

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2025

DOCKET NUMBER: AR20240004549

APPLICANT REQUESTS:

- Full restoration of active-duty Army Guard/Reserve (AGR) status from 22 November 2016 through 28 February 2025 at current rank
- Back pay and allowances in the corresponding rank at the time of separation
- Placed on the Retired List effective 1 March 2025
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of the Army (DA) G1 Emails
- Memorandum to the Army Board for Correction of Military Records (ABCMR)
- ABCMR Response to Docket Number AR20230001171
- Email Office of The Staff Judge Advocate (OTJAG) Input

FACTS:

1. The applicant states, in pertinent part:

- He asks the Board to consider the weight of the OTJAG opinion
- His DA records should reflect the continuous active-duty service he was granted by the ABCMR on 8 April 2021
- The action was sent for review by the ABCMR in 2017
- The Board did not review the case for over 4 years due to backlog
- He has exhausted all other administrative remedies and has been denied correction
- His DA records were not corrected, and he was given the option to reapply to active service only if he could prove he met the new program requirements
- He was granted an exception to policy due to his current rank of lieutenant colonel (LTC) and had to meet current physical standards
- A legal opinion from OTJAG states the current practice of releasing AGR captains and majors who have been selected for and accepted selective

continuation (SELCON) is in contravention with AGR program policy and is legally objectionable

- Accordingly, any AGR captain or major who is elected for and accepts SELCON will remain on active duty in the AGR program for the duration of the SELCON period

2. The applicant provides and his service record shows:

- On 22 April 1997, he took the oath of office in the California Army National Guard (ARNG)
- On 25 August 2008 and on 23 May 2011, he was ordered to AGR status with a reporting date of 15 September 2008
- On 20 March 2014, he was notified he had completed the required years of qualifying Reserve service and was eligible for retired pay at age 60
- On 10 August 2016, release from active duty (REFRAD) orders were published and he was released from active-duty effective 21 November 2016
- On 21 November 2016, he was honorably released from active duty due to non-selection, permanent promotion
- Emails in the year 2017 from DA G1 regarding his REFRAD
- Orders were published ordering him to active duty in the years 2018 through 2021
- On 26 April 2018, orders were published promoting him to LTC effective 10 August 2017
- On 29 August 2018, the applicant sent a memorandum to the ABCMR requesting an update of his 2017 application
- On 20 March 2021 he was ordered to active duty as a member of the ARNG with service in Romania, Bulgaria, and Germany; he was honorably released for completion of required active service on 19 March 2022
- On 1 April 2022 he was ordered to active duty as a member of the ARNG and was honorably released on 30 December 2024 for completion of required active service
- On 17 February 2022, REFRAD orders were published, and he was released from active-duty effective 19 March 2022
- On 27 July 2023, the ABCMR sent the applicant a letter in reference to his application docket number AR20230001171 stating he had not contacted U.S. Army Human Resources Command (AHRC) to correct his records
- On 18 March 2024, he received an email with OTJAG input which states in pertinent part the requested "retroactive" reinstatement to the AGR program and revocation of the previous separation orders was not approved by the Board; their determination was to reinstate the applicant to the AGR program if otherwise qualified; the accession branch reinstated him to the AGR program to fulfill the Board decision

- On 24 September 2024, orders were published transferring him to U.S. Army Reserve (USAR) Control Group (Reinforcement) effective 31 December 2024
- On 3 October 2024, orders were published transferring him to the retired reserve effective 1 January 2025

3. On 27 January 2021, the Board made a determination regarding his request for reinstatement on AGR status, in docket number AR20170004284, stating based upon a preponderance of evidence, the Board determined there is sufficient evidence to grant relief, dependent upon if the applicant is fully eligible to be reinstated.

