

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240003311

APPLICANT REQUESTS: in effect, correction of his record to show he submitted a timely application for non-regular retired pay prior to reaching age 60.

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

- DD Form 149 (Application for Correction of Military Record)
- Chronological Statement of Retirement Points
- Statement of Service
- Notification of Eligibility for Retired Pay at Age 60 (20-year letter)
- DD Form 214 (Report of Separation from the Armed Forces of the United States)
- Orders C07-390007, issued by the U.S. Army Human Resources Command (HRC) on 20 July 2023
- Self-authored statement

FACTS:

1. The applicant states, in part, that after service in the Regular Army, he enlisted in the U.S. Army Reserve (USAR) and served until he was advised he had enough time to retire.

a. His unit advised him he had enough time to retire, and he was to let them know when he reached age 60. He did so, but he was then advised that he was a little short of having enough time in service and he was now too old to return to service—nothing could be done.

b. He believed what he was told until May 2023 when he was looking over some papers and found a letter (his 20-year letter) stating his retirement could not be denied.

c. Due to his economic situation, he needs his full retirement that he earned over years of service and humbly asks that the Board grant relief.

2. Following a brief period of service in the Army National Guard and 3 years of service in the Regular Army, the applicant served in the USAR from 24 August 1955 through 4 November 1980.

3. On 26 March 1981, the Office of the Adjutant General, U.S. Army Reserve Components Personnel and Administration Center, issued a memorandum, subject Notification of Eligibility for Retired Pay at Age 60, advising the applicant that he had completed the required years of service to be eligible for retired pay at age 60 and the eligibility could not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of creditable service unless it resulted from fraud or misrepresentation on his part.

4. The applicant was born in 1934 and reached age 60 in 1994.

5. On 20 July 2023, HRC issued Orders C07-390007, which placed the applicant on the retired list in the rank/grade of sergeant first class/E-7 effective on his 60th birthday in 1994.

6. On 29 August 2024, the Chief, Personnel Services Division, HRC, provided an advisory opinion recommending full relief.

a. HRC reviewed the applicant's record and determined he did not submit his retirement application as prescribed by Army Regulation 135-180 (Retirement for Regular and Non-Regular Service). HRC found no record of communication directing the applicant to apply for retirement benefits or advising them of their requirements.

b. The Defense Finance and Accounting Service provided a list of Service Members who were not aware of the application process. HRC notified the applicant, and he subsequently complied with the non-regular retirement pay application requirement.

c. HRC requests the Board to consider the insufficiency of guidance from past units and chains of command. HRC recommends that every applying Service Member receive their full retirement pay from their date of eligibility.

7. The applicant was provided a copy of the advisory opinion for his review and comment. In his response, he concurs with the recommended relief.

8. Title 31, U.S. Code, section 3702, also known as the Barring Statute, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U.S. Code, is relieving the Government of the need to retain, access, and review old records for the purpose of settling stale

claims, which are often difficult to prove or disprove. In this case, the applicant's claim accrued in 1994 but he was not placed on the Retired List until 2023.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the findings and recommendation of the HRC advisory official, and the concurrence of the applicant of those findings and recommendations, the Board concluded there was sufficient evidence to correct the applicant's record to show he submitted a timely application for non-regular retired pay prior to reaching age 60.

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 Army records of the individual concerned be corrected by show he submitted a timely application for non-regular retired pay prior to reaching age 60, that the application was received and processed by the appropriate authorities to retire the applicant as requested.

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 31, U.S. Code, section 3702, also known as the Barring Statute, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U.S. Code, is relieving the Government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.
2. Army Regulation 135-180 (Qualifying Service for Retired Pay Nonregular Service) implements the statutory authority governing what constitutes qualifying service for retired pay for nonregular service in the Reserve Components. Chapter 2, in pertinent part, states that to be eligible for retired pay, an individual must have attained the age of 60 and completed a minimum of 20 years of qualifying service. A qualifying year is defined as a year of service during which a Reservist earns at least 50 retirement points. Payment of retired pay upon reaching age 60 is not automatic. Eligible individuals must complete an application for retired pay.
3. Army Regulation 135-180 states in paragraph 2-3 that a twenty-year letter will be issued to the Reserve Component Soldier within 1 year after they complete 20 years of qualifying service for retirement. The letter, once issued, may not be withdrawn or revoked.

//NOTHING FOLLOWS//