

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20240000564

APPLICANT REQUESTS: correction of the orders placing him on the Permanent Disability Retired List (PDRL) to show his total years of service.

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 C-09-990661, dated 29 September 2009
- DA Form 5016 (Chronological Statement of Retirement Points)
- letter from the Defense Finance and Accounting Service (DFAS), dated 2 December 2011
- Letter from AHRC Gray Area Retirements, dated 16 October 2023

FACTS:

1. The applicant states the orders placing on the PDRL need to be corrected to match his qualifying service for retirement as shown on his DA Form 5016. He is trying to obtain Concurrent Retirement and Disability Pay (CRDP). He was informed by the AHRC Gray Area Retirements Branch that there is a conflict between his total service shown on his PDRL orders and his total service shown on his DA Form 5016 and as a result, the AHRC Gray Area Retirements is unable to process his application for CRDP.
2. The applicant was born in May 1963. Following service in the Army National Guard and U.S. Army Reserve, the applicant entered active duty in Active Guard/Reserve status on 29 April 2001.
3. The applicant's Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) is dated 12 March 2003. This letter informed him that having completed the required years of qualifying service, he is eligible for retired pay upon application at age 60.
4. On 28 August 2009, a Physical Evaluation Board (PEB) found the applicant medically unfit for further military service. The PEB recommended a 50% disability rating and his placement on the Temporary Disability Retired List (TDRL).

5. AHRC Orders C-09-990661, dated 29 September 2009, ordered the applicant's release from assignment and duty because of physical disability and his placement on the TDRL effective 23 December 2009. The orders show his years of service as follows:

- Disability retirement: 9 years, 9 months, and 29 days (i.e., active service)
- Basic pay: 26 years, 10 months, and 16 days (i.e., total service for retired pay)

6. The applicant's DA Form 5016 shows he was credited with 26 years, 10 months, and 16 days of qualifying service for retirement.

7. On 30 November 2011, a PEB reevaluated the applicant's unfitting conditions and determined the conditions had stabilized at a degree of severity that was equal to or greater than 30% and recommended the applicant's placement on the PDRL with a 50% disability rating.

8. U.S. Army Physical Disability Agency Orders 266-52, dated 23 September 2011, ordered the applicant's removal from the TDRL and his placement on the PDRL effective 23 September 2011. The orders contain the following entries pertaining to the applicant's years of service:

- Disability retirement: Not Applicable
- Basic pay: Not Applicable

9. The applicant provided a letter from DFAS, dated 2 December 2011, in reply to an inquiry from his U.S. Senator, showing DFAS verified the applicant is entitled to CRDP upon his retirement at age 60 based on his years of service and his Department of Veterans Affairs (VA) disability rating.

10. The applicant also provided a letter from the AHRC Gray Area Retirements Branch, dated 16 October 2023, in reply to his application for CRDP, informing him of the following:

a. A review of your CRDP application revealed that there is a conflict of service with the order placing you on the PDRL and your Chronological Statement of Retirement Points (DA Form 5016). Therefore, the Gray Area Retirements Branch is not able to process your request for CRDP.

b. The Gray Area Retirements Branch recommends that you apply to the Army Board for Correction of Military Records to make the necessary corrections to your PDRL order to match the service on your DA Form 5016 so that you may be eligible to receive CRDP.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board reviewed the applicant's petition and military records and determined his Physical Disability Retirement Orders should be amended to reflect his total years of service creditable for pay. The Board noted the applicant served a total of 8 years, 7 months, and 24 days of active duty service, with 1 year, 2 months, and 5 months of prior active duty service, and 17 years and 17 days of total prior inactive service as annotated on his DD Form 214 and 26 years, 10 months, and 16 days as annotated on his DA Form 5016. The Board defers to the U.S. Army Human Resources Command and/or the Defense Finance and Accounting Service for determination of his basic pay determination calculation.

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 and Army National Guard records of the individual concerned be corrected by:

- amending Order 266-52, U.S. Army Physical Disability Agency, dated 23 September 2011280-901, to include his basic pay calculation (as calculated by the U.S. Army Human Resources Command and/or the Defense Finance and Accounting Service)
- entitlement to back pay and allowances, if applicable, as a result of this correction

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:

The "MyArmyBenefits" website provides, Concurrent Retirement and Disability Pay (CRDP) allows military retirees to receive both military retired pay and VA compensation. This was prohibited until the CRDP program began on 1 January 2004. CRDP is a "phase in" of benefits that gradually restores a retiree's VA disability offset. This means that an eligible retiree's retired pay gradually increased each year until the phase in was complete effective January 2014.

- a. Eligibility: The service member must be eligible for retired pay to qualify for CRDP. If the service member was placed on a disability retirement but would be eligible for military retired pay in the absence of the disability, the service member may be entitled to receive CRDP.
- b. Under these rules, the service member may be entitled to CRDP if:
 - The service member is a regular retiree with a VA disability rating of 50% or greater
 - The service member is a Reserve retiree with 20 qualifying years of service, who has a VA disability rating of 50% or greater, and who has reached retirement age (In most cases the retirement age for Reservists is 60)

//NOTHING FOLLOWS//