

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20230014939

APPLICANT REQUESTS:

- reconsideration of his previous request for cancellation/remittance of debt related to Fiscal Year 1992 Voluntary Early Transition Program with entitlement to Voluntary Separation Incentive (VSI)/Special Separation Bonus (SSB)
- issuance of a Notification of Eligibility for Retired Pay at Age 60 (15-Year Letter)

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty), ending 27 June 1979
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 7 November 1983
- Transition Assistance Management Program Letter, 5 October 1994
- DD Form 214, ending 30 June 1992
- DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty), 6 November 1992
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20210015304 Denial Letter, 30 May 2023
- Retiree Account Statement, 23 October 2023
- Applicant Letters to Defense Finance and Accounting Service (DFAS)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20210015304 on 1 September 2022.

2. The applicant states, in part:

a. His prior denial noted that he would not be eligible for retired pay based on length of service. However, his DD Forms 214 show he completed more than 15 years of continuous active-duty service and another six months of delayed enlistment. Being placed in a Retired Reserve status in September 1999 should qualify for a fifteen-year

letter. He contacted the U.S. Army Human Resources Command (AHRC) to find answers on the status and was told to apply for Retirement. He received nothing from AHRC on any promotion board or status after separating from active duty in 1992 until receiving the retirement order in 1999.

b. He also contacted DFAS shortly after submitting a correction request form on stopping the retirement pay until this is sorted and yet they continue to pay it. He requests relief of repayment due to a series of errors beyond his control.

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

a. On 6 December 1976, he enlisted in the U.S. Army Reserve and was placed in the Delayed Entry Program (DEP). On 24 May 1977, he was released from the DEP and enlisted in the Regular Army on 25 May 1977.

b. His DD Form 214, ending 27 June 1979 reflects an honorable discharge from active duty with service from 25 May 1977 to 27 June 1979 for a net active service this period of 2 years, 1 month, and 3 days.

c. On 28 June 1979, he reenlisted in the Regular Army for 6 years. His DD Form 214, ending 7 November 1983 reflects an honorable discharge from active duty. Item 12 (Record of Service) shows service from 28 June 1979 to 7 November 1983 for a net active service this period of 4 years, 4 months, and 10 days and total prior active service of 2 years, 1 month, and 3 days.

d. On 8 November 1983, Headquarters, United States Army Aviation Center and Fort Rucker issued a Memorandum for Appointment as a Reserve Warrant Officer of the Army. He was appointed as a Reserve warrant officer and executed an oath of office.

e. On 4 May 1992, the 189th Personnel Service Company issued Orders Number 109-42 reassigning him to the U.S. Army transition point for transition processing and honorable release from active duty with transfer to the U.S. Army Reserve (USAR) Personnel Center (Reinforcement) effective 30 June 1992. These orders state "officer separated under the VSI SSB."

f. His DD Form 214, ending 30 June 1992 reflects an honorable release from active duty in the rank of chief warrant officer two (CW2) under the provisions of chapter 3 of Army Regulation 635-100 (Personnel Separations – Officer Personnel), section XVI. Item 6 (Reserve Obligation Term Date) shows 30 June 2022; Item 9 (Command to which Transferred) shows USAR Control Group (Reinforcement).

- Item 12; shows service from 8 November 1983 to 30 June 1992 for a net active service this period of 8 years, 7 months, and 23 days with total prior active service of 6 years, 5 months, and 13 days
- Item 18 (Remarks) shows "VSI payment of \$10,056.36 (first payment) for 30 years"

g. On 21 September 1999, the U.S. Army Reserve Personnel Command issued Orders Number C-09-930858 releasing him from the USAR Control Group (Reinforcement) and assigning him to the Retired Reserve due to non-selection for promotion, effective 5 October 1999.

h. On 24 November 2020, the U.S. Army Human Resources Command (HRC) issued Orders Number C11-091098 for an honorable retirement at the rank of chief warrant officer three (CW3) with a retroactive effective date of 31 October 2019.

i. On 21 April 2021, AHRC issued Orders Number C11-091098R revoking Orders Number C11-091098 removing him from the Retired List.

j. Also on 21 April 2021, AHRC informed the applicant the reason his retirement orders were revoked. The applicant is not entitled to a Non-Regular Retirement through the Gray Area Retirements (GAR) Branch, as he did not qualify for either a 15 or 20 year letter. The applicant is a recipient of the Voluntary Separation Incentive (VSI) Program. His DD214/215 (block 18) states that he is entitled to payments for 30 years. At this time, the applicant is receiving a Non-Regular Retirement which was processed in error.

k. DA Form 5016 (Chronological Statement of Retirement Points) dated 17 March 2022 shows he earned 15 years, 5 months, and 19 days qualifying for retirement.

