

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240001079

APPLICANT REQUESTS:

- correction of his DA Form 5016 (Retirement Accounting Statement) to reflect; 15 additional retirement points in retirement year ending (RYE) 14 June 2008 and 33 additional retirement points in RYE 14 June 2009
- a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Headquarters (HQs), U.S. Army Cadet Command Orders Number 07-05813
- DA Form 4824 (Addendum to Certificate and Acknowledgement of Service Requirements for all Personnel Applying for Participation in the Reserve Officers' Training Corps (ROTC)/Simultaneous Membership Program (SMP)
- HQs, U.S. Army Cadet Command Orders Number 07-06961
- DA Form 5016

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 he performed qualifying service as a SMP cadet attending ROTC Advanced course as directed by the U.S. Army Cadet Command orders. The first orders were for the period of 27 July through 10 August 2007 and the second orders were for the period of 10 July through 11 August 2008. The time frame for his ROTC Advanced course conflicted with his unit's annual training and other Army Reserve obligations which prevented him from achieving good years of service for retirement.
3. A review of the applicant's service record shows:

- a. On 15 June 2006, the applicant enlisted in the U.S. Army Reserve (USAR).
- b. On 6 July 2006, Orders Number C-07-622333 issued by the U.S. Army Human Resources Command (AHRC), the applicant was released from the USAR Delayed Entry Program and assigned to a USAR Troop Program Unit (TPU).
- c. On 6 November 2007, DA Form 4824 was completed showing the applicant elected to participate in the SMP as a member currently assigned to a TPU. He understood:
  - The SMP was a voluntary officer training program which required Reserve Component enlisted status for eligibility
  - By law (Title 10, USC, section 2106) a commissioned officer may not apply credits which stem from enlisted service served concurrently with ROTC advanced course training, when computing length of service for any purpose
- d. On 15 November 2007, DA Form 597 (Army Senior ROTC Nonscholarship Cadet Contract) was completed showing the applicant would attend North Georgia College and State University. The Army would cover his tuition and fees for the period 22 August 2007 through 15 December 2009.
- e. On 30 April 2010, the applicant executed his oath of office and was appointed as a Reserve commissioned officer.
- f. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was ordered to active duty for training, effective 8 August 2010. He was honorably released from active duty on 30 November 2010 after completion of 3-months and 23-days of active service.
- g. DD Form 220 (Active-Duty Report) shows the applicant was ordered to active duty effective 1 March 2015. He was released from active duty on 13 March 2015 after completion of 13-days of active service.
- h. On 14 June 2022, Orders Number HR-2165-00022, issued by AHRC, the applicant was ordered to active duty for operational support, effective 12 September 2022.
- i. On 30 October 2023, Orders Number HR-3303-00011, issued by AHRC, the applicant was ordered to active duty for operational support, effective 11 November 2023.
- j. DA Form 5016 dated 14 July 2024 shows the applicant obtained in RYE:

- 14 June 2008; 37 inactive duty training points, 15 membership points, 5 active-duty training points, for a total of 57 creditable points
- 14 June 2009; 26 inactive duty training points, 15 membership points, and zero active-duty training points, for a total of 41 creditable points

4. The applicant provides:

a. HQs, U.S. Army Cadet Command Orders Number 07-05813 dated 20 April 2007, shows the applicant was authorized travel to the U.S. Military Academy, West Point, NY, effective 27 July 2007, and to return to his home of record, effective 10 August 2007.

b. HQs, U.S. Army Cadet Command Orders Number 07-06961 dated 22 April 2008, shows the applicant was authorized travel to Fort Lewis, WA, effective 10 July 2008 and to return to his home of record, effective 11 August 2008.

5. On 9 August 2024, in the processing of this case, AHRC provided an advisory opinion regarding the applicants request to be awarded retirement points for duty he performed while in the ROTC program. The advisory official stated retirement points are not authorized for ROTC Advance Camp in accordance with Title 10 USC, section 2106. It states in computing length of service for any purpose, an officer appointed under this section may not be credited with enlisted service for the period covered by his advanced training other than any period of enlisted service performed on or after 1 August 1979 as a member of the Selected Reserve.

