

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 September 2024

DOCKET NUMBER: AR20240000669

APPLICANT REQUESTS:

a. Correction of his Permanent Disability Retired List (PDRL) orders to show his disability retirement is based on 21 years, 11 months and 13 days vice 11 years, 2 months and 21 days and, in effect, and receipt of Concurrent Retirement and Disability Pay (CRDP).

b. Personal appearance before the Board via Video/Telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 211-2220 Retirement Orders
- NGB Form 23A (Army National Guard (ARNG) Current Annual Statement)
- Letter from U.S. Army Human Resources Command (AHRC)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 there is a conflict of service with the order placing him on the PDRL and his Chronological Statement of Retired Points. He wishes to have this corrected so that he will be able to receive his CRDP. He feels that after completing 21 years, 11 months, and 13 days of military service he is entitled to his military retirement.

3. The applicant provides the following documents:

a. Orders 211-2220, published by Headquarters, United States Army Garrison, Fort Benning, 30 July 2014, shows he was in the ARNG and his scheduled date of separation was 29 September 2014. He was placed on the retired list on

30 September 2014. He had 11 years, 2 months, and 21 days of service for disability retirement, 13 years, 2 months, and 15 days of Title 10 U.S. Code 1405, and 21 years, 11 months, and 13 days towards basic pay.

b. ARNG Current Annual Statement, 14 June 2023, shows he had 21 years, 11 months, and 13 days creditable service for retired pay.

c. Letter from AHRC, 16 October 2023, states a review of his CRDP application revealed there was a conflict of service with the order placing him on the PDRL and his ARNG Current Annual Statement. Therefore, the Gray Area Retirements Branch was not able to process his request for CRDP. The Gray Area Retirement Branch recommended he apply to the Board to make the necessary corrections to his PDRL order to match the service on his ARNG Current Annual Statement so he may be eligible to receive CRDP.

4. The applicant's service record contains the following documents:

a. DD Form 4 shows he enlisted in the ARNG on 6 February 1999. He remained in the ARNG through extensions of his enlistment.

b. Informal Physical Evaluation Board Proceedings, 9 July 2014, shows the board found him physically unfit for duty, recommended a rating of 40 percent, and that his disposition be permanent disability retirement. He concurred with the findings and did not request reconsideration of his Department of Veterans Affairs ratings.

c. DD Form 214 shows he was ordered to active duty, as a member of the ARNG, on 23 June 2012 and was honorably transferred to U.S. Army Reserve Control Group (Retired) on 29 September 2014. He had completed 2 years, 3, months, and 7 days of net active duty service with 8 years, 11 months, and 14 days prior active duty service and 10 years, 8 months, and 22 days prior inactive duty service.

d. NGB Form 22 shows he entered the ARNG on 6 February 1999 and was honorably transferred to the retired reserve on 29 September 2014. He had 21 years, 11 months, and 13 days total service for pay and for retired pay.

e. His service record is void of a notification for retired pay non-regular retirement (20 year letter) upon application at the age of 60.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. Although the applicant provides a letter from AHRC advising him of a discrepancy between the service time shown on his retirement orders and the service time shown on his ARNG Current Annual Statement, the Board did not find a discrepancy. His service time for disability retirement, 10 USC 1405 time, and service time for basic pay are correct on his retirement orders.
3. The Board did find, however, that the missing element in the record is a document verifying his eligibility for non-regular retired pay at age 60, which would be the basis for him becoming eligible for CRDP. The applicant completed 20 years of service qualifying for non-regular retirement on 5 February 2013. The Board determined his record should be corrected by issuing him a 20-year letter dated 5 February 2013 to resolve any questions regarding the fact that prior to his retirement for disability he had already become eligible for non-regular retired pay.
4. The applicant is advised that this Board does not have the authority to make determinations on CRDP eligibility. This is a function of the Defense Finance and Accounting Service, to which the applicant should direct any further questions regarding his retired pay.

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 issuing him a Notification of Eligibility for Non-regular Retired Pay at Age 60 (20-year letter).

3/6/2025

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. Title 10, U.S. Code, 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. Army Regulation 135-180 (Qualifying Service for retired Pay Non-Regular Service) implements statutory authorities governing the granting of "retired pay" to Soldiers and former Reserve components (RC) and ARNG Soldiers. Chapter 2 provides eligibility criteria and states, in pertinent part, that in order to qualify for non-regular retirement, a member must have:
 - attained age 60
 - completed a minimum of 20 years of qualifying service
 - paragraph 2-8 defines qualifying service and states, that an RC Soldier must earn a minimum of 50 retirement points each retirement year to have that year credited as qualifying service
3. Army Regulation 140-185 (Training and Retirement Points Credits and Unit Level Strength Accounting Records) contains Army policy for ARNG training and retirement point credit. Paragraph 1-7 states a qualifying year of service for non-regular retired pay is a full year during which a ARNG 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.

4. DoD 7000.14-R Financial Management Regulation, Chapter 64, CRDP, prescribes that effective 1 January 2004, eligible military retirees are entitled to concurrent receipt of both retired pay and VA disability compensation. The CRDP program provided for a 10-year phase-out of the offset to retired pay due to receipt of VA disability compensation. The CRDP program provides a restoration of monthly retired pay calculated on the circumstances of each entitled individual. A qualifying service-connected disability is a service-connected disability (or combination of service-connected disabilities) that the VA rates at 50% or higher. Physical Disability Retirement Members retired for physical disability who have less than 20 years of service creditable for the purposes of computing retired pay are not eligible for CRDP.

5. Title 10, U.S. Code, section 12731, states that except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title if the person is at least 60 years of age, has performed at least 20 years of qualifying service computed under section 12732 of this title, and is not entitled under any other provision of law to retired pay from an Armed Force. A qualifying year is determined to be a year in which the Reserve member was credited with a minimum of 50 points.

6. Title 10, U.S. Code, section 12731(d), states that the Secretary concerned shall notify each person who has completed the years of service required for eligibility for retired pay. The notice shall be sent, in writing, to the person concerned within 1 year after the person completes that service. Section 12738(a) states that after a person is notified that he or she has completed the years of service required for eligibility for retired pay, the person's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service unless it resulted directly from the fraud or misrepresentation of the person.

7. Title 10 U.S. Code Section 1405 states for the purposes of the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member are computed by adding -

- a. His years of active service;
- b. The years of service, not included in clause (1), with which he was entitled to be credited on 31 May 1958, in computing his basic pay; and
- c. The years of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 12733 of this title if he were entitled to retired pay under section 12731 of this title.

8. Army Regulation 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.

//NOTHING FOLLOWS//