

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 November 2024

DOCKET NUMBER: AR20240001547

APPLICANT REQUESTS: issuance of a Notification of Eligibility for Retired Pay (15 Year Letter).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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, he never received his 15 year letter and never received a medical evaluation board (MEB) or physical evaluation board (PEB) decision. He was enlisted in the military from 2000-2019 and an MEB/PEB was never completed. He served in the Arkansas Army National Guard (ARNG) and on active duty.
3. The applicant's service record contains the following documents:
  - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the ARNG on 4 May 2000.
  - b. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was ordered to active duty, as a member of the ARNG, on 11 June 2001 and was honorably released on 10 August 2001. He had completed 2 months of active duty service.
  - c. DD Form 214 shows he was ordered to active duty, as a member of the ARNG, on 8 October 2001 and was honorably released on 20 August 2002. He had completed 10 months and 13 days of active duty service. He was ordered to active duty in support of Operation Noble Eagle.

d. NGB Form 22 (Report of Separation and Record of Service) shows he was a member of the ARNG from 4 May 2000 through 21 April 2004. He had completed 3 years, 11 months, and 18 days of net service. He was mobilized from 8 October 2001 through 9 September 2002 and from 12 October 2003 through 8 November 2003. He was discharged for failure to obtain required physical.

e. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the U.S. Army Reserve (USAR) on 12 December 2005. He remained a member of the USAR through oaths of extension of his enlistment or reenlistment.

f. Orders 17-345-00145, published by Headquarters, 63d Readiness Division, 11 December 2017, shows he was discharged from the USAR effective 11 December 2017. The reason for his discharge is not available for the Board's consideration.

g. DA Form 5016 (Chronological Statement of Retirement Points), 18 November 2024, shows he has 12 years, 11 months, and 18 days qualifying years for retirement.

h. His service record is void of, and he did not provide, documentation showing he was authorized an MEB or PEB.

4. On 6 September 2024, the Chief, Personnel Services Division, U.S. Army Human Resources Command (AHRC), provided an advisory opinion, which states:

a. AHRC has reviewed the applicant's military records and determined that he had errors on his DA Form 5016 that was sent to AHRC. AHRC updated his DA Form 5016 and made the necessary corrections. The updated DA Form 5016 shows 12 years, 11 months, and 18 days of qualifying service. He was discharged on 11 December 2017 and was not given any other options to complete his military service to attain 20 years of qualifying time.

b. According to Title 10 U.S. Code section 12732, if he is to be separated because he has been demonstrated to be medically unfit for continued Selected Reserve service, he may receive a 15 year notice of eligibility. There is no evidence in his records to show he was determined to be unfit for continued Selected Reserve Service. Therefore, it is the opinion of AHRC that he does not qualify for a 15 year notice of eligibility.

5. On 27 September 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

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 applicant served in the ARNG from 4 May 2000 through 21 April 2004. Even after correction of his retirement points, the evidence shows he had completed 12 years, 11 months, and 18 days qualifying years for retirement. By law (10 USC 12732) in order to qualify for a 15-Year Letter, the applicant must meet two conditions. He did not meet either. He only completed 12 years and 11 months (less than 15 qualifying years towards non-regular retirement) and he was not found to be medically unfit for continued Selected Reserve service. Since there is no evidence in his records to show he was determined to be unfit for continued Selected Reserve Service or that he had completed at least 15 qualifying years of service, the Board determined he does not qualify for a 15-year notice of eligibility.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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|---|---|---|----------------------|
| : | : | : | 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.

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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, 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. Public Law 102-484, section 4403 of the Fiscal Year 1993 National Defense Authorization Act, dated 23 October 1992, was the first authorization to allow the U.S. Army to create an early retirement program, the Temporary Early Retirement Authorization (TERA) for Active Component and Active Guard and Reserve Soldiers who had completed 15 years of Active Federal Service (AFS), but less than 20 years of AFS at their separation date and who requested retirement in lieu of separation. The TERA was enacted by Congress to assist in the military drawdown of forces and to permit selected military members to retire early between 15 and 20 years of service and for Regular Army Soldiers to accrue additional military retirement points through service in Reserve Components (RC) or employment in qualifying public or community service organizations. The Secretaries of the respective services designated the ranks and military specialties that were eligible to apply according to the needs of the specific service. Retirement under this program was not a right; it was granted on an individual basis according to the requirements of the service.

3. Title 10 USC, section 12731 (Age and service requirements) provides the legal age and service requirements for age and service for Reserve non-regular retirement. It states that, upon application, a person is entitled to retired pay if the person has attained the applicable eligibility age, has performed at least 20 years of 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 or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

4. Title 10 USC, section 12731a (Temporary special retirement qualification authority) provides for retirement with at least 15 years of service. The Secretary concerned may, during the period described in the subsection below, determine to treat a member of the Selected Reserve of a RC of the armed force under the jurisdiction of that Secretary as having met the service requirements of 10 USC 12731, subsection (a)(2), and provide the member with the notification required by subsection (d) of that section if the member:

a. As of 1 October 1991, has completed at least 15, and less than 20, years of service computed under section 12732 of this title; or

b. After that date and before the end of the period described in subsection (b), completes 15 years of service computed under that section; and

c. Upon the request of the member submitted to the Secretary, transfer the member to the Retired Reserve.

d. The period referred to above is the period beginning 23 October 1992 and ending 31 December 2001.

5. Title 10 USC, section 12731b (Special rule for members with physical disabilities not incurred in the line of duty), enacted 23 October 1992, provides in pertinent part that in the case of a member of the Selected Reserve of a RC who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for the purpose of Section 12731 of this title, determine to treat the member as having met the service requirement and provide the member notification required if the member completed at least 15 years, but less than 20 years of qualifying service for retirement purposes as of 1 October 1991. This special provision of the law is applicable only to members who are medically disqualified for continued service in an RC.

6. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with Department of Defense Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

7. Army Regulation (AR) 635-40 (Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, chapter 3, as evidenced in a medical evaluation board (MEB); when they receive a permanent physical profile rating of "3" or "4" in any functional capacity factor and are referred by a Military Occupational

Specialty Medical Retention Board; and/or they are command referred for a fitness for duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and physical evaluation board (PEB). The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability are either separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a onetime severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

8. Title 10, USC, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Title 10, USC, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

9. Army Regulation 40-501 (Standards of Medical Fitness), provides policies and procedures on medical fitness standards for induction, enlistment, appointment, and retention. Paragraph 3-33 (anxiety, somatoform, or dissociative disorders) states the causes for referral to an MEB are as follows:

- persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization; or
- persistence or recurrence of symptoms necessitating limitations of duty or duty in protected environment; or
- persistence or recurrence of symptoms resulting in interference with effective military performance

10. Title 38, USC, sections 1110 and 1131, permits the VA to award compensation for disabilities that were incurred in or aggravated by active military service. However, an award of a higher VA rating does not establish error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The VA does not have the authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. These two government agencies operate under different policies. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

11. Title 10, U.S. Code, section 1556 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.

//NOTHING FOLLOWS//