

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20240004544

APPLICANT REQUESTS:

- Evaluation of retirement points and to correct years of creditable service to qualify for a Non-Regular retirement at age 60
- Video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Enlistment/Travel Order Number 232-11
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 21 September 1983
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), ending 4 October 1984
- DA Form 2-1 (Personnel Qualification Record – Part II)
- NGB Form 23B (Army National Guard (ARNG) Retirement Points History Statement), 3 April 2014
- Certificate of Participation
- Orders Number 219-116
- DD Form 1351-2 (Travel Voucher or Subvoucher)
- DD Form 2860 (Claim for Combat-Related Special Compensation (CRSC))
- SF 15 (Application for 10-Point Veteran Preference)

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 needs two additional years of creditable service for eligibility for retirement pay at age 60. He requests an evaluation of his service time so that he may receive retirement benefits for his family.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 14 February 1979.
- b. He was honorably released from active duty on 21 September 1983, and transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement). He completed 4 years, 7 months, and 8 days of active service this period.
- c. On 13 December 1983, he enlisted in the ARNG of the United States.
- d. On 4 October 1984, he was released from the ARNG with a general characterization of service and transferred to the USAR Control Group (Individual Ready Reserve (IRR)). He completed 9 months and 22 days of net service
- e. On 4 March 1998, he enlisted in the ARNG for a period of 3 years.
- f. He was ordered to active duty in support of Operation Iraqi Freedom on 5 August 2005. On 13 December 2006, he was honorably released from active duty. He completed 1 year, 4 months, and 9 days of service this period.
- g. The ARNG Current Annual Statement prepared on 4 March 2013 shows at the time the applicant had 3,958 total points for retirement pay and 18 years of creditable service for retirement pay.
- h. Orders Number 037-034, issued by Headquarters, Missouri National Guard on 6 February 2014, discharged the applicant from the ARNG and transferred him to the Retired Reserve by reason of permanent disability with an effective date of 19 February 2014.
- i. On 19 February 2014, he was honorably retired from the ARNG by reason of permanent disability and transferred to the USAR Control Group (Retired Reserve). NGB Form 22 shows he completed 14 years, 10 months, and 20 days of net service this period. Item 10e (Total Service for Retired Pay) shows he completed 18 years total service for retired pay.

4. The applicant provides:

- a. Enlistment/Travel Order Number 232-11, issued by Armed Forces Examining and Entrance Station on 15 November 1977, that shows he was ordered to active duty for training for a period of 15 weeks.
- b. DA Form 2-1, that details his service from 7 April 1976 through 1 October 2002.

c. NGB Form 23B, prepared on 3 April 2014, that shows the applicant had 3,974 total points for retirement pay and 18 years of creditable service for retirement pay.

d. A Certificate of Participation issued by the Joint Forces Engineering Component Command for the applicant's valuable contributions while deployed to Operation Alaskan Road.

e. Orders Number 219-116, issued by Headquarters, Missouri National Guard on 6 August 2004, that shows the applicant was ordered to temporary duty from 6 August 2004 through 8 August 2004.

f. DD Form 1351-2 that shows the applicant's travel and expenses from his home of record on 5 August 2005 to Iraq in support of Operation Iraqi Freedom, and his return on 20 October 2006.

g. A partial DD Form 2680 that shows the applicant requested CRSC pay.

h. SF 15 dated 5 October 2010, that shows the applicant claimed 10-point veteran preference based on eligibility for or receipt of compensation for the Department of Veterans Affairs.

5. On 25 September 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending denial of the applicant's request for recalculation of retirement points to reach 20 years of creditable service to be able to collect retirement pay at age 60.

a. He enlisted on 7 April 1976 and was placed on the retired disability list (Permanent Disability Retired List (PDRL)) on 20 February 2014, with a civilian break in service from 20 March 1985 to 3 March 1998. During his service time the applicant received seven bad years that he did not receive creditable service for retired pay resulting in 18 years of qualifying creditable service when he was placed in the PDRL.

b. After review of the applicant's records and submission, his retirement statement is correct, and he did have seven service years where he did not accumulate more than 50 retirement points. The applicant has 18 qualifying years of creditable service for retired pay. In accordance with National Guard Regulation 680-2 (Automated Retirement Points Accounting Management), extra points earned in one anniversary year cannot be carried into another anniversary year in order to claim that year as a qualifying year. Furthermore, after coordination with the National Guard Retirement Services Branch, he is eligible to receive retirement pay based on his placement of the PDRL at 90 percent disability. He waived retirement pay for Veterans Affairs (VA) payments he is currently receiving. He does not qualify for concurrent pay or non-regular retirement pay.

c. It is the recommendation of this office that the applicant's request be denied. He received 18 years of creditable service. He is ineligible to receive non regular retirement pay at age 60 or concurrent retirement pay with his VA benefits.

6. On 26 September 2024, the applicant was provided with the advisory opinion for comment or rebuttal. He did not provide a response.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the findings and recommendations outlined in the NGB advisory opinion, and the lack of any rebuttal of those findings and recommendation submitted by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military record.

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.

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, USC, 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 (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

3. Title 10, USC, section 12731 (Age and service) states:

a. A person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person— (1)has attained the eligibility age applicable under subsection (f) to that person; (2)has performed at least 20 years of service computed under section 12732 of this title (4)is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay.

b. Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of Homeland Security, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

c. The Secretary concerned shall notify each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice shall be sent, in writing, to the person concerned within one year after the person completes that service.

4. AR 135-180 (Qualifying Service for retired Pay Non-Regular Service) implements statutory authorities governing the granting of "retired pay" to Soldiers and former Reserve Component Soldiers. Chapter 2 provides eligibility criteria and states, in pertinent part, that in order to qualify for non-regular retirement, a member must have attained age 60 and completed a minimum of 20 years of qualifying service. Paragraph 2-8 defines qualifying service and states, in pertinent part, that a Reserve Component Soldier must earn a minimum of 50 retirement points each retirement year to have that year credited as qualifying service.

5. National Guard Regulation 680-2 (Automated Retirement Points Accounting Management) states:

a. Soldiers must earn a minimum of 50 retirement points, regardless of source, in each full anniversary year to have that year creditable towards verification of the total years of qualifying service for non-regular retired pay. A partial qualifying year is any period of less than 12 full months, during which the Soldier earns the pro-rated share of 50 points in table D-2 in appendix D for that period. Enter all retirement points earned in the RPAM record, whether the period is creditable or not. When Soldiers accrue the required qualifying years for issuance of a notification of eligibility for retired pay, use all creditable retirement points in the RPAM record whether the year in which the retirement points were earned was creditable or not, subject to the limits in paragraph 2-3 and table 2-1 above, to determine retired pay.

b. Paragraph 3-2 (Basic qualifying service requirement) states to qualify for non-regular retired pay at or after the age specified in paragraph 3-1, a Soldier or former Soldier must have completed at least 20 years of qualifying service, as provided in 10 USC 12731 and 12732. b. However, ARNG Soldiers in an active status with at least 15, and fewer than 20, years of qualifying service who are disqualified from continued service due to physical disability and meet all other eligibility criteria may be retired. The disability must not have been the result of the Soldier's intentional misconduct, willful neglect, willful failure to comply with standards and qualifications for retention. The disability cannot have been incurred during a period of unauthorized absence, as provided in Title 10, USC, section 12731b. Soldiers will be discharged from the ARNG and transferred to the USAR for assignment to the Retired Reserve, or concurrently discharged from the Army National Guard and as a Reserve of the Army, before the 15 year Notification of Eligibility (NOE) can be generated and issued.

//NOTHING FOLLOWS//