

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230014590

APPLICANT REQUESTS:

- credited with qualifying Reserve retirement years from 5 November 1979 to 4 November 1980 and from 5 November 1980 to 4 November 1981
- issuance of Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter)
- any additional relief equitable
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Brief
- DA Form 5016 (Chronological Statement of Retirement Points), 2 November 2017
- DD Forms 214 (Report of Separation from Active Duty), for the period ending 9 November 1978
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 5 March 1998
- Memorandum, subject: Department of Defense Physical Disability Board of Review (PDBR) Recommendation for [Applicant], 22 May 2017
- Army Review Boards Agency Notification Letter to the Applicant, 22 May 2017
- U.S. Army Physical Disability Agency (USAPDA) Letter to the Applicant, 27 June 2017
- USAPDA Orders 178-05, 27 June 2017 (Permanent Disability Retired List)
- Two Defense Finance and Account Service (DFAS) Letters to the Applicant, 17 August 2017 and 12 March 2020
- Email Correspondence from the Joint Base McGuire-Dix-Lakehurst Retirement Services Officer [Screenshot], 2 November 2017
- DA Form 1383 (Annual or Terminal Statement of Retirement Points), 10 November 1979 to 9 November 1980
- Office of the Adjutant General, Reserve Components Personnel and Administration Center Letter to the Applicant, subject: Statement of Retirement Points, 3 December 1981

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, through counsel, states:

a. Although more than 3 years have elapsed since his discharge, the Board should accept and consider his application for relief. He only recently learned of his right to petition the Board. After learning of his right to petition the Board, he spent a short time researching his options for retaining counsel and undertook efforts to collect the materials necessary for filing. Given his significant sacrifice, the resources he had committed to his efforts to correct the injustices, and the injustices themselves, it is in the interest of justice that the Board accept and consider his application for relief.

b. He enlisted in the U.S. Army on 5 November 1974. As reflected on his DD Form 214 and his DA Form 5016, he served in both the Regular Army (RA) and in the U.S. Army Reserve (USAR) for a total of 19 years, 4 months, and 8 days. He was discharged pursuant to "Disability, Temporary" effective 5 March 1998.

c. In a decision, dated 17 August 2017, his military records were corrected to grant permanent medical retirement with a rating of 40 percent.

d. In a letter, dated 12 March 2020, DFAS informed him he needed to provide a points summary statement and a 20-Year Letter in order to confirm his eligibility for Concurrent Retirement and Disability Pay (CRDP).

e. As reflected in the email correspondence, he has made previous attempts to correct his retirement points calculation. Unfortunately, his request for assistance on this issue at other levels was ignored. He has therefore, exhausted all other administrative remedies and requests the Board grant relief.

f. Currently, his current DA Form 5016 reflects that he has a total of 19 years, 4 months, and 8 days. The same DA Form 5016 reflects that he had no qualifying time served for the years of 5 November 1979 to 4 November 1980 and 5 November 1980 to 4 November 1981.

g. The enclosed DA Form 1383 issued to him for the period of 10 November 1980 to 9 November 1981 reflects he had 15 days of membership points, 15 days of active duty points, and 58 total retirement points for this period.

h. The enclosed Memorandum of Retirement Points, dated 3 December 1981 reflects the applicant received 45 Reserve duty points, 15 active duty points, 15 membership points for a total of 75 points for the period of 10 November 1980 to 9 November 1981.

i. Enclosed is a document reflecting the suggested changes to his DA Form 5016. They request the Board review and consider this document in conjunction with the request for relief.

4. The applicant provides:

a. DFAS letter, 12 March 2020, which requests additional documentation to verify his eligibility which included a points summary statement and a 20-Year Letter. He received a disability retirement and did not have 20 years of day-for-day active duty service. The law authorizing CRDP requires at least 20 years of service.

b. Email from a Retirement Services Officer, which states, he was ineligible for CRDP as he did not have 20 years of service; however he potentially will once his retirement points statement is corrected. She provided supporting documentation showing he had good years of service from 1979 through 1981 and requested his DA Form 5016 be corrected.

c. DA Form 1383 from 10 November 1979 through 9 November 1980, which shows he received 28 inactive duty points, 15 membership points, 15 active duty points, and 58 total retirement points.