4. On 14 January 2025, the Chief, Personnel Services Division, AHRC provided an advisory opinion, which states in pertinent part:

- AHRC reinstated the applicant into the AGR program effective 1 April 2022
- AHRC does not have the authority to grant active-duty time that was not served unless directed to do so
- AHRC cannot direct Defense Finance Accounting Service to remit back pay to a service member

5. On 21 January 2025, the advisory opinion was provided to the applicant to allow him the opportunity to respond. On 3 February 2025, he responded and provided additional documentary evidence. He stated, in pertinent part:

- He understands AHRC cannot grant active-duty time that was not served or back pay allowances unless directed to do so
- That is what his communication with the ABCMR has been about for the past three years
- To clarify, the intent of full relief includes granting active duty with full pay and allowances back to his REFRAD date 21 November 2016
- Full relief would have included full back pay and allowances, as well as his return to active duty
- He had expected adjudication of this situation to have been handled swiftly to avoid a long break in active service
- He would never have imagined it would take over 4 years to be completed
- During that time, he served honorably in the Army Reserve including a yearlong deployment to Romania
- The additional service, back pay and allowances would be somewhat offset by that
- He reached his mandatory removal date (MRD) on 30 December 2024 and was REFRAD from active duty, placed in the Army Reserve for one day, and the retired Reserve on 1 January 2025
- He is two months short of 20 years Active Federal Service

- Had his record been updated timely, his MRD would have been extended through 28 February 2025 so he could retire with 20 years Active Federal Service
- He is requesting the Board direct AHRC to correct his record showing continual active service since he originally entered the AGR program in 2008 with back pay and allowances from 22 November 2016 through 28 February 2025
- He requests to be placed on the retired list effective 1 March 2025 with an active-duty retirement

6. The applicant provides the following documents, not previously considered, with his rebuttal:

- On 10 August 2016, orders were published attaching the applicant to Fort Sam Houston for separation processing
- On 21 March 2017, a memorandum to AHRC states the purpose of the memorandum was to inform AHRC there was an opinion from the OTJAG the states the practice of releasing AGR captains and majors who have accepted SELCON is in contravention with the AGR program policy and is legally objectionable
- On 2 November 2017 a memorandum from AHRC to the applicant states G1 advised AHRC to consider notifying all former AGR captains and majors who were released from the AGR program; he was advised to contact the ABCMR
- On 31 January 2025, the applicant's spouse, who is a retired sergeant first class and worked with AHRC, wrote a letter describing her work with AHRC

BOARD DISCUSSION:

1. 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 concurred with the previous Board's decision, that there is sufficient evidence to grant relief. The applicant was reinstated into the AGR program on 1 April 2022. The Board determined the applicant should be granted active duty time from 22 November 2016 through 28 February 2025, at the current rank. The applicant will be placed on the retired list effective 1 March 2025.

2. 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 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 showing:

- a. The applicant was in an active duty status from 22 November 2016 through 28 February 2025. The exact arrears compensation is to be determined by the Defense Finance and Accounting Service.
- b. He was placed on the retired list effective 1 March 2025.

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. Army Regulation 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 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.

2. National Guard Regulation 600-5 (The AGR Program Title 32, FTNGD Management), in effect at the time, set forth the procedures for selecting, assigning, using, managing, and administering ARNG of the U.S. personnel serving on FTNGD in an AGR status. Paragraph 6-5, of this regulation sets the policies, standards, and procedures for the involuntary release of AGR Soldiers from the FTNGD.

a. Guidelines for involuntary release.

(1) Counseling or a letter of reprimand.

(2) General Considerations. When deciding whether to initiate procedures for involuntary release, the following factors may be considered:

- Seriousness of the events or conditions
- The likelihood that the events or conditions will continue or reoccur
- The Soldier's ability to perform FTNGD in a satisfactory manner
- The Soldier's potential for further military service
- The Soldier's military service
- The possibility that reassigning the AGR Soldier will improve performance

b. When a commander or supervisor initiates an involuntary release, the notice will be in writing and will include:

(1) The basis for the proposed involuntary release.

(2) The right to consult with military counsel at no cost to the Soldier, and to consult with civilian counsel at the Soldier's own expense.

(3) Copies of the documents supporting the request for involuntary release.

(4) AGR Soldiers may be given the opportunity, but are not required, to request voluntary release from FTNGD in lieu of involuntary release.

