

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20240000649

APPLICANT REQUESTS: correction of her record to show she was paid disability severance pay.

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

- DD Form 149 (Application for Correction of Military Record)
- Defense Finance and Accounting Service (DFAS) Email correspondence
- Army Review Boards Agency (ARBA) Docket Number AR20150009861
- Orders Number 257-0001
- Orders Number 258-0001
- U.S. Army Physical Disability Agency (USAPDA) Letter, 23 September 2015
- ARBA Letter, 23 June 2015

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, the medical board made a decision in which she did not agree with. She only received an email from someone at Fort Buchanan that found her record incomplete. She wants the record corrected and the decision made that she would be paid severance pay.
3. A review of the applicant's official record shows the following:
 - a. On 13 November 1996, the applicant enlisted in the U.S. Army Reserve (USAR).
 - b. On 2 December 2002, the applicant enlisted in the USAR for a period of 6 years.
 - c. On 10 February 2003, the applicant entered active duty.

d. On 16 November 2004, the applicant was honorably retired from active duty by reason of disability, severance pay, non-combat in the rank/grade of specialist (SPC)/E-4. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 1 year, 9 months, and 24 days of net active service with 5 months and 17 days of prior active service. Item 18 (Remarks) is void of an entry pertaining to severance pay, but it contains a statement "DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) will be issued to provide missing information."

e. On 16 November 2006, Orders Number 06-320-00006 issued by Headquarters, U.S. Army Reserve Command discharged the applicant from the USAR with an under honorable conditions (general) characterization of service, under the provisions of Army Regulation 135-178 (Enlisted Administrative Separations), effective 16 November 2006.

f. The applicant's records are void of documentation pertaining to her medical separation. However, on 8 June 2015, the Physical Disability Board of Review (PDBR) notified the Director, ARBA, that after reviewing the disability rating pertaining to the applicant's medical separation the PDBR recommended modifying her disability rating to reflect a combined rating of 10 percent without recharacterization of the separation.

g. On 23 June 2015, the Deputy Assistant Secretary of the Army (Review Boards) reviewed the recommendation and record of proceedings pertaining to the applicant and concurred with the recommendation to modify her disability rating to 10 percent.

h. On 14 September 2015, Orders Number 257-0001 issued by Headquarters, U.S. Army Garrison, Fort Buchanan, reassigned the applicant to the transition point pending separation processing, effective 3 December 2004. Item a of these orders state "Soldier is entitled to full separation pay in accordance with Title 10, USC, section 1174 in pay grade E-4 based on 3 years of service.

i. On 15 September 2015, Orders Number 258-0001 issued by Headquarters, U.S. Army Garrison, Fort Buchanan, amended Orders Number 257-0001 by showing the original separation order separating her with severance pay could not be located and was rescinded and replaced by this order.

j. On 23 September 2015, the USAPDA informed the applicant pertaining to the correction of her disability separation modifying her disability rating to 10 percent. A copy of her original separation order could not be located, so a new separation order was issued. Her severance pay amount was not affected by the change because severance pay is not based on her rating.

4. The applicant provides DFAS email correspondence wherein she provides information pertaining to a ticket opened pertaining to her severance pay and she was waiting on the status of a payment. She was redirected to the ABCMR.

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 enlisted in the USAR on 13 November 1996. She served on active duty from 10 February 2003 to 16 November 2004. She was separated due to disability with severance pay at a disability rating of zero percent. She applied to the DOD Physical Disability Board of Review (PDBR) for review of her disability. The PDBR increased her disability rating to 10%. The USAPDA issued orders modifying her disability rating to 10% without recharacterization to her separation. Separation with disability severance pay occurs when the soldier's medical condition is found unfitting, the soldier has less than 20 years of service as computed under Title 10, U.S. Code, section 1208, and the soldier's combined disability rating assigned to the unfitting disabilities is less than 30%. Severance pay is computed under several formulas, one of which is by multiplying the member's years of service computed under section 1208 (subject to the minimum and maximum years of service) and 2 months of basic pay for each year of service which includes active service and inactive duty points. The severance pay amount was not affected by this change in the disability rating, because severance pay is not based on her rating. As such, the Board determined relief is not warranted.

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.2.

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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. 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. Department of Defense Financial Management Regulation 7000.14, Volume 7A states in section 3505 (Disability Severance Pay) a member separated from the military service for physical disability is entitled to severance pay, if qualified, as prescribed in personnel regulations of the military service concerned. When a member is entitled to disability severance pay, separation orders specify this entitlement. To compute

disability severance pay, multiply the sum of basic pay for 2 months by the number of combined years (but not over 19) of active service and inactive duty points. The member's separation orders will specify the total combined years of active service and inactive duty points to be counted in computing severance pay. The minimum number of years for computation purposes will be three years.

3. Title 31, USC, section 3702, is the 6-year barring statute for payment of claims by the government. In essence, if an individual brings a claim against the government for monetary relief, the barring statute says that the government is only obligated to pay the individual 6 years from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the court held that the Board for Correction of Military Records (BCMR) is not bound by the barring act, that the BCMR decision creates a new entitlement to payment and the 6 years starts running over again, and that payment is automatic and not discretionary when a BCMR decision creates an entitlement.

//NOTHING FOLLOWS//