considered the advising official recommendation, however the Board determined there is sufficient evidence to support correction of his records to show he had 20 full years in the Army National Guard (ARNG) towards retirement by moving one point from his RYE 1995 to RYE 1996 to give him a good year with 50 points. The Board agreed the applicant served his time and should be issued his 20-year letters and correction to records. As such, the Board granted relief.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), the Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show the applicant had a good year in RYE1996 by moving one point from RYE1995. Also issue the applicant his notification of eligibility for 20 years letter.

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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.

ADMINISTRATIVE NOTE(S):

Correct the applicant's DD Form 214 for the period ending 7 April 1995 by changing item 24 (Character of Service) from uncharacterized to honorable. He was a member of the ARNG who entered active duty for completion of initial active-duty training, received a military occupational specialty, and was released to his ARNG unit.

REFERENCES:

1. Title 10, 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 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 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. It states that 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. The ABCMR will decide cases based on the evidence of record. The ABCMR is not an investigative agency.

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. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) contains Army policy for U.S. Army Reserve (USAR) and ARNG training and retirement point credit. It also prescribes guidance for USAR and ARNG unit level strength accounting. (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 (RC) 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.

4. AR 135-180 (Retirement for Non-Regular Service) implements statutory authorities governing the granting of retired pay for non-regular service to Soldiers in the ARNG, Army National Guard of the United States (ARNGUS) or the USAR.

a. Paragraph 2-2 (Basic qualifying service requirements) states, to be eligible for retired pay at or after the age (60 years of age) specified in paragraph 2–1 (Age requirements), an individual need not have military status at the time of application, but must have completed one of the following: (1) A minimum of 20 years of qualifying service computed under Title 10, U.S. Code (USC), section 12732; or, (2) Fifteen (15) years of qualifying service, and less than 20, computed under Title 10, USC, section 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. Paragraph 2-4 (Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter)) states, (1) Under Title 10, USC, section 12731a, RC Soldiers who complete the eligibility requirements in section I will be notified in writing within 1 year after completion of the required service in accordance with AR 140–185. 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. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued by HRC for all USAR Soldiers except for those who are within 2 years of qualifying for an active duty retirement and can remain on active duty to complete the required service. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format determined by HRC. 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.

5. Title 10, USC, section 12731 (Age and service requirements), provides that, a person is entitled, upon application, to retired pay computed under section 12739 (Computation of retired pay) of this title, if the person has attained the eligibility age of 60 years and has performed at least 20 years of service computed under section 12732 (Entitlement to retired pay: computation of years of service) of this title. In the case of a person who completed the service requirements of paragraph (2) (20 years of service computed under section 12732) before 25 April 2005, performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before 5 October 1994, the number of years of such qualifying service under this paragraph shall be eight.

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Physical Disability Evaluation System (PDES) according to the provisions of 10 USC 61 and DoDD 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability,



this regulation provides for disposition of the Soldier according to applicable laws and regulations.

a. The TDRL is used in the nature of a "pending list". It provides a safeguard for the Government, against permanently retiring a Soldier who can later fully recover, or nearly recover, from the disability, causing him or her to be unfit. Conversely, the TDRL safeguards the Soldier from being permanently retired with a condition that may reasonably be expected to develop into a more serious permanent disability. b. Requirements for placement on the TDRL are the same as for permanent retirement. The Soldier must be unfit to perform the duties of his or her office, grade, rank, or rating at the time of evaluation. The disability must be rated at a minimum of 30 percent or the Soldier must have 20 years of service computed under section 1208, title 10, United States Code (10 USC 1208). In addition, the condition must be determined to be temporary or unstable. c. A Soldier who is determined to be physically fit will not be placed on the TDRL regardless of the severity of the physical defects or the fact that they might become unfitting were the soldier to remain on active duty for a period of time.

b. PERSCOM will dispose of the case by publishing orders or issuing proper instructions to subordinate headquarters, or return any disability evaluation case to-USAPDA for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations. Subparagraph b (Final disposition), based upon the final decision of USAPDA or APDAB, PERSCOM will issue retirement orders or other disposition instructions as follows:

- permanent retirement for physical disability
- placement on the TDRL
- separation for physical disability without severance pay
- separation for physical disability with severance pay
- transfer Soldier who has completed 20 qualifying years of service
- separation for physical disability without severance pay when disability was incurred as result of intentional misconduct, willful neglect, or during unauthorized absence
- return Soldier to duty determined physically fit

c. A Soldier on the TDRL must undergo a periodic medical examination and PEB evaluation at least once every 18 months to decide whether a change has occurred in the disability for which the Soldier was temporarily retired.

