

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 October 2024

DOCKET NUMBER: AR20230015247

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 31 August 2022 to reflect his entitlement to involuntary separation pay
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Email from Senator [REDACTED] 4 January 2022
- Email from applicant
- Letter from Senator [REDACTED]
- Letter to Senator [REDACTED] undated
- DD Form 214 for service ending 31 August 2022
- Email from the Inspector General (IG)
- Letter from the IG
- Letter to Senator [REDACTED] 21 August 2023
- E-mail from Senator [REDACTED] 22 August 2023

FACTS:

1. The applicant states he signed his DD Form 214 on 12 July 2022, which did not state he was entitled to separation pay. He appealed this error through the IG office and Senator [REDACTED]. He received the response that his separation orders stated he was entitled to separation pay and therefore his DD Form 214 should reflect the same.

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

a. On 17 May 2010, Orders Number 29-1-A-049, issued by the U.S. Army Human Resources Command (AHRC), appointed the applicant in the Regular Army in the rank of lieutenant colonel.

b. On 27 May 2010, Orders Number A-05-015943, issued by AHRC, ordered the applicant to active duty, effective 15 July 2010, to fulfill an active duty requirement in a voluntary indefinite status.

c. On 8 June 2018, the Assistant Secretary of the Army for Manpower and Reserve Affairs memorandum, subject: Request for Deferment of Mandatory Removal Date (MRD) – Colonel (COL) [REDACTED] (the applicant), stated the applicant was approved for a mandatory removal date extension until 31 January 2022.

d. On 5 November 2018, the Assistant Secretary of the Army for Manpower and Reserve Affairs memorandum, subject: Request for Deferment of MRD – COL [REDACTED] (the applicant), stated the applicant was approved for a mandatory removal date extension until 31 August 2022.

e. On 18 March 2022, Orders Number 077-0006, issued by the Installation Management Command – Europe U.S. Adjutant General Bavaria Transition Center, assigned the applicant to the U.S. Army transition point, effective 18 March 2022. The additional instructions stated the applicant was entitled to full separation pay in accordance with Title 10 United States Code (USC), section 1174.

f. On 31 August 2022, the applicant was honorably discharged by reason of maximum age. A DD Form 214 shows the applicant completed 12-years, 1-month, and 16-days of active service. Block 18 (Remarks) does not reflect his eligibility for separation pay. The applicant's service record is void of a DA Form 7783 (Written Service Agreement and Mandatory Disclosure Statement).

g. On 23 August 2023, the Army Board for Correction of Military Records unanimously recommended to grant full relief in response to the applicant's request for:

- waiver of MRD
- retroactive retirement due to age

However, after review of the findings, conclusions and the Board member recommendations, the Deputy Assistant Secretary of the Army (Review Boards) found that relief was not warranted.

3. The applicant provides:

a. E-mail from Senator [REDACTED] dated 4 January 2022, in response to the applicant's request to get verbiage included in the National Defense Authorization Act (NDAA) for Fiscal Year 2021 that would authorize Medical and Dental Corps officers to received retirement pay regardless of years of service, states Congress was unable to get the

language into the NDAA for Fiscal Year 2022 and Congress was currently focused on Fiscal Year 2023.

b. Letter from Senator [REDACTED] to the Secretary of the Army dated 30 July 2022, which states the applicant was not guaranteed his retirement and health care benefits he earned for his military service due to the Army's change in policy and Congressional action. Senator [REDACTED] urged the Secretary of the Army to grandfather him to receive those benefits that were promised when he commissioned. For decades, the Army had the authority to appoint commissioned officers in the Medical and Dental Corps and to provided them with a non-disability retirement with less than 20-years of active Federal service if they reached their mandatory retirement age before obtaining 20-years of active Federal service. The Army relied on this policy as a recruitment tool during the Iraq and Afghanistan wars to meet the country's needs at the time. However, about 2 years ago the Army changed its interpretation of the law and determined it no longer had the authority to grant these benefits. The Army requested and received a change to the NDAA for Fiscal Year 2021 to clarify the law and its authority to guarantee retirement and health care benefits for the Medical and Dental Corps officers who reach mandatory retirement age. Unfortunately, the legislation did not protect officers who were commissioned under the previous policy. The applicant was commissioned in the Army in 2010 at the age of 52 and was extended beyond the age of 62 in 2017 to serve until age 64 years of age. If he proceeded with his retirement in 2020, he would have been grandfathered in the NDAA for Fiscal Year 2021. However, because his mandatory retirement was extended and allowed him to serve his country the Army rejected his retirement request and was forced to separate him without the previously promised benefits. He should not be punished for his willingness to continue to serve.

c. Office of the Deputy Chief of Staff G1 letter to Senator [REDACTED] stated prior to December 2019, the Army mandatorily retired officers at the end of the month in which they reached age 62, regardless of the total amount of active Federal service accrued. The Defense Finance and Accounting Service (DFAS) conducted a legal review of this retirement practice in late 2019. This ultimately led to the Office of the Under Secretary of Defense for Personnel and Readiness issuing a directive to all services to cease retiring any officer at the age of 62, unless the officer accrued 20 or more years of active service. Therefore, they are unable to retire any officer who has not completed 20 years of active service by the time they reach the age of 62. While the applicant was retained beyond age 62 until 31 August 2022, he did not complete 20 years of active service and will not be eligible for military service retirement. The Secretary of the Army has no authority to grandfather or retire the applicant. However, since the applicant completed more than 6 years of active service, he would receive separation pay upon separation from the Army.

