

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 September 2024

DOCKET NUMBER: AR20230015237

APPLICANT REQUESTS: reconsideration of his previous request for the correction of his service record to reflect he completed approximately 4-years of active service versus 2.34-years of active service with entitlement to back pay and allowances.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) service ending 16 August 1995
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) service ending 16 March 2000
- DA Form 1059 (Service School Academic Evaluation Report), 12 December 2001
- Headquarters (HQs), 81st Regional Support Command Orders Number 02-168-00024
- HQs, U.S. Infantry Center Orders Number 180-2239
- DD Form 214 service ending 7 July 2006
- U.S. Army Physical Disability Agency (USAPDA) Orders Number D171-09
- NGB Form 23B (Army National Guard (ARNG) Retirement Points History Statement), 26 September 2017
- DA Form 5016 (Chronological Statement of Retirement Points)
- DA Form 199 (USAPDA Revised Physical Evaluation Board (PEB) Proceedings)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20150013790 on 15 November 2016.
2. The applicant states he provided his service record and all the evidence to show his active duty time should be four-years or close to 3.8 years. Despite this the Army failed to credit him with the correct years of active service and years of service to determine his retired pay.

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

- a. On 17 March 1994, the applicant enlisted in the ARNG.
- b. On 29 July 1994, the applicant graduated from Basic Combat Training at Fort Sill, OK.
- c. The applicant's DD Form 214 shows the applicant was ordered to active duty for training, effective 20 June 1995. He was released from active duty on 16 August 1995. DD Form 214 shows the applicant completed 1-month and 27-days of active service with 2 months of prior active service.
- d. The applicant's NGB Form 22 shows he was honorably released from the ARNG on 16 March 2000 after completion of 6-years of service and assigned to the U.S. Army Reserve (USAR) Control Group (Annual Training). It also shows in item 18 (Remarks) the applicant was ordered to Initial Active Duty for Training during the periods of:
  - 31 March through 29 July 1994
  - 20 June through 16 August 1995
- e. The applicant's service record was void of evidence of his assignment to a USAR Troop Program Unit (TPU).
- f. On 26 January 2001, Orders Number 01-026-015, issued by HQs, 81st Regional Support Command, the applicant was assigned to the USAR Control Group (Annual Training), effective 6 July 2000 for failure to report to the USAR TPU.
- g. On 25 April 2001, Orders Number C-04-111583, issued by the U. S. Army Reserve Personnel Command, the applicant was released from the USAR Control Group (Annual Training) and assigned to a USAR TPU, effective 24 April 2001.
- h. The applicant's DA Form 1059 shows he achieved course standards attending the 54B (Chemical Operations Specialist) course during the period of 25 November through 12 December 2001 (18-days).
- i. The applicant's service record is void of evidence he was ordered to active duty.
- j. On 27 February 2006, Orders Number A-02-604563, issued by the U.S. Army Human Resources Command, the applicant was retained on active duty, effective 24 February 2006, to voluntarily participate in Reserve component medial holdover medical retention processing program for completion of medical care and treatment.

k. On 26 June 2006, the PEB found the applicant physically unfit for retention and recommended he be placed on the Temporary Disability Retired List (TDRL).

l. On 29 June 2006, Orders Number 180-2239, issued by HQs, U.S. Infantry Center, the applicant was placed on the TDRL, effective 8 July 2006, with a 30 percent disability in the rank of staff sergeant. His disability retirement was based on 2-years, 5-months, and 7-days of service. The applicant's years of service was in accordance with Title 10 United States Code (USC), section 1405 (Years of Service) was 3-years, 9-months, and 16-days. The order also shows the applicant did not complete over 4-years of active service.

m. The applicant was honorably retired from active duty effective 7 July 2006 due to a temporary disability. DD Form 214 shows the applicant completed 1-year, 7-months, and 28-days of active service with 9 months and 9 days of prior active service.

n. On 6 June 2008, the PEB found the applicant physically unfit for retention and recommended he be placed on the Permanent Disability Retired List (PDRL) with 60 percent disability.

o. On 19 June 2008, Orders Number D171-09, issued by the USAPDA, the applicant was removed from the TDRL, effective 19 June 2008, and placed on the PDRL with 60 percent disability. The order also stated the applicant did not complete over 4-years of active service.

p. The applicant's NGB Form 23 dated 19 October 2010, shows the applicant earned during retirement year ending:

- 16 March 1995 – 30 Inactive Duty Training (IDT) points, 15 membership points, and 121 Active Duty Training (ADT) points for a total of 166 creditable points
- 16 March 1996 – 25 IDT points, 15 membership points, and 58 ADT points for a total of 113 creditable points
- 16 March 1997 – 43 IDT points, 15 membership points, and zero ADT points for a total of 58 creditable points
- 16 March 1998 – 45 IDT points, 15 membership points, and zero ADT points for a total of 60 creditable points
- 16 March 1999 – 47 IDT points, 15 membership points, and zero ADT points for a total of 62 creditable points
- 16 March 2000 – 39 IDT points, 15 membership points, and zero ADT points for a total of 54 creditable points

The applicant earned 6-years of creditable service for retired pay with 179 ADT points for a total of 513 points.

q. On 15 November 2016, the ABCMR denied the applicant's request for the correction of his service record to reflect he completed 4-years of active service versus 2.34-years of active service with the entitlement to back pay and allowances. The Board determined his service was properly calculated and there was no evidence of error or injustice. He earned 845 active duty points divided by 360 days equals 2.35-years.

r. On 13 September 2021:

(1) The USAPDA PEB found the applicant to be physically unfit for retention and recommended he be placed on the PDRL with 70 percent disability. The findings of his Board implemented the decision of the ABCMR.

