

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 October 2024

DOCKET NUMBER: AR20240000723

APPLICANT REQUESTS: in effect, that numerous years-worth (July 2007 to February 2010) of his DA Form 1380's (Record of Individual Performance of Reserve Duty Training) were never processed for "points only" and now he wants credit for those periods. In addition:

- Compensation for military duties performed outside duty hours
- A personal appearance before the Board via video/or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter, 26 February 2024
- Twenty-four DA Forms 1380 (Record of Individual Performance of Reserve Duty Training)
- Training certificates

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. In an advisory opinion obtained by U.S. Army Human Resources Command (HRC), dated 29 August 2024, HRC partially granted and made the corrections for the applicant's retirement point credit from 27 June 2007 to 26 June 2008. Therefore, this part of the applicant's request will no longer be discussed in these proceedings. However, his remaining request for retirement points from 27 June 2008 to 14 February 2010 will still be considered by the Board.
3. In addition, the applicant's request for reversal of survival benefit plan (SBP) election is being addressed in a separate case (AR20240010574). Therefore, this issue will not be discussed further in these proceedings.

4. The applicant states, in effect, he wishes to correct retirement points that were intentionally omitted by his chain of command. In 2007, He began submitting DA Forms 1380 for points only, through his unit's human resources channels, for work performed outside of normal duty hours. Unbeknownst to him, the DA Forms 1380, were never processed. Once he discovered the error, he addressed his concerns, but his records were not corrected. He is asking to be compensated for the non-duty hours he spent working on his training.

5. The applicant provides:

a. Two DA Forms 1380, authenticated by an officer having knowledge of duties performed, reflective of the following:

(1) 24 January 2010 8 hours N2

(2) 14 February 2010 8 hours N2

b. The applicant has also provided the corresponding training certificates to the hours reflected on the aforementioned DA Forms 1380.

6. The applicant's service record shows:

a. The applicant enlisted in the United States Army Reserves on 27 June 2000.

b. DA Form 2-1 (Personnel Qualification Record) shows in:

(1) Item 5 (Oversea Service)

- Service in Iraq from 8 September 2004 to 3 July 2005
- Service in Iraq from 13 June 2008 to 25 April 2009
- Service in Djibouti from 21 November 2013 to 23 October 2014

(2) Item (Awards)

- Bronze Star Medal
- Joint Service Commendation Medal
- Army Commendation Medal (third award)
- Army Achievement Medal (third award)
- Army Good Conduct Medal
- National Defense Service Medal
- Iraq Campaign Medal with one bronze service star
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal

- Military Outstanding Volunteer Service Medal
- Armed Forces Reserve Medal with bronze hourglass
- Noncommissioned officer Professional Development Ribbon (third award)
- Army Service Ribbon
- Army Reserve Components Overseas Training Ribbon (third award)
- Army Superior Unit Award
- Meritorious Unit Commendation

c. Action memorandum subject: Permanent Change of Assignment, 22 February 2024, shows the applicant was medically separated on 31 December 2023, and placed on the permanent disability retirement list. He served 21 years, and 5 years, 8 months, 12 days of active service. His grade at the time of retirement was master sergeant (MSG) E-8.

7. On 29 August 2024 the Army Service Center, HRC, provided an advisory opinion. They provided a DA Form 5016 which shows 20 creditable reserve retirement years and 3124 cumulative retirement points. They favorably corrected and amended his retirement points administratively for the period of 27 June 2007 to 26 June 2008 to show 33 extension course points. Unfortunately, all of his DA Forms 1380 provided were not turned in within 30 days and there was no letter of lateness provided for the remaining period extending to February 2010; therefore, they were unable to make the remaining requested corrections.

8. On 29 August 2024, the applicant was provided a copy of the advisory opinion with the opportunity to respond.

9. On 10 September 2024, the applicant submitted the following comments in response to the advisory opinion:

a. The applicant concurred with HRC's comment that he did, in fact, fail to state in his original application that he did submit the DA Forms 1380 to his chain of command in a timely manner (within 30 days), beginning in 2007. However, his units failed to process them.

b. He followed the proper procedure for submitting his DA Forms 1380, and he constantly attempted to use the proper human resource channels to rectify the situation, however, they failed to resolve the situation. Now that he has retired, his only option is ABCMR.

c. When he submitted the DD Form 149, along with supporting documents to ABCMR, he was unaware of a letter of lateness as HRC indicated. He wishes for this memorandum to serve as a letter of lateness, since he is retired and the officers that he worked with are as well.

d. This error was created by his former commands, who failed to take care of their Soldiers. He believed this was a personal retaliation against him by the chain of command.

8. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and U.S. Army Human Resources Command advisory opinion, the Board concurs with the recommendation for partial approval regarding retirement point credit of 16 points.

2. The opine noted that the submitted DA Forms 1380 were not turned in within the required 30-day timeframe, and no letter of lateness was provided for the remaining period extending to February 2010. However, the Board determined there was sufficient evidence to show the applicant completed the training and submitted the proper documentation in a timely manner to his unit, but never received credit for the points allocated on his 1380's. The Board determined, at no fault of the applicant his records should be corrected to show he completed the training for the periods 24 January 2010 and 14 February 2010. Based on the advisory opinion, regulatory guidelines, the Board granted partial relief to show 16 retirement points credit but denies compensation for military duties performed outside duty hours.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show the applicant submitted his DA Form 1380's in a timely manner to Human Resources Command for the periods of

- 24 January 2010 8 hours N2
- 14 February 2010 8 hours N2 which totaled 16 retirement point for service performed.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to numerous years-worth (July 2007 to February 2010) of his DA Form 1380's were never processed for "points only" and now he wants credit for those periods. In addition: Compensation for military duties performed outside duty hours



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 (Armed Forces), 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 140-185 (Training and Retirement Point Credits and Unit Level Strength and Accounting Records), prescribes the types of training and activities for which retirement points are authorized and the procedures for recording retirement point credits and training for U.S. Army Reserve (USAR) Soldiers. 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. The Anniversary Year Ending (AYE) date is the annual date that a Soldier's retirement point record is closed out. It is utilized when referring to retirement points accounting.

a. Paragraph 2–2, (Criteria for Earning Retirement Points) states retirement points may be earned by USAR Soldiers for active duty (AD), or while in an active Reserve status, for ADT, initial active duty for training (IADT), involuntary active duty for training (involuntary ADT), AT, and IDT. Types of IDT are:

- regularly scheduled unit training includes UTA, and MUTA
- Regularly Scheduled Training (RST) other than UTA/MUTA
- make up assemblies for missed UTA/MUTA due to AT
- Equivalent Training (ET) in lieu of scheduled UTA/MUTA or RST
- additional training assemblies (ATA)
- two-hour unit training assemblies
- training of individual Soldiers in non-pay status

b. Paragraph 2–4 (Criteria for Awarding Retirement Points) states, personnel on AD, ADT, IADT, involuntary ADT, or AT are awarded 1 point for each calendar day they serve in one of these categories and may not be awarded additional points for other activities while in such status. Most types of IDT are covered by one of the following rules on required duration of IDT and calendar day limitations on points:

- one point for each scheduled 4-hour period of IDT at UTA, RST, ET, ATA, or make up assembly maximum of 2 points in 1 calendar day
- one point for each 2 hour or greater period
- two-hour aggregates of shorter periods may be used, except in the case of 2-hour unit training assembly's maximum of 1 point in 1 calendar day
- one point for each 2 hour or greater period
- two-hour aggregates of shorter periods may be used except in the case of 2-hour unit training assemblies
- award of a second point in the same day requires additional hours to bring the day's total to a minimum of 8, maximum of 2 points in 1 calendar day
- points may not be awarded under more than one of the rules above during any single calendar day
- Soldiers may not perform more than 48 BAs per fiscal year. Soldiers must perform RST within 60 days of the missed BA.

c. Paragraph 3-3 (DA Form 1380) provides that DA Form 1380 will be prepared for a unit Soldier who performs equivalent training or additional training with their unit after the scheduled Battle Assembly. TPU units will retain one copy of the DA Form 1380 to post the appropriate entry into the Automated Drill Attendance Reporting System (ADARS) for the months report. 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.

d. Paragraph 3-3b, states a DA Form 1380 will be prepared for a unit Soldier who performs equivalent training or additional training. The code "P" or "N" will be entered in item 10c before the retirement point credit. The code "P" indicates the Soldier is entitled to inactive duty pay for the duties performed; the code "N" indicates the Soldier is entitled to retirement point credit only.

4. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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 may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions.

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.

5. Title 31 (Money and Finance), 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//