6. On 13 August 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

7. On 28 August 2024, the applicant responded via email, he stated there were two primary reasons why the advisory opinion is incorrect:

a. Army Regulation (AR) 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records), paragraph 1-7 (Eligibility) a(3) dated 26 August 2024 states retirement point credit is authorized for ROTC SMP.

b. Title 10 and his SMP contract merely reference length of service, not the crediting of points. The intent of these regulations is to prevent concurrent enlisted service to be calculated during advanced camp, thus eliminating SMP years of service. Title 10 does; however, allow enlisted service credit for him, since he performed the service as a member of the Selected Reserve on or after 1 August 1979. His contract shows he was a SMP cadet and was ordered by the U.S. Army Cadet Command to attend 33-days Leadership Development and Assessment Course during the period of 10 July through 11 August 2008. The allowing of awarded retirement points for SMP cadets is apparent,

because the 33-days he was on orders for the Army prevented him from attending his units annual training. He would ask the Board to consult the Reserve Personnel Management Directorate since the SMP was created specifically for Soldiers in his situation.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 United States Army Human Resources Command (AHRC)- Personnel Services Division advisory opinion, the Board concurred with the advising official finding that retirement points are not authorized for ROTC Advance Camp in accordance with Title 10 USC, section 2106. The opine noted, in computing length of service for any purpose, an officer appointed under this section may not be credited with enlisted service for the period covered by his advanced training other than any period of enlisted service performed on or after 1 August 1979 as a member of the Selected Reserve.

2. The Board noted the applicant's response stating that based on regulatory guidance 140-185, Chapter 1-7 a.3, retirement point credit is authorized for ROTC SMP and that Title 10 and his SMP contract were referencing length of service not crediting of points. However, the Board found the advising official reference to Title 10 USC section 2106 provides clear guidance that retirement points are not authorized for ROTC Advance Camp. Based on regulatory guidance and the advising official, the Board denied relief.

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:

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.

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 140-1 (Mission, Organization, and Training), provides policy guidance on the mission, organization, and training of the U.S. Army Reserve (USAR).
  - a. Paragraph 3-11 (Equivalent Training (ET)), ET is performed in lieu of scheduled training (either Rescheduled Training (RST) or, Unit Training Assembly (UTA) or Multiple Unit Training Assembly (MUTA)). Pay or retirement point credit, or both is authorized. ET must be accomplished within 60-days after the training for which it is substituted, or by the end of the training year (fiscal year) if within 60-days of that date. An explanation of the circumstances will be included, with a statement that the ET, if granted, will not cause the Soldier to exceed the 48 paid unit assemblies for the fiscal year. a. ET is limited to Soldiers who have missed a UTA, MUTA, or RST due to unforeseen personal emergencies and desire to make it up. No more than 4 UTAs may be made up during a fiscal year. b. ET given will be the same type and quality as the training missed. It will be appropriate to, and enhance the ability of, Soldiers to carry out their assigned duties. For staff or support personnel, this may include duty which enhances unit training, management, or readiness. c. ET must be at least as long as the training missed. d. ET will not be granted for assemblies missed due to ADT.

b. Paragraph 3-14 (Additional training assemblies (ATAs)), ATAs may be used to conduct additional wartime or assigned mission training. An ATA will be a minimum of 4-hours. No more than 12 ATAs will be performed by any one individual per year.

3. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records), in effect at the time, prescribes policy for U.S. Army Reserve (USAR) training and retirement point credit.

a. Paragraph 1-3 (Eligibility), only Reserve Soldiers (other than Reserve Officers Training Corps (ROTC) and Delayed Entry Control Group Soldiers and Active Standby Reserve are authorized retirement point credit. As an exception to the above exclusion of ROTC service, potential participants in the ROTC/Simultaneous Membership Program (SMP) (those not enrolled in Advanced ROTC course) are authorized retirement points credit and to be paid for drills in the grade and years of service attained. Participants in the ROTC/SMP enrolled in the Advanced ROTC course are authorized retirement points and pay for drills until commissioned. Points and service time while in the advanced course are then removed.