4. ABCMR Docket Number AR20210015304, decided on 1 September 2022, wherein he requested discharge under the FY92 Enlisted Voluntary Early Transition Program with entitlement to VSI/SSB, placement on the retired list, and cancellation/remittance of debt related to VSI. The Board denied his request for the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the overall merits were insufficient as a basis for correction of the applicant's records.

5. The applicant provides the following:

a. Transition Assistance Management Program Letter, dated 5 October 1994 providing the applicant copies of the DD Form 215 showing his VSI payment was changed from \$10,056.36 to \$10,056.36 for 30 years and 2 months.

b. Retiree Account Statement, dated 23 October 2023 showing his retiree pay and debt payment in the amount of \$1,170.00.

c. Applicant Letters to DFAS wherein the applicant requested assistance with his VSI repayments with no resolution.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant completed 8 years, 7 months, and 23 days of commissioned active service and 6 years, 5 months, and 13 days of prior enlisted service for a total of 15 years, 1 month and 6 days of active service. He was released from active duty under the separated from active duty under the FY92 Enlisted Voluntary Early Transition Program with entitlement to the Voluntary Separation Incentive (VSI)/Special Separation Benefit (SSB). Upon his release from active duty, he was transferred to the U.S. Army Reserve.

a. Issuance of a Notification of Eligibility for Retired Pay at Age 60: Deny. The applicant completed over 15 years of active service and after his release from active duty, he was transferred to the U.S. Army Reserve but did not earn any qualifying years of service. He was separated due to non-selection for promotion. Initially, he was issued orders placing him on the retired list. But these orders were revoked because the orders were issued in error. He had not completed at least 20 qualifying years of service towards non-regular retirement. The applicant does not qualify for a 15-year letter because such letter is issued to a member of the Selected Reserve who has completed at least 15 but less than 20 qualifying years of service and was separated due to being found unfit because of physical disability. The applicant was not separated for that reason. He was separated for non-promotion. Therefore, the Board determined he does not meet the statutory requirements for a 15-year letter.

b. The applicant was erroneously issued orders on 24 November 2020 placing him on the retired list at the rank of CW3 with a retroactive effective date of 31 October 2019. However, his placement on the retired list was in error since he is a recipient of the Voluntary Separation Incentive (VSI) Program and did not qualify for retired pay. Therefore, any retired pay he received was subject to recoupment. The Board found no error or injustice in the recoupment of retired pay he did not earn.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. For the issue being reconsidered (recoupment), 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 to amend the decision of the ABCMR set forth in Docket Number AR20210015304 on 1 September 2022.
2. For the new issue (15-Year Letter), 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. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

2. Title 10, U.S. Code, § 12731a - Temporary special retirement qualification authority.

a. Retirement With At Least 15 Years of Service.—For the purposes of section 12731 of this title, the Secretary concerned may—

(1) during the period described in subsection (b), determine to treat a member of the Selected Reserve of a reserve component of the armed force under the jurisdiction of that Secretary as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member— (A) as of October 1, 1991, has completed at least 15, and less than 20, years of service computed under section 12732 of this title; or (B) after that date and before the end of the period described in subsection (b), completes 15 years of service computed under that section; and

(2) upon the request of the member submitted to the Secretary, transfer the member to the Retired Reserve.

b. Period of Authority.— The period referred to in subsection (a)(1) is the period beginning on October 23, 1992, and ending on December 31, 2001.

c. Applicability Subject to Needs of the Service.—

(1) The Secretary concerned may limit the applicability of subsection (a) to any category of personnel defined by the Secretary in order to meet a need of the armed force under the jurisdiction of the Secretary to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2713).