5. The applicant's service record shows:

a. He served in the RA from 11 November 1975 to 9 November 1978. He was honorably relieved from active duty with 2 years, 11 months, and 29 days of active duty service.

b. He enlisted in the USAR on 29 September 1981 and remained in the USAR through immediate reenlistments and oaths of extension of enlistment or reenlistment.

c. DA Form 199 (Physical Evaluation Board (PEB) Proceedings), dated 27 January 1992 shows he did not have any functional impairment which prevented satisfactory performance of duty and he was found to be fit for duty and recommended to be returned to duty. He concurred with the finding and waived a formal hearing of his case.

d. On 6 March 1998, by memorandum from the U.S. Total Army Personnel Command, dated 19 December 1997, he was placed on the temporary disability retired

list (TDRL). he was Memorandum: Placement on the temporary disability retired list (TDRL),

e. Orders D247-9, published by the U.S. Total Army Personnel Command on 19 December 1997 show his effective date of retirement as 5 March 1998 and placement on the TDRL effective 6 March 1998. His disability retirement was calculated at 18 years, 10 months and 19 days and his basic pay was calculated at 22 years, 4 months, and 1 day.

f. He was honorably retired on 5 March 1998. His DD Form 214 shows he completed 14 years, 7 months, and 25 days of active service with 4 years, 2 months, and 24 days of total prior active service and 3 years, 5 months, and 12 days of total prior inactive service.

g. On 4 October 2007, a PEB convened and found the applicant physically unfit and recommended a combined rating of 10 percent and hi disposition be separated with severance pay if otherwise qualified. The applicant concurred with the findings of the PEB on 4 October 2007.

h. Orders D292-093, published by the USAPDA on 18 October 2007, removed the applicant from the TDRL effective 6 March 2003 and discharged him from the service because of permanent physical disability. He was entitled to severance pay. He elected to transfer to the retired reserve with entitlement to apply for Reserve retirement pay benefits in lieu of disability severance pay.

i. On 11 April 2017, the PDBR adjudicated the disability rating. After reviewing the application and medical separation case file, the PDBR recommended the separation be re-characterized to reflect permanent disability retirement with a combined disability rating of 40 percent rather than 10 percent.

i. On 22 May 2017, the Deputy Assistant Secretary of the Army (DASA) (Review Boards), approved the PDRB's recommendation. On the same day, the DASA informed the applicant of the re-characterization of his separation.

j. Order 178-05, published by USAPDA on 27 June 2017 placed him on the PDRL with 40 percent disability.

k. His DA Form 5016, dated 17 July 2024, shows from 5 November 1979 through 4 November 1980 and from 5 November 1980 through 4 November 1985 he only received 15 membership points. He had 19 years, 4 months, and 8 days qualifying for retirement.

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 review based on law, policy, and regulation. The Board found sufficient evidence, including a DA Form 1383 (Annual or Terminal Statement of Retirement Points) for the period 10 November 1979 to 9 November 1980, which shows he received 28 active duty training points, 15 membership points, 15 active duty points, and 58 total retirement points and an annual retirement points statements for the period 10 November 1980 to 9 November 1981, which shows he received 45 reserve duty training points, 15 active duty points, 15 membership points, and 75 total retirement points. The Board concluded these two documents show he qualified for retirement for those retirement years from 5 November 1979 to 4 November 1980 and from 5 November 1980 to 4 November 1981.
2. The applicant's DA Form 5016, dated 17 July 2024, shows he had 19 years, 4 months, and 8 days of qualifying service for retirement. Based on the discussion above and being awarded two additional qualifying years of service, the Board determined the applicant qualifies for issuance of Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).
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.

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. In pertinent part, 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. 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) 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 (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.

b. Paragraph 3-5 (DA Form 5016) provides that, these statements — (1) Provide a permanent record of the total retirement points Soldiers earn during an anniversary year. (2) Inform Soldiers whether they earned sufficient points for a qualifying year for retirement or retention in an active status. (3) Provide Soldiers an opportunity to review their retirement points to request corrections. The DA Form 5016 is initiated and prepared by HRC from the processing of data furnished manually and utilizing automation. Prepared for Soldiers under HRC command to include obligated enlisted Soldiers who have earned at least one retirement point. Prepared to cover a full anniversary year of active duty for training or active duty. Prepared for all Soldiers regardless of the number of points awarded. Issued annually and upon correction to a record.

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 Army National Guard (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 (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation) prescribes Army policy for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. Paragraph 4-7 (Medical Evaluation Board (MEB) Policy) states an MEB is convened to determine whether a Soldier's medical condition(s) meets medical retention standards per AR 40-501 (Standards of Medical Fitness). Paragraph 4-19 (Physical Evaluation Board (PEB) Policy) states PEBs determined fitness for purposes of Soldiers retention, separation, or retirement for disability under 10 USC, Chapter 61, or separation for disability without entitlement to disability benefits under other than 10 USC, Chapter 61.

7. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent.

8. Title 38, USC, Section 1131 (Peacetime Disability Compensation – Basic Entitlement) provides for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the U.S. will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

//NOTHING FOLLOWS//