

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 December 2024

DOCKET NUMBER: AR20240003725

APPLICANT REQUESTS: correction of his discharge orders to show he was transferred to the Ready (Retired) Reserve on separation order effective 13 August 2004 to increase his retirement pay.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Notification of Eligibility for Retired Pay at Age 60
- Army National Guard (ARNG) Retirement Points History Statement
- NGB Form 22, Report of Separation and Record of Service, August 2004
- ARNG Discharge Order, 13 August 2004
- Application for Retired Pay Benefits, August 2023

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 on XX A____ 2023, he turned 60 years old and was expecting \$996.00 of retired pay from paperwork that he had received. He only received \$550.00. After months of reaching out, he was informed that he was put into total out status instead of ready reserve. His last day of service with the Army National Guard was 14 April 2003, after completing 21 years of service. He has not received any paperwork explaining the total out status program and what this was and or where the other part of his retirement pay would go. If someone can help explain to him what this program is, when exactly he was put into the program and what he can do to get the other part of his retirement pay. He has retired from the military and his civilian job and without the other half of his retirement money, he will be forced to work a fulltime job to pay his bills. He has enclosed his retirement paperwork.

3. The applicant was born on XX A___ 1963 and turned 60 years of age on XX___ 2023. He had prior Regular Army service from 14 September 1982 to 21 February 1987.

a. He enlisted in the Wisconsin Army National Guard (WIARNG) on 11 February 1982. He served through multiple extensions or reenlistments in a variety of assignments, and he attained the rank of staff sergeant (SSG)/E-6.

b. On 8 September 1982, WIARNG issued him a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

c. On 23 July 2004, the Deputy Adjutant General, WIARNG indicate that he reviewed the packet of information regarding the separation of the applicant from the WIARNG for his inability to possess a firearm or ammunition due to conviction of a misdemeanor crime of domestic violence. The applicant is not entitled to a hearing before a board of officers and the Soldier's chain of command recommends separation from the WIARNG.

d. Also on 23 July 2004, The Adjutant General (TAG) of the State of Wisconsin reviewed the applicant's pending separation for your inability to possess a firearm or ammunition due to conviction of a misdemeanor crime of domestic violence. After careful consideration of his case, TAG direct that he be separated from the WIARNG. In accordance with National Guard Regulation 600-200, Enlisted Personnel Management, paragraph 8-270, he would be discharged from the WIARNG effective 3 August 2004 with an Honorable characterization of service.

e. On 11 August 2004, WIARNG published Orders 224-517 ordering the applicant's discharge from the WIARNG effective 13 August 2004.

f. The applicant was honorably discharged from the ARNG on 13 August 2004. His NGB Form 22 shows he was discharged in accordance with NGR 600-200, paragraph 8-27(o) as directed by TAG. His NGB Form 23A, ARNG Retirement Points History Statement shows he completed 21 years of qualifying service towards non-regular retirement.

g. Shortly before turning age 60, the applicant applied for retired pay benefits at age 60. As such, on 12 July 2023, the U.S. Army Human Resources Command published Orders C-07-339418 placing him on the retired list effective XX A___ 2023, his 60th birthday, in grade SSG/E-6.

4. On 14 November 2024, the National Guard Bureau (NGB) provided an advisory opinion in the processing of the applicant's case. An NGB official stated the applicant

requests transfer to ready reserves on separation order effective 13 August 2004 to increase his retirement pay. The NGB recommends denial.

a. Soldier was separated from the WIARNG on 13 August 2004 with 21 years of creditable service and attained non regular retirement pay eligibility upon turning 60 years of age on XX A___ 2023. Soldier is requesting his separation order be changed to a transfer order to the ready reserves. Soldier is stating his retirement pay is not the anticipated \$996.00 but \$550.00 because of an error in his separation order.

b. After review of the Soldier's submission and records, Soldier was involuntarily separated from the WIARNG with orders 224-517 dated 11 August 2004, effective 13 August 2004. Soldier was separated and barred from reenlistment in accordance with NGR 600-200 and AR 600-200 because of a qualifying conviction of domestic violence under the Lautenberg amendment and inability to carry a firearm. The soldier was separated from the military vice transferred to the ready reserves in accordance with Army Regulation (AR) 135-178. This would result in the soldier receiving non regular retirement pay based on the E6 pay scale from 2004.

c. It is the recommendation of this office that the applicant's request be denied. Soldier did not meet the requirements to be in the retired reserves in accordance with AR 135-178 and AR 600-200 (Active Duty Enlisted Administrative Separations) as he was involuntarily separated with a bar to reenlist. Soldier's current nonregular retirement benefits reflect the 2004 E6 PayScale and the correct entitlements.

d. The Wisconsin Army National Guard and the National Guard Bureau Retirements Branch concur with this advisory opinion.

5. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit a rebuttal. 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.

a. A majority of the Board noted that the evidence shows the applicant was separated from the WIARNG on 13 August 2004 with 21 years of creditable service and attained non regular retirement pay eligibility upon turning 60. He was involuntarily separated from the WIARNG effective 13 August 2004. He was separated and barred from reenlistment, because of a qualifying conviction of domestic violence under the Lautenberg amendment and inability to carry a firearm. The Board majority reviewed and agreed with the advisory official's determination that the applicant did not meet the

requirements to be in the retired reserves as he was involuntarily separated with a bar to reenlist. Therefore, the Board majority determined relief is not warranted.

b. A minority member determined relief is warranted. The applicant was put out under the Lautenberg amendment (domestic violence); he completed 21 years when he was barred IAW AR 600-20 he was not eligible to extend or reenlist. That should not change the fact that he gave 21 years to the nation and 600-20 doesn't say you can't put him on the Retired/Ready Reserve. Additionally, the member in the minority found his "jury" conviction would have imposed a punishment of some nature. For the Army to withhold COLA from him 20 years later seems a lot like double jeopardy and repunishing him. When this first came out in the 1990s, soldiers were told to self-report, and nothing will happen, and then a year or so later, the Army started putting people out. That is an injustice.

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.

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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. National Guard Regulation 600-200, Enlisted Personnel Management, establishes standards, policies, and procedures for the management of the Army National Guard (ARNG) and the Army National Guard of the United States (ARNGUS) enlisted soldiers in various functional areas including separation. Soldiers with qualifying conviction under the Lautenberg Amendment are not authorized to attend any service school where instruction with firearms or ammunition is part of the curriculum. The soldier is unqualified for further military service by reason of the criminal conviction. These convictions are those that qualify under the Lautenberg Amendment to the Gun Control Act of 1968 which "... prohibits the possession of firearms by persons convicted of a misdemeanor crime of domestic violence, and, relatedly, prohibits the knowing sale or disposition of any firearm or ammunition to a domestic violence misdemeanant." Effective 1 March 2004, soldiers with qualifying convictions will be coded as "999U" in the Position-Number-Individual-Excess field within SIDPERS. Refer to paragraph 8-35i (3) of this regulation and paragraph 12-2, AR 135-178 for separation authority. Utilization of these soldiers is outlined in paragraph 3-10 of this regulation.

//NOTHING FOLLOWS//