d. E-mail from the IG office dated 30 June 2023 stated in order for the applicant to be eligible for separation pay, he needs to enter into a written service agreement prior to

his separation. Since he declined to enter into a written agreement, he is not eligible for separation pay.

e. Letter from the IG office dated 5 July 2023 stated separation benefits fall under the jurisdiction of AHRC.

f. Letter from the Office of the Deputy Chief of Staff G1 dated 21 August 2023 to Senator ■ stated a review of the applicant's service record revealed the applicant's separation orders properly indicated he was entitled to full separation pay. However, his DD Form 214 failed to indicate his eligibility for separation pay. Since DFAS provides separation pay based on the information in the DD Form 214, the applicant did not receive separation pay. The only recourse the applicant has is to apply to the Army Board for Correction of Military Records to correct his DD Form 214.

g. E-mail from Senator ■ office dated 22 August 2023 stated their office received a final response from the Army regarding the applicant's separation pay, and therefore, no further action could be taken by their office.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was not warranted.

2. The Board considered the applicant's request, supporting documents, his record of service, the reason for his separation (maximum age), the email from the IG and the letter from the ODCS G1 regarding his eligibility for separation pay, the separation pay statement on his orders and the DFAS requirement for the DD Form 214 to state his entitlement to separation pay. The Board considered the change in policy regarding retirement without reaching 20 years of service and the outcome of the previous ABCMR consideration. Based upon a preponderance of evidence, including the email from the IG, the Board determined that the absence of a statement entitling him to separation pay on his DD Form 214 and the denial by DFAS was not in error or unjust.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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.

4/28/2025

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. 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 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.

2. AR 635-8 (Personnel Separations – Separation Processing and Documents), prescribes the transition processing function of the military personnel system. It provides principles of support, standards of service, policies, tasks, rules, and steps governing required actions in the field to support processing personnel for separation and preparation of separation documents. Paragraph 7-3 (The Separation Packet), subparagraph I, for Soldiers authorized separation pay, include copies of DA Form 4187 (Personnel Action), DA Form 3340 (Request for Continued Service in the Regular Army), and DA Form 4126 (Bar to Continued Service). Subparagraph z. DA Form 7783 (Written Service Agreement and Mandatory Disclosure Statement) for Soldiers involuntary separated and is entitled to separation pay.

3. Department of Defense Instruction 1332.29 (Involuntary Separation Pay), establishes policy, assigns responsibilities, and prescribes procedures concerning eligibility and requirements for receipt of separation pay for Active and Reserve Component Service members who are involuntarily separated from active duty or active service. Paragraph 3.1 (Eligibility), full payment of non-disability Involuntary Separation Pay, is authorized to Service members of the Active and Reserve Components who are involuntarily separated from active duty/active service and who meet each of following five conditions:

- Service member has completed at least 6-years, but fewer than 20-years, of active duty/active service; a period of active duty/active service is continuous if any break in military service does not exceed 30-days
- Service member's separation is characterized as "honorable"
- Service member is being involuntarily separated by the Military Service concerned through either the denial of reenlistment or the denial of continuation on active duty or in an active service status, under one of the following specific conditions:
  - Service member is fully qualified for retention but is denied reenlistment or continuation by the Military Service concerned
  - Service member is fully qualified for retention and is being involuntarily separated under a reduction in force by authority designated by the Military Service concerned

- Service member is a: Regular officer, commissioned or warrant, who is being separated in accordance with Chapter 36
- Service member, having been denied reenlistment or continuation on active duty/active service by the Military Service concerned accepts an earlier separation
- Service member has entered into a written agreement with the Military Service concerned to serve in the Ready Reserve of a Reserve Component of the Military Services for a period of not less than 3-years following the separation from active duty/active service; a Service member who enters into this written agreement and who is not qualified for appointment or enlistment in the Ready Reserves need not be enlisted or appointed by the Military Service concerned to be considered to have met this condition of eligibility for separation pay
- Service member has signed the following mandatory disclosure statement: "If I qualify for military retired or retainer pay and/or the Department of Veterans Affairs disability compensation pursuant to the laws administered by the Secretary of Veterans Affairs after receiving Involuntary Separation Pay, I will be subject to a deduction from such retired or retainer pay, or from disability compensation in the total amount of any ISP paid

4. Title 10 USC, section 1174 (Separation pay upon involuntary discharge or release from active duty), a regular officer who is discharged who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay.

a. Subparagraph (d) (Amount of Separation Pay), the amount of separation pay which may be paid to a member under this section is: (1) 10 percent of the product of his years of active service, and 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or one-half of the amount computed under clause.

b. Subparagraph (e) (Requirement for Service in Ready Reserve; Exceptions To Eligibility), as a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than 3- years following the person's discharge or release from active duty. If the person has a service obligation that is not completed at the time the person is discharged or released from active duty, the 3-year obligation shall begin on the day after the date on which the person completes the person's obligation. Each person who enters into an agreement who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

//NOTHING FOLLOWS//