(5) AGR Soldiers will acknowledge receipt in writing.

(6) The AGR Soldier will be given 30 days from receipt to rebut or comment.

(7) The Soldier will return the rebuttal and any supporting documents to the commander who initiated the recommendation.

(8) If the Soldier declines to respond as to the election of rights such declination will constitute a waiver of rights, and an appropriate notation will be made.

(9) The initiating individual will review the rebuttal, and any other documents provided and determine whether to withdraw the recommendation or continue the process.

(10) After reviewing the rebuttal, a Commander may withdraw the initiation of the involuntary release.

(11) If the Commander decides to pursue the involuntary release after reviewing the rebuttal, the recommendation and all supporting documents will be forwarded through command channels and the Office of the Staff Judge Advocate to the HRO/AGR Manager for action.

(12) The HRO/AGR Manager will conduct administrative review and forward packet to The Adjutant General (TAG) for final determination.

c. When involuntary release is approved by TAG:

(1) Effective date of releasing Soldier from FTNGD will be determined by the HRO/AGR Manager and will include use of accrued leave for transition leave.

(2) Orders releasing a Soldier from FTNGD, and other separation documents will be prepared per appropriate regulations.

d. Soldiers performing FTNGD who are being discharged or involuntarily separated, are entitled to separation pay provided they have completed at least six or more years, but fewer than 20 years, of active service.

3. Title 10, U.S. Code, section 14701 Selection of officers for continuation on the reserve active-status list. (a) Consideration for Continuation.—

(1) (A) A reserve officer of the Army, Navy, Air Force, or Marine Corps described in subparagraph (B) who is required to be removed from the reserve active-status list under section 14504 of this title, or a reserve officer of the Army, Navy, Air Force, or Marine Corps who is required to be removed from the reserve active-status list under section 14505, 14506, or 14507 of this title, may be considered for continuation on the

reserve active-status list under regulations prescribed by the Secretary of Defense. (B)A reserve officer covered by this subparagraph is a reserve officer of the Army, Air Force, or Marine Corps who holds the grade of first lieutenant, or a reserve officer of the Navy who holds the grade of lieutenant (junior grade), and who— (i)is a health professions officer; or (ii)is actively pursuing an undergraduate program of education leading to a baccalaureate degree. (C)The consideration of a reserve officer for continuation on the reserve active-status list pursuant to this paragraph is subject to the needs of the service and to section 14509 of this title.

(2) A reserve officer who holds the grade of captain in the Army, Air Force, or Marine Corps or the grade of lieutenant in the Navy and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 20 years of commissioned service.

(3) A reserve officer who holds the grade of major or lieutenant commander and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 24 years of commissioned service.

(4) A reserve officer who holds the grade of lieutenant colonel or commander and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 33 years of commissioned service.

(5) A reserve officer who holds the grade of colonel in the Army, Air Force, or Marine Corps or the grade of captain in the Navy and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 35 years of commissioned service.

(6) An officer who is selected for continuation on the reserve active-status list under regulations prescribed under paragraph (1) but who declines to continue on that list shall be separated in accordance with section 14513 or 14514 of this title, as the case may be.

(7) Each officer who is continued on the reserve active-status list under this section, who is not subsequently promoted or continued on the active-status list, and whose name is not on a list of officers recommended for promotion to the next higher grade shall (unless sooner separated under another provision of law) be separated in accordance with section 14513 or 14514 of this title, as appropriate, upon the expiration of the period for which the officer was continued on the reserve active-status list.

4. Title 31, U.S. Code, section 3702, is the 6-year barring statute for payment of claims by the Government. In essence, if an individual brings a claim against the Government for monetary relief, the barring statute states the Government is only obligated to pay the individual 6 years in arrears from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the court held that the Board for Correction of Military Records is not bound by the barring act. The Board for Correction of Military Records decision creates a new entitlement to payment and the 6-year statute begins again. Payment is automatic and not discretionary when a Board for Correction of Military Records decision creates an entitlement.

5. Title 10, USC, section 1405 (Years of service), (a) for the purposes of the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member