

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20240003032

APPLICANT REQUESTS:

- issuance of a Notification of Eligibility for Retired Pay at Age 60 (15-Year Letter)
- personal appearance before the Board

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 she is missing the 15-Year Letter. She was a victim of sexual assault and harassment. She mentions a letter for service-connected disability and confrontation with a superior officer. She adds that she was raped and faced harassment from female personnel. She further states the sexual assault happened in 1973 and her injury happened in 1987. She concludes by stating the confrontation with the officer happened in 1995 but was never documented. She only signed a statement to transfer to the Individual Ready Reserve, but she never received anything.
3. The applicant also indicated in her application her request is based on post-traumatic stress disorder, other mental health, sexual assault/harassment, reprisal/whistleblower.
4. The applicant enlisted in the Regular Army on 26 March 1973. Her DD Form 214 (Report of Separation from Active Duty) shows she was discharged on 13 December 1973 under the provisions of Army Regulation 635-200 (Personnel Separations—Enlisted Personnel), paragraph 8-8 (Pregnancy).
5. The applicant's record show she enlisted in the U.S. Army Reserve (USAR) on 6 March 1979. She reenlisted on 5 May 1980 and on 2 April 1986.

6. The applicant's DA Form 5016 (Chronological Statement of Retirement Points) shows an end date of 10 March 1998. The form also shows she was credited with 15 years, 8 months, and 18 days of qualifying service for non-regular retirement.
7. The applicant's available records do not contain a separation packet or separation orders showing the reason for her discharge from the USAR.
8. During the processing of this application, the staff of the Army Review Boards Agency submitted a request for records pertaining to the applicant to the U.S. Army Crime Records Center, part of the U.S. Army Criminal Investigation Command. On 9 September 2024, the U.S. Army Crime Records Center responded by memorandum stating a search of Army criminal file indexes revealed no records for the applicant. This request for records was submitted based on the applicant's statement that she experienced sexual assault and harassment.

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 and available military records, the Board determined the applicant had an end date of 10 March 1998, based on regulatory guidance AR 135-180 (Qualifying Service for Retired Pay Nonregular Service), effective 1 July 1987). The Board found the 15-year notification of eligibility for retired pay at age 60 was not authorized during her period of service. In accordance with the regulation, the 15-year notification did not go into effect until 2015 based on the regulation dated 28 April 2015. Based on regulatory guidance, the Board denied relief.
2. Per regulatory guidance the Soldier may not elect reassignment to the Retired Reserve in lieu of involuntary separation unless specifically waived unless they are medically disqualified for retention in an active status, not as a result of own misconduct, who have completed at least 15 qualifying years of service but less than 20 qualifying years of service for retired pay and are eligible to receive the NOE for Retired Pay at Age 60 (15-Year Letter). The 15-year NOE pertains only to members of the Selected Reserve, and that loss of qualification to continue in the Selected Reserve must be solely due to medical disqualification.
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.

X//Signed//

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. Title 10 U.S. Code, section 12731 (Age and service requirements) provides the legal age and service requirements for 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.

3. Army Regulation 140-10 (Army Reserve – Assignments, Attachments, Details, and Transfers), effective 16 August 2021 25 May 2018, provides that assignment to the Retired Reserve is authorized with the exception of enlisted Soldiers subject to involuntary separation. The Soldier may not elect reassignment to the Retired Reserve in lieu of involuntary separation unless specifically waived.

a. Eligible Soldiers may be allowed to transfer if they:

(1) are entitled to receive retired pay from the U.S. Armed Forces because of prior military service or disability;

(2) have 20 qualifying years of service for retired pay at age 60, and are eligible to receive the Notification of Eligibility (NOE) for Retired Pay at Age 60 (20-Year Letter).

(3) are medically disqualified for retention in an active status, not as a result of own misconduct, who have completed at least 15 qualifying years of service but less than 20 qualifying years of service for retired pay and are eligible to receive the NOE for Retired Pay at Age 60 (15-Year Letter). The 15-year NOE pertains only to members of the Selected Reserve, and that loss of qualification to continue in the Selected Reserve must be solely due to medical disqualification; or

(4) have completed a total of 20 years of active service in the U.S. Armed Forces.

4. Title 10 U.S. Code, section 12731b (Special rule for members with physical disabilities not incurred in the line of duty), enacted 23 October 1992, 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.

5. Public Law 102-484, section 4403 of the Fiscal Year 1993 National Defense Authorization Act, 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.

6. Army Regulation 15-185 (ABCMR) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record.

a. Paragraph 2-9 states 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 evidence.

b. Paragraph 2-11 states 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.

7. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//