(3) Notwithstanding the provisions of section 4415(2) of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 106 Stat. 2714), the Secretary concerned may, consistent with the other provisions of this section, provide the notification required by section 12731(d) of this title to a member who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability. Such notification may not be made if the disability is the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned or was incurred during a period of unauthorized absence.

3. Title 10, U.S. Code § 12731b - Special rule for members with physical disabilities not incurred in line of duty.

a. In the case of a member of the Selected Reserve of a reserve component who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for purposes of section 12731 of this title, determine to treat the member as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member has completed at least 15, and less than 20, years of service computed under section 12732 of this title.

b. Notification under subsection (a) may not be made if— (1) the disability was the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned; or (2) disability was incurred during a period of unauthorized absence.

4. MILPER Message 92-85, dated 7 January 1992, announced the implementation instructions for the enlisted voluntary incentive programs in support of the Army's drawdown. Incentives were offered to separate Soldiers who under existing policies would have been allowed to continue on active duty until eligible for retirement. The VSI and SSB were offered to selected members. Soldiers who met the eligibility criteria were required to enter into a written agreement to separate from active duty and accept an enlistment or transfer to the Ready Reserve. Applications for separations under the provisions of the VSI/SSB did not guarantee approval. Only those applications that met the strict requirements established by Headquarters, Department of the Army (HQDA), were approved. Category 3 requests applied to Soldiers who were in the grade of sergeant/E-5 or above with 9 or more years of active service as of 31 December 1991 in selected military occupational specialties. The approval authority for this category was the Commander, U.S. Total Army Personnel Command (now known as the U.S. Army Human Resources Command), Alexandria, Virginia. The application window for category 3 Soldiers closed on 29 February 1992. The Commander, USAHRC, determined which applications were approved or disapproved and notified Soldiers of final action through their chain of command starting on or after 15 April 1992.

5. For SSB, an eligible member of the Armed Forces would receive a lump sum payment equal to 15 percent of the Soldier's annual basic pay multiplied by his years of active service. Soldiers who applied for this incentive were required to enter into a written agreement to serve in the Ready Reserve for a period of not less than 3 years in addition to any remaining military service obligation based in statute following the separation from active duty. The VSI was an annual annuity payment equal to 2.5 percent of the Soldier's annual basic pay multiplied by his years of service and paid for

twice the number of years served. Soldiers approved for VSI must have been appointed, enlisted, or transferred to the Ready Reserve for the entire period they received VSI annual payments.

6. AR 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. Request for remission or cancellation of indebtedness must be based on injustice, hardship, or both. Title 10 USC, section 4837 states a Soldier's debt may be remitted or canceled in cases arising from payments made in error to a Soldier, debts incurred while serving on active duty or in an active status as a Soldier, and debts acknowledged as valid.

7. Title 10 USC, section 4837 (Settlement of accounts: remission or cancellation of indebtedness of members):

a. In general. -The Secretary of the Army may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving on active duty as a member of the Army, but only if the Secretary considers such action to be in the best interest of the United States.

b. Retroactive applicability to certain debts. -The authority in subsection (a) may be exercised with respect to any debt covered by that subsection that is incurred on or after 7 October 2001.

c. Regulations. --This section shall be administered under regulations prescribed by the Secretary of Defense.

8. Title 10, USC, section 1175 (Voluntary Separation Incentive) states, consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary of Homeland Security may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c). Except as provided in subparagraph (B), a financial incentive provided a member under this section shall be paid for the period equal to twice the number of years of service of the member, computed as provided in subsection (e)(5). A member who is receiving VSI payments shall not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by the Department of Veterans Affairs, but there shall be deducted from voluntary separation incentive payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from VSI payments for any disability compensation received because of an earlier

period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty.

9. Department of Defense Instruction 1332.29 (Eligibility of Regular and Reserve Personnel for Separation Pay) in effect at the time section 3.6.2 states Service members who receive separation pay under this Instruction, or severance pay or readjustment pay under any law based on active military service, and become eligible for disability compensation administered by the VA shall have deducted from such disability compensation an amount equal to the total amount of separation pay, severance pay, or readjustment pay received.

//NOTHING FOLLOWS//