

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20240000033

APPLICANT REQUESTS: in effect, correction of his record to show the submitted DA Forms 1380 (Record of Individual Performance of Reserve Duty Training), various dates, were accepted, and added to his record for the retirement/anniversary years of:

- 18 December 2007 to 17 December 2008
- 18 December 2008 to 17 December 2009
- 18 December 2009 to 17 December 2010
- 18 December 2010 to 17 December 2011
- 18 December 2011 to 17 December 2012

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

- DD Form 149 (Application for Correction of Military Record)
- Supporting Documents for Retirement Year Ending (RYE) 17 December 2008
 - DA Form 1380, 6 April 2008
 - DA Form 1380, 6 October 2008
- Supporting Documents for RYE 17 December 2009
 - DA Forms 1380, 21 April 2009
- DA Forms 1380, 8 December 2010
- DA Form 1380, 14 December 2010
- Order Number 038447, 18 January 2011
- Supporting Documents for 4 days of Active Duty, 24 - 27 February 2011
- DD Form 1351 (Travel Voucher), 31 March 2011
- Supporting Documents for RYE 17 December 2011
 - DA Forms 1380, 20 September 2011
 - DA Form 1380, 22 October 2011
 - DA Form 1380, 4 November 2011
 - DA Forms 1380, 7 November 2011
 - DA Form 1380, 8 November 2011
 - DA Forms 1380, 9 November 2011
 - DA Forms 1380, no dates
- U.S. Army Human Resources Command (HRC) email communication to applicant, 4 January 2023

- HRC comments pertaining to applicant's submitted DA Forms 1380
- DA Form 5016 (Chronological Statement of Retirement Points), 30 October 2023
- HRC Points Detail for Total Years, 3 November 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:

a. He is currently receiving his Reserve retirement pay. HRC set his total retirement points at 4733. The Army is shorting him by 89 days. The correct total should be 4822 days [sic]. Out of his 20 plus years of service, four are fouled up. He has documents to support the accurate count for each respective year. Please correct his retirement points to total 4822.

b. The Army: 1) Failed to properly enter his records while he was a drilling reservist; 2) Failed to review and update his Reserve retirement record while he was a drilling reservist; and 3) Failed to adequately review and update his records after he sent in corrections and documents after he stopped drilling.

3. A review of the applicant's military service records show:

a. Having prior enlisted service in the U.S. Navy Reserve (USNR) and commissioned officer service in the U.S. Navy and USNR, he was appointed as a Reserve commissioned officer in the rank of major/O-4 and executed his oath of office on 19 May 2000.

b. On 20 January 2011, HRC notified the applicant that he was eligible for Retired Pay at Age 60 (20-Year Letter).

c. On 6 October 2015, Headquarters, 81st Regional Support Command published Orders Number 15-279-00029, which assigned the applicant to the Retired Reserve for "maximum authorized years of service" effective 1 January 2016.

d. U.S. Total Army Personnel Command Memorandum for the applicant, dated 17 April 2000, shows he was appointed as Reserve commissioned officer of the Army, effective 19 May 2000.

e. On 27 July 2023, HRC published Orders Number C07-390501, which placed the applicant on the Army of the United States retired list, effective 22 June 2023.

f. The applicant's record contains DA Form 5016 dated 24 September 2024, which shows his total career retirement points earned as – 1078 Inactive Duty Training (IDT), 185 Extension Course, 376 Membership, 3239 Active Duty Training (ADT), 25 years, 8 months, and 29 days Qualifying for Retirement, and 4733 Total Points Creditable. In relevant part, the form also shows for the completed anniversary years listed below, he earned the following retirement points:

- 18 December 2007 to 17 December 2008 – 76 IDT, 15 Membership, 6 ADT, 1 year Qualifying for Retirement, and 97 Total Points Creditable
- 18 December 2008 to 17 December 2009 – 62 IDT, 15 Membership, 44 ADT, 1 year Qualifying for Retirement, and 121 Total Points Creditable
- 18 December 2009 to 17 December 2010 – 55 IDT, 15 Membership, 40 ADT, 1 year Qualifying for Retirement, and 110 Total Points Creditable
- 18 December 2010 to 17 December 2011 – 87 IDT, 15 Membership, 40 ADT, 1 year Qualifying for Retirement, and 142 Total Points Creditable
- 18 December 2011 to 17 December 2012 – 75 IDT, 15 Membership, 155 ADT, 1 year Qualifying for Retirement, and 245 Total Points Creditable

