

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20230014649

APPLICANT REQUESTS:

- amendment of his U.S. Army Physical Disability Agency (USAPDA) Orders Number D120-40 to be calculated to match his National Guard Bureau (NGB) Form 23B (Army National Guard (ARNG) Retirement Points History Statement)
- correction of his NGB Form 23B to reflect his service time while on the Temporary Disability Retired List (TDRL) during the period of 4 January 2007 through 29 April 2008

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

- DD Form 149 (Application for Correction of Military Record)
- U.S. Army Human Resources Command (AHRC) Orders Number A-06-512540
- Headquarters (HQs), U.S. Infantry Center Orders Number 362-2214
- USAPDA Orders Number D120-40
- NGB Form 23B, 14 April 2023

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 requests the amendment of his USAPDA Orders to correction his service calculation to match his retirement points and creditable years of service on his NGB Form 23B. When he applied for his retired pay, he was informed by the Defense Finance and Accounting Service he could not receive his Concurrent Retirement and Disability Pay (CRDP) or his retirement pay because his service calculation on the orders which placed him on the Permanent Disability Retired List (PDRL), which stated not applicable and did not match his NGB Form 23B.

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

a. On 18 November 1982, the applicant enlisted in the Army National Guard of the United States (ARNGUS) and he had continuous service through extensions or reenlistments.

b. On 15 March 2003, Orders Number 074-011, issued by [REDACTED] Military Department Personnel Service Branch, ordered the applicant to active duty in support of Operation Enduring Freedom, effective 15 March 2003.

c. On 19 November 2004, the applicant was honorably released from active duty. DD Form 214 shows he completed 1-year, 8-months, and 5-days of active service.

d. On 1 June 2005, Orders Number A-06-512540, issued by AHRC, ordered the applicant to active duty, effective 16 May 2005, to voluntarily participate in the Reserve component medical holdover medical retention processing program for completion of medical care and treatment.

e. The applicant's service record was void of his DD Form 214 for this period of active service.

f. Provided by the applicant, on 28 December 2006, Orders Number 362-2214, issued by HQs, U.S. Infantry Center, released the applicant from active duty due to physical disability incurred while entitled to basic pay and placed on the TDRL, effective 4 January 2007, with 30 percent disability under Title 10 USC, section 1405 with 8-years, 1-month, and 13-days of service.

g. NGB Form 22 (Report of Separation and Record of Service) shows the applicant was honorably released from the ARNGUS and assigned to the U.S. Army Reserve (USAR) Control Group (Retired Reserve) and placed on the TDRL. It also shows in items:

- 10a (Net Service This Period): 24-years, 1-month, and 17-days
- 18 (Remarks): active duty service:
  - 15 March 2003 through 19 November 2004
  - 16 May 2005 through 3 January 2007

h. On 9 March 2007, Orders Number 068-511, issued by the State Military Department Joint Force HQs [REDACTED] National Guard, discharged the applicant from the ARNG and assigned him to the USAR Control Group (Retired Reserve) and placed him on the TDRL, effective 4 January 2007.

i. On 24 March 2008, the Physical Evaluation Board found the applicant physically unfit for retention and recommended he be placed on the PDRL with a 50 percent disability rating. The applicant concurred with the findings and waived a formal hearing.

j. On 29 April 2008, Orders Number D120-40, issued by the USAPDA, removed the applicant from the TDRL and placed him on the PDRL effective 29 April 2008, with a 50 percent disability rating.

4. The applicant provided his NGB Form 23B with shows he earned:

- 1,769 active duty points
- 3,053 total career points
- 3,000 total points for retired pay
- 24-years, 1-month, and 17-days of creditable service for retired pay

5. On 24 May 2024, in the processing of his case, the NGB provided an advisory opinion regarding the applicant's request for amendment of the order that placed him on the PDRL to match his total points for retired pay as annotated on his NGB Form 23B and service credit for the period of 4 January 2007 through 29 April 2008 while he was on the TDRL. The advisory official recommended partial approval of the applicant's request. The applicant's PDRL orders show creditable service length for disability retirement as "Not Applicable." The TDRL order already has his Title 10 USC section 1405 service calculated as: 8-years, 1-month, and 13-days which equals 2,923 total points for retired pay. The applicant provided his NGB Form 23B which shows 3,000 total points for retired pay, a difference of 77 points. Based on this information, the Soldier's TDRL order should indicate creditable service length for disability retirement of 8-years and 4-months. It is the opinion of the NGB that USAPDA should re-publish the applicant's orders to reflect his service as 8-years, 4-months and zero day, utilizing his NGB Form 23B which captures the missing 77 retirement points.

It is recommended the Army Review Boards Agency (ARBA) disapprove the applicant's request for service credit while he was on the TDRL during the period of 4 January 2007 through 29 April 2008 as he was not an active member of the ARNG and it does not count as service toward basic pay for retirement.

6. On 4 June 2024, the ARBA, Case Management Division, provided the applicant the advisory opinion for review and comment. 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 partial relief is warranted.
2. The Board concurred with the conclusion of the advisory official that the applicant's retirement orders did not capture all of his creditable service and should reflect creditable service for disability retirement of 8 years and 4 months. The Board determined the applicant's record should be corrected by revising his retirement orders to reflect this creditable service for disability retirement.
3. The Board also concurred with the advisory official's conclusion that the applicant's time on the TDRL is not creditable ARNG service as he was no longer a member of the ARNG during that time. The Board determined there is no basis for relief with regard to this portion of the applicant's request.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending USAPDA Orders D120-40, 29 April 2008, to show "Disability retirement: 8 years and 4 months."

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

3/4/2025

X

CHAIRPERSON

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. Title 38 United States Code (USC), section 5304 (Prohibition against duplication of benefits), (a) (1) except as provided in Title 10 USC, section 1414 or to the extent that retirement pay is waived under other provisions of law, not more than one award of pension, compensation, emergency officers', regular, or reserve retirement pay, shall be made concurrently to any person based on such person's own service or concurrently to any person based on the service of any other person. (2) Notwithstanding the provisions of paragraph (1) of this subsection and of section 5305 of this title, pension under section 1521 or 1541 of this title may be paid to a person entitled to receive retired or retirement pay described in section 5305 of this title concurrently with such person's receipt of such retired or retirement pay if the annual amount of such retired or retirement pay is counted as annual income for the purposes of chapter 15 of this title.

3. Title 10 USC, section 1201 (Regulars and members on active duty for more than 30-days: retirement), upon a determination by the Secretary concerned that a member is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b). (b) Required Determinations of Disability, determinations by the Secretary that: based upon accepted medical principles, the disability is of a permanent nature and stable; the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and either; the member has at least 20-years of service computed under section 1208 of this title; or the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either:

- disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service);
- disability is the proximate result of performing active duty;
- disability was incurred in line of duty in time of war or national emergency; or
- disability was incurred in line of duty after 14 September 1978

4. Title 10 USC, section 1202 (Regulars and members on active duty for more than 30-days: temporary disability retired list), Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

5. Title 10 USC, section 1405 (Years of service), for the purposes of the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member are computed by adding:

- his years of active service;
- the years of service, not included in clause (1), with which he was entitled to be credited on May 31, 1958, in computing his basic pay; and
- the years of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 12733 of this title if he were entitled to retired pay under section 12731 of this title

6. Army Regulation 600-8-105 (Military Orders) states in paragraph 2-25, only the organization that published the original order may amend, rescind, or revoke the order.

//NOTHING FOLLOWS//