- Soldiers who have waived retired pay to receive compensation from the VA, continue to be retired Army Soldiers, Soldiers must undergo examinations when ordered

- Soldiers recalled to active duty while still on the TDRL must also undergo a periodic examination when ordered by the Commander, USA HRC
- Soldiers who fail to complete a physical examination when ordered will have their disability retired pay suspended
- Soldiers on the TDRL will notify Commander, HQUSAPDA (AHRC-PDB) of any change in their current mailing address

d. The Army Human Resources Command (AHRC) will notify the Soldier of the forthcoming medical examination. The letter will include the information below:

- name, address, and telephone number of the appointed MTF closest to the Soldier's home
- name and telephone number of the PEBLO who will assist the Soldier during and after the medical examination
- Soldier may telephone the MTF collect to resolve any problems
- MTF will arrange for and schedule the medical examination, every effort will be made to schedule the examination for the Soldier's convenience; however, the medical examination must be carried out within the month prescribed
- at the discretion of USA HRC, an escort may accompany a Soldier who is unable to travel alone to the place of examination, one person may travel with the Soldier upon request when the record clearly shows that the Soldier is not physically or mentally able to travel without help

e. AHRC will take the actions described below when a periodic examination cannot be carried out. (1) Soldier's failure to report or reply. If a Soldier fails to respond to correspondence concerning the medical examination or fails or refuses to complete a medical examination, USA HRC will make an effort to discover the reason. If such action cannot be justified and the fifth anniversary of placement on the TDRL has not been reached, HRC will notify the Soldier and the Chief, Retired Pay Operations, U.S. Army Finance and Accounting Center (USAFAC), to suspend retired pay. HRC will keep the Soldier's name on the TDRL until the fifth anniversary unless it is removed sooner by other action. (2) Unable to locate Soldier. When reasonable efforts to locate the Soldier are unsuccessful, HRC will take the action prescribed in (1), above. (3) Soldier imprisoned by civil authorities. A report by the responsible MTF commander may indicate that examination of a Soldier is not possible because the Soldier is imprisoned and civil authorities will not permit the examination. If so, HRC will take the action prescribed in (1), above. (4) Removal on fifth anniversary. Soldiers on the TDRL shall not be entitled to permanent retirement or separation with severance pay without a current acceptable medical examination, unless just cause is shown for failure to complete the examination. Six months before the fifth anniversary of placement on the TDRL, HRC will make a final attempt to contact the Soldier or proper civil authorities and arrange a final examination. If this fails and the Soldier does not undergo a

physical examination, HRC will administratively remove him or her from the TDRL on the fifth anniversary of placement on the list without entitlement to any of the benefits.

f. AHRC may restore the Soldier's eligibility to receive disability retirement pay if, after failure to report for and complete the required periodic examination, the Soldier later satisfactorily meets the examination requirements. AHRC will notify the Chief, Retired Pay Division, USAFAC, to restore disability retired pay retroactive to the date the Soldier undergoes the examination provided the Soldier is still qualified for retention on the TDRL. The Soldier's eligibility to receive retired pay may be made retroactive, not to exceed 1 year, if the soldier can show just cause for failure to respond to official notice or orders. A Soldier's name may have been removed from the list as provided in paragraph 7-11b (4). If so, the Soldier may take application to the Army Board for Correction of Military Records (ABCMR).

7. Title 38, U.S.C sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

8. DTM 11-015, 19 December 2011, provides for the Integrated Disability Evaluation System (IDES). The IDES is the joint Department of Defense (DOD) - VA process by which DOD determines whether wounded, ill, or injured Service members are fit for continued military service and by which DOD and VA determine appropriate benefits for Service members who are separated or retired for a service-connected disability.

a. Appendix 10 to Attachment 4 states within 15 days of receiving proposed disability ratings from the (D-RAS), the PEB would apply the ratings using the diagnostic code(s) provided by the D-RAS to the Service member's unfitting conditions and publish the disposition recommendation.

b. Appendix 11 to Attachment 4 (D-RAS Procedures), in effect at the time, stated:

1) Upon receipt of the case files (request for rating and service treatment record) of unfit Service members from PEB administration, the D-RAS determines whether the VA C&P disability examination report is adequate for disability rating purposes.

2) The D-RAS will rate the service member's referred and claimed service-connected disabilities and provide a proposed rating decision, with rationale, to the PEB within 15 days of notification by the PEB administration staff that a service member is unfit.

3) Once the D-RAS has rated all unfitting conditions, the D-RAS will provide their proposed rating decision to the PEB. The D-RAS will defer rating all other conditions that require additional claim development in accordance with VA business practices and regulations.

4) Within 15 days of receipt from the PEB of a service member's written request for a one-time reconsideration of a proposed disability evaluation assigned for unfitting conditions by VA, the VA decision review officer will consider any new documentation or information from the Service member and provide the PEB updated proposed ratings, if any.

5) This is a one-time "request for reconsideration" of the rating(s) from the D-RAS. Subsequent appeals of ratings to VA must occur when the Service member has separated, attained veteran status, and has been formally notified of the rating decision

9. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//