

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 November 2024

DOCKET NUMBER: AR20240002228

APPLICANT REQUESTS: in effect, that he be transferred to the Retired Reserve at the time of discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum, subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), 20 February 2002
- Orders 02-352-00013, Headquarters, U.S. Army Special Operations Command, 18 December 2002 (Discharge from the U.S. Army Reserve (USAR))

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 requests a change to reflect a permanent retirement rather than discharge and to correct his pay.
3. A review of the applicant's service record shows:
 - a. He enlisted in the USAR on 17 January 1981.
 - b. He reenlisted in the USAR on 2 December 1990.
 - c. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he entered active duty service on 6 December 1990 and was honorably released from active duty for expiration of term of service on 2 June 1991 and transferred to the USAR. He completed 5 months and 27 days of active service.
 - d. He reenlisted in the USAR on 1 December 1993.

e. Memorandum, subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), 20 February 2002 reflects he had completed the required years of qualifying reserve service and is eligible for retired pay on application at age 60 in accordance with Title 10 USC, Chapter 1223.

f. Orders 02-352-00013, Headquarters, U.S. Army Special Operations Command, 18 December 2002 (Discharge from the USAR) shows the applicant was discharged from the USAR with an effective date of 8 November 2002. The applicant was held beyond normal discharge date through no fault of his own.

4. On 7 October 2024, the U. S. Army Human Resources Command (HRC) provided an advisory opinion in the processing of his case. The advisory official states:

a. HRC reviewed the applicant's documents and there is not enough proof he requested to be transferred to the Retired Reserve at the time of his discharge. The applicant does not provide an explanation of why he waited 22 years to file for a change.

b. The applicant is eligible for Retirement Pay at age 60. In order to apply, he will need to visit <https://www.usar.army.mil/Retirement/>.

c. No administrative relief granted.

5. On 10 October 2024, a staff member at Army Review Boards Agency provided the applicant a copy of the advisory opinion for an opportunity to respond. He did not.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board reviewed the U.S. Army Human Resources Command's advisory finding insufficient evidence the applicant applied to be transferred to the Retired Reserve at the time of discharge. Despite HRC's advisory, the Board determined the applicant served honorably for over 20 years and is entitled to retirement.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	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:

- revoking Orders 02-352-00013, Headquarters, United States Army, Special Operations Command, dated 18 December 2002
- issuing orders transferring him to the Retired Reserve, effective 8 November 2002
- entitlement to back pay and allowances as a result of this correction

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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. Army Regulation 135-178 (Enlisted Administrative Separations) established policies, standards, and procedures governing the administrative separation of enlisted Soldiers of the Army National Guard and the USAR. This regulation states discharge will be accomplished when it has been determined that a Soldier is no longer qualified for retention unless the Soldier requests and is eligible for transfer to the Retired Reserve in accordance with applicable Army Regulations.
3. Army Regulation (AR) 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing non-regular retirement. Paragraph 2–4. Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter), under 10 USC 12731a RC Soldiers who complete the eligibility requirements in section I will be notified in writing within 1 year after completion of the required service in accordance with AR 140–185. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued by the U.S. Army Human Resources Command (HRC) for all U.S. Army Reserve Soldiers except for those who are within 2 years of qualifying for an active-duty retirement and can remain on active duty to complete the required service. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format determined by HRC.
4. Title 10, U.S. Code, sections 12731 through 12740 authorize retired pay for Reserve Component military service. Under this law, a Reserve Soldier must complete a minimum of 20 qualifying years of service to be eligible for retired pay at age 60. Section 12731 states a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person has attained the eligibility age applicable under the appropriate subsection and has performed at least 20 years of service computed under section 12732 of this title.
5. Army Regulation 135-180 (Retirement for Non-Regular Service) prescribes policies and procedures governing non-regular retirement. After 30 June 1949, a Reservist must earn a minimum of 50 retirement points each retirement year to have that year credited as qualifying service. Only Soldiers assigned to an active status in a RC or individuals in active Federal service are authorized to earn retirement point credits. When a person is in an active status for a period less than a full retirement year, a minimum number of

retirement points are required to be earned in order to have that period credited as qualifying service.

6. Army Regulation 135-180 (Qualifying Service for Retired Pay Non-Regular Service) states in paragraph 2-1 that to be eligible for retired pay an individual does not need to have a military status at the time of application for retired pay, but must have: (1) attained age 60, (2) completed a minimum of 20 years of qualifying service, and (3) served the last 8 years of his or her qualifying service as an RC Soldier. During the period October 1991 to December 2001, the requirement to serve the last 8 years in an RC was amended to the last 6 years, and on 26 April 2005 this requirement was reduced to zero years. This regulation also specifies, in part, that each RC Soldier who completes the service required to be eligible for retired pay at age 60 will be notified in writing with a 20-year letter within 1 year after he/she completes the service.

//NOTHING FOLLOWS//