(2) Orders Number D 256-43, issued by HQs, USAPDA, amended USAPDA Orders Number D 171-09 to change the disability percentage to 70 percent as directed by the ABCMR Docket Number AR20190013693.

s. The applicant's DA Form 5016 (Chronological Statement of Retirement Points) shows he earned:

- 356 IDT points
- 185 membership points
- 908 ADT points
- 11-years, 3-months, and 21-days qualifying for retirement
- 1,434 total creditable points

t. The applicant's Soldier Management Services - WEB Portal retirement point detail shows the applicant's USAR active service periods:

- 6 November through 11 December 2001 (1-month and 6-days)
- 12 through 13 October 2002 (2-days)
- 17 November through 6 December 2003 (20-days)
- 19 through 21 July 2004 (3-days)
- 10 November 2004 through 7 July 2006 (1-year, 7-months and 28-days)

4. The applicant provides:

a. NGB Form 23B dated 26 September 2017 shows the applicant earned 242 ADT points, 578 total points for retired pay with 6 creditable years of service for retired pay while assigned to the ARNG.

b. DA Form 5016 dated 6 December 2017 shows the applicant earned 356 IDT points, 185 membership points, and 908 ADT points for a total of 1,434 creditable points with 11-years, 3-months, and 21-days of qualifying service for retired pay.

5. On 19 July 2024, in the processing of this case, AHRC provided an advisory opinion regarding the applicants request for the correction of his service record. The advisory official stated after a review of the applicant's service record and supporting documents, his DA Form 5016 is correct as issued.

6. On 23 July 2024, the Army Review Boards, Agency Case Management Division, provided the applicant the advisory opinion for review and comment.

7. On 1 August 2024, the applicant responded stating the ABCMR should reject the advisory opinion in whole as AHRC contradicted its own records and provided uncorroborated statements regarding his service records from the North Carolina ARNG. AHRC records also show he was not paid for 45-days of accrued leave before he was placed on the TDRL which was not added to his active service credit. AHRC does not show active duty for training for attending a service school for MOS reclassification from 13B (Cannon Crewman) to 54B.

When he transferred from the ARNG to the USAR he was assigned to two units simultaneously. He was attending unit training assembly with one unit while the other unit coded him as absent without leave and was not being paid.

AHRC did not consider all of the evidence and did not corroborate his active service while he was assigned to the ARNG but merely recounted the event without proper validation. It also did not act in good faith when stating he could request copies of his leave and earnings statements when those records no longer exist and the Board provided him 14-days to respond to the advisory opinion which conflicted with the leave and earnings statement request form which states it takes 30 to 60-days to process. It appears the Board is bias and has already made a decision based on a document that contradicts his official service record and supported evidence. He should receive credit for 3.83-years active service based on the evidence, the Board is obligated to correct the injustice and provide the necessary corrections in order to receive the correct compensation.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.

2. A majority of the Board found that the applicant's service time was incorrectly calculated based only on his active duty points when, as a Reserve Component Soldier, the service time should have been calculated using all of his points. This calculation (1,434 points divided by 360) yields service time of 3.98 years. A majority of the Board

determined the applicant's record should be corrected to show his service time for pay upon retirement was 3.98 years.

3. The member in the minority concurred with the conclusion of the advisory official that there was no error in the calculation of the applicant's service time.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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 by correcting his retirement orders to show his service time for disability retirement is 3.98 years.

2/26/2025

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. The Defense Finance Accounting Service (DFAS) website contains Retired Pay information (<http://www.dfas.mil/retiredmilitary/plan/estimate.html>). It specifically states Reserve service is "converted" to active service by dividing retirement points by 360.

2. Title 10 United States Code (USC), section 12733 (Computation of retired pay: computation of years of service), For the purpose of computing the retired pay of a person under this chapter, the person's years of service and any fraction of such a year are computed by dividing 360 into the sum of the following:

- person's days of active service
- person's days of full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned
- One day for each point credited to the person, but not more than:
  - 60-days in any one year of service before the year of service that includes 23 September 1996;
  - 75-days in the year of service that includes 23 September 1996, and in any subsequent year of service before the year of service that includes 30 October 2000;
  - 90-days in the year of service that includes 30 October 2000, and in any subsequent year of service before the year of service that includes 30 October 2007; and
  - 130-days in the year of service that includes 30 October 2007, and in any subsequent year of service

3. Department of Defense Financial Management Regulation 7000.14-R, Volume 7B, chapter 1, Paragraph 010207 (Service Creditable for Disability Retirement), B, a member who is not a member of a Regular Component of the Armed Forces is credited with service calculated as the sum of:

- all days of active service
- all day of full time service while performing annual training duty or attending prescribed periods of instruction designated a s a Military Service school by law or by the Secretary concerned; and
- One day for each point, but not more than:
  - 130-days in the year of service that includes 30 October 2007 and in any subsequent year of service credited for attendance at drills or periods of equivalent instruction,
  - between 30 October 2000 and 29 October 2007, maximum number was 90-days
  - between 23 September 1996 and 29 October 2000, the maximum number was 75-days, and
  - 60-days before 23 September 1996

The credit includes points at the rate of 15 per year for membership in a Reserve Component of an Armed Force, in the Army or the Air Force without component, or service before 1 July 1949.

//NOTHING FOLLOWS//