b. Paragraph 2-1 (Criteria for crediting retirement points), the limitations on the number of points which may be credited to a Soldier during a retirement year. Maximum-365 (366 during leap year) points. However, Annual or Terminal Statement of Retirement Points will report all points earned. Retirement points credited for activities other than active service or funeral honors may not exceed 130 retirement points for anniversary years closing on or after 30 October 2007. Inactive duty training (IDT) will be either 4-hours in length for one retirement point or 8-hours in length for two retirement points, with the exception of the 2-hour IDT funeral honors duty.

c. Paragraph 2-2 (Qualification and eligibility for earning retirement points) states retirement points may be earned by USAR Soldiers for active duty or duty in an active status for ADT, initial active duty for training (IADT), involuntary active duty for training (involuntary ADT), voluntary IDT, annual training (AT), IDT, membership points, and for other training of individual Soldier in a non-pay status.

e. Paragraph 2-4 (Criteria for awarding retirement points), 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. Table 2-1 provides criteria for award of retirement points for IDT performed in accordance with AR 140-1 (unless another reference is cited). Most types of IDT are covered by one of the following rules on required duration of IDT and calendar day limitations on points. Soldiers are authorized a maximum of one medical and one dental physical health assessment for 4-hour periods per fiscal year unless

follow-ups are authorized at the need of the Army due to further medical screening per AR 40–501.

- Four-hour rule; Soldiers earn one point for each scheduled 4-hour period of IDT at Battle Assembly, Rescheduled Training (RST), ET, or Additional Training Assemblies
- Four/eight-hour rule; Soldiers earn one point for each 4-hour or greater period, award of a second point in the same day requires additional hours to bring the day's total to a minimum of 8-hours for a maximum of two points in 1 calendar day

f. Paragraph 3-3 (DA Form 1380), DA Form 1380 will be prepared for a unit Soldier who performs ET or additional training with their unit subsequent to the scheduled BA. TPU units will retain one copy of the DA Form 1380 to post the appropriate entry into ADARS for the month's report and then place in the appropriate Army records information management system file. Non-paid 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.

g. Table 3-1 provides that the code "N" will be entered for RST. The code "N" indicates the Soldier is entitled to retirement point credit only. The code "P" indicated the Soldier is entitled to retirement point credit and pay.

4. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records), dated 26 August 2024 states in paragraph 1-7a (3) retirement point credit is authorized for ROTC SMP, Delayed Entry Program Soldiers, and active Standby Reserve Soldiers.

5. Department of Defense Instruction 1215.07 (Service Credit for Non-Regular Retirement) states inactive duty may be credited for each attendance at an inactive duty training period. A maximum of 2 retirement points for attendance at inactive duty training periods or equivalent training, in any 1 calendar day. The Service member's participation is without payment other than the pay to which the Service member is entitled as a Reserve Component member. Credit no more than one retirement point for fewer than 8-hours.

6. Title 10 USC, section 2106 (Advanced training; commission on completion), (c) in computing length of service for any purpose, an officer appointed under this section may not be credited with enlisted service for the period covered by his advanced training, other than any period of enlisted service performed on or after 1 August 1979, as a member of the Selected Reserve.

7. AR 601-210 (Regular Army and Army Reserve Enlistment Program) in effect at the time, prescribes eligibility criteria governing the enlistment of persons, with or without prior service (PS), into the Regular Army (RA), the U.S. Army Reserve (USAR), and the Army National Guard (ARNG). Paragraph 9-14 (Enlistment Program 9H, U.S. Army Reserve Officers' Training Corps/Simultaneous Membership Program), d. (Limitations), (1) Longevity credit. In computing length of service for any purpose, an officer appointed through the ROTC Advanced Course may not be credited with enlisted service for the period covered by his or her training in the ROTC Basic/Advanced Course. This includes service performed as a CDT under the ROTC/SMP. e (15) Satisfactory participation with the TPU at all scheduled training assemblies and AT periods. Member will be excused on request from AT during the year he or she is required to attend ROTC Leader Development and Assessment (LDAC).

8. AR 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//