4. The applicant provides, in pertinent part:

a. Order Number 038447 dated 18 January 2011, which ordered the applicant to Active Duty Training School for 4 days no later than 25 February 2011.

b. Supporting Documents for 4 days of Active Duty from 24 to 27 February 2011, consisting of orders, amendments, and a travel voucher.

c. DD Form 1351 dated 31 March 2011, which shows he was paid for the temporary duty period of 24 to 27 February 2011.

d. HRC email dated 4 January 2023, between the applicant and Supervisor Retirement Point Team, HRC Reserve Personnel Actions Branch (PAB), wherein, the Supervisor Retirement Point Team stated:

(1) A member of her team completed an in-depth review of the applicant's requested corrections to his retirement points. She informed the applicant to review the attached as Mr. [REDACTED] had addressed each year of a requested correction individually. Please let her know if he [the applicant] had any questions.

(2) "Several of your requested actions have been previously submitted to HRC, after those reviews as well, no additional retirement points were awarded. For awarding

of any retirement points on the DA Forms 1380s that you have submitted, you will need to submit an application to ABCMR."

e. HRC attached comments dated 4 January 2023, provided to the applicant pertaining to his submitted DA Forms 1380. The attachment outlines and details the errors found but not limited to just these errors below:

(1) Enter the date the DA Form 1380 was completed. FORMAT: YYYYMMDD. This date cannot be before the last duty date, the duty was performed in Item 9a and must be dated no later than the last day of the month the duty was performed.

(2) Check the box for "OTHER." To the right of "OTHER" enter "POINTS ONLY," To the right of "cite authorization" enter in accordance with (IAW) Army Regulation (AR) 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) Table 2-3 RULE ____ and enter the rule that applies to the duty performed. The appropriate rule for points only can be found in AR 140-185, Table 2-3, version 3 August 2018. Table 2-3 is on page 8 of the regulation.

(3) Dates should be entered in the following format: DD MM YYYY. Example: 08 01 2022. All duty dates on the DA Form 1380 must be in in the same month and year. If the duty crossed multiple months, multiple DA Forms 1380 (one per each month) must be submitted. A DA Form 1380 will not cover more than one month.

(4) Enter N1 (for Non-paid, 1 IDT) if 4 hours of duty was performed. Enter N2 (for Non-paid, 2 IDTs) if 8 hours of duty was performed. HRC, PAB, Retirement Points Team cannot process "P" coded DA Forms 1380, which indicates duty is for pay.

(5) Enter the name, grade and position of the commissioned military officer having knowledge of the duties performed. This individual cannot be a Civilian or an NCO [Noncommissioned Officer] unless accompanied by a signature authority or delegation memorandum or a DD Form 577 (Appointment/Termination Record – Authorized Signature) authorized by the Commander. PAB does not maintain signature authority memos or DD Forms 577 on file and must be included upon submission.

(6) Retirement points credited for activities other than active service or funeral honors duty may not exceed for anniversary years closing on or after 30 October 2000 but before 20 October 2007: 90 retirement points. The points for IDT, Correspondence/Extension and membership points are capped at 90 points once combined.

(7) We cannot add points using Active-Duty orders or travel vouchers. "You would need to provide a Leave and Earnings Statement (LES) to add points. You can request LES's from DFAS."

f. HRC Points Detail for Total Years dated 3 November 2023, pages are printed per retirement year and show start and end dates, type of retirement points, status, points, and school code.

g. DA Forms 1380 with various dates submitted for points only for the completed retirement/anniversary years from 18 December 2007 through 17 December 2012. The forms show the applicant's dates, hours, retirement points, location of duties, nature of duties, training, or instruction, as follows:

- 4 and 7 January 2008 – 4 hours each day, N1 (nonpaid), plan and prepare for Battle Assembly (BA) January and February 2008; Totaling 2 points
- 3 April 2008 – 4 hours, N1, plan and prepare for April 2008 BA; Totaling: 1 point
- 10 and 15 May 2008 – 4 hours each day, N1, prepare package to send to Office of The Judge Advocate General (OTJAG) and travel to Fort Jackson; Totaling: 2 points
- 16 May 2008 – 8 hours, "N1", finalize package to send to OTJAG; Totaling: 2 points
- 3 October 2008 – 4 hours, N1, plan and prepare for BA; Totaling: 1 point
- 12, 22, and 24 September 2008 – 4 hours each day, N1, prepare package recommission tour, send and review emails, review assignment; Totaling: 3 points
- 8, 12, 15, 22, and 29 January 2010 – 2 hours each day, N1, Staff and administrative duties in support of Troop Program Unit (TPU) activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 2.5 points
- 3, 12, 19, and 26 February 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 2 points
- 12, 19, and 26 March 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 1.5 points
- 2, 5, 13, and 16 April 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 2 points
- 3, 7, 20, and 25 May 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 2 points

- 5, 9, 22, and 26 June 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 2 points
- 2, 16, 23, and 30 July 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 2 points
- 3, 10, 15, 16, 21, and 30 August 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 3 points
- 6 and 9 September 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 1 point
- 14, 15, 23, and 26 September 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 2 points
- 2, 5, 10, 19, 26, 28, and 29 October 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 3.5 points
- 2 November 2010 – 2 hours, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: .5
- 5, 8, 14, 16, and 19 November 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 2.5 points
- 1 and 7 December 2010 – 2 hours each day, N1, Staff and administrative duties in support of TPU activities, include but not limited to planning and preparing for BA; review, analyze, draft, respond to emails; legal research/analysis; Totaling: 1 point
- 4 October 2011 – 2 hours, N1, reviewed and analyzed emails; Totaling: .5
- 5 October 2011 – 4 hours, N1, reviewed, analyzed and responded to emails; Totaling: 1 point
- 6 October 2011 – 4 hours, N1, T/C [telephone call] to Colonel (COL) [REDACTED] reviewed matters and sent to Lieutenant Colonel [REDACTED] drafted emails, t/c to Major [REDACTED] on OER reference COL [REDACTED] reviewed and analyzed emails and ethics issue; Totaling: 1 point

- 7 October 2011 – 2 hours, N1, sent email to Commanding General (CG) reference telephone call, reviewed and analyzed email from CG, planned and prepared for t/c with CG, t/c with CG, sent, reviewed and analyzed other emails; planned and prepared for to support SRP; Totaling: .5 points
- 27 October 2011 – 2 hours, N1, t/c with CG [REDACTED] t/c with possible recruiting lieutenant, reviewed and analyzed emails and TF ops, sent Individual Ready Reserve (IRR) letter for IRR JAG; Totaling: .5 points
- 2 November 2011 – 2 hours, N1, reviewed and analyzed emails reference multiple issues and followed up with MAJ [REDACTED] reference miscellaneous; Totaling: .5 points
- 4, 7, 8, 10, 11, 14, 15, and 16 November 2011 (individual DA Forms 1380 for each day) – 2 hours each day, N1, reviewed, analyzed and sent emails, prepared requests, researched legal in Florence, t/c with Reserve Legal Support Office Unit reference recorder assignment, conducted t/c with other officers, Totaling: 4 points

5. On 11 June 2024, the Chief, Personnel Services Division, HRC, provided an advisory for this case and stated HRC reviewed the applicant's DD form 149 application. AR 140-185, paragraph 3-3, requires that nonpaid DA Forms 1380 be forwarded to HRC for award of retirement points no later than the end of each duty month. The DA Forms 1380 were dated 2008, 2010, and 2011 and received by HRC in June 2024. The DA Forms 1380 were not prepared or submitted in accordance with AR 140-185. Therefore, it is the opinion of HRC, that we cannot award retirement points based on these DA Forms 1380, without direction from the Army Review Boards Agency.

6. On 30 June 2024, the applicant responded to the HRC advisory opinion and stated, in part:

a. Under Title 10, USC, section 1552, the ABCMR may correct records "when the Secretary considers it necessary to correct an error or remove an injustice." Title 10, USC, section 1552(a)(1). This statute is remedial and to be liberally construed, rather than narrowly or technically. *Oleson v. United States*, 172 Ct. Cl. 9, 18 (1965)(internal citations omitted). The Board can correct military records insofar as they comprise or mirror erroneous or mistaken legal views, although there is no change in the hard facts themselves.

b. Error or injustice "are not the same." *Reale v. United States*, 529 F.2d 533 (Ct. Cl. 1976). Error "means legal or factual error. Normally, it is such that a court of law could correct it whether the Soldier or Sailor had first applied to a Correction Board, or not." 'Injustice,' when not also 'error', is treatment by the military authorities, that shocks the sense of justice, but is not technically illegal. *Id.* (internal citation and quotations omitted).

c. The Army HRC's refusal to correct and credit him for these retirement points is both erroneous and unjust. Denying him the credit for the specified retirement points will result in injustice. He respectfully suggests that it is unjust for the United States Army to: (1) require and authorize him to perform duties and work; (2) enjoy the fruits of his labors, (3) advise him to fill out DA Forms 1380, provide documents, which he did; and (4) refute the bureaucratic niceties on forms which he timely submitted.

7. The applicant's entire response to the HRC advisory opinion and his supporting documents can be reviewed in their entirety within the supporting documents.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.
2. The Board concurred with the applicant's argument that it is unjust that he performed duty for which he received no credit toward his non-regular retired pay. Based on a preponderance of the evidence, the Board determined the applicant's record should be corrected by processing the DA Forms 1380 he provided in support of his application and updating his retirement points accordingly.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 processing the DA Forms 1380 he provided in support of his application and updating his retirement points accordingly

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. AR 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (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.

3. AR 140-1 (Mission, Organization, and Training) provides policy guidance on the mission, organization, and training of the U.S. Army Reserve (USAR). Paragraph 3-26 (Training of individual Soldiers in a non-pay status) states, Soldiers in an active status may take part in individual inactive duty training (IDT) in a non-pay training status when authorized by the appropriate commander. In pertinent part, individual training opportunities with retirement point credit are shown below:

- attachment to appropriate Reserve Component Troop Program Units (TPU)
- attachment to Active Army units
- attachment to reinforcement training units as appropriate
- attachment to Reserve Component Training Institutions as students or as augmentation staff or faculty
- attendance at Army service or Army area school training
- participation in approved training projects or using administrative skills in support of TPU and USAR activities
- enrollment in appropriate extension courses
- attendance at authorized conventions, professional conferences, or appropriate trade association meetings related to the individual's mobilization specialty
- conducting or reviewing medical examinations, and related medical duties
- recruiting duties as described in AR 140–185

4. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records), in effect at the time, contains Army policy for U.S. Army Reserve training and retirement point credit. It also prescribes guidance for USAR unit level strength accounting. In pertinent part:

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 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 2-1 (Criteria for crediting retirement points) states, IDT will be either four (4) hours in length for one (1) retirement point or eight (8) hours in length for two (2) retirement points.

c. Paragraph 3-1 states, the Army Training Requirements and Resources System training transcript, DD Form 214 (Certificate of Release or Discharge from Active Duty), DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty), DD Form 220 (Active Duty Report), master military pay account, DFAS Form 702 (Defense Finance and Accounting Service Military Leave and Earnings Statement), DA Form 1379 (U.S. Army Reserve Components Unit Record of Reserve Training), DA Form 1380 (Army Reserve Record of Individual Performance of Reserve Duty Training), DA Form 5016, and the Reserve retirement repository are used to maintain and record the award and entitlement of retirement points described in paragraphs 3-2 through 3-7. Units of assignment are responsible to ensure source documents are uploaded into iPERMS prior to submission of action to adjust a Soldier's retirement points. (See AR 600-8-104 for a sample list of appropriate documentation). This will ensure proper validation of retirement points throughout a Soldier's career.

d. Paragraph 3-3 (DA Form 1380) states, the purpose of this form is to record IDT by —

(1) TPU Soldiers performing IDT assemblies when pay is authorized, and the Soldier is not present to sign the IDT attendance roster.

(2) TPU Soldiers attached to another USAR unit for 89 or fewer days. In such cases the unit of attachment will prepare DA Form 1380 and forward to unit of assignment for recording attendance.

(3) Non-unit Soldiers under the jurisdiction of HRC who are attached for retirement points only to USAR TPUs, Army National Guard units, or to another Service or component for training per AR 140-10. Only attached Soldiers are authorized to perform IDT with the exception of one annual physical health assessment each for medical and dental readiness when authorized by the command prior to the event. Note: Non-unit Soldiers attached for retirement point credit to IMA detachments are reported on DA Form 1379 for those units.

e. Paragraph 3-3b states, DA Form 1380 will be prepared for a unit Soldier who performs equivalent training or additional training with their unit subsequent to the scheduled Battle Assembly. TPU units will retain one copy of the DA Form 1380 to post the appropriate entry into Automated Drill Attendance Reporting Software (ADARS) for the months report and then place in the appropriate Army records information management system file. Nonpaid DA Forms 1380 will not be entered into ADARS and will be forwarded to HRC for award of retirement points no later than the end of each duty month. DA Form 1380 will be scanned into the Soldiers integrated Personnel Electronic Records Management System by the unit of assignment per AR 600-8-104 (Army Military Human Resource Records Management).

//NOTHING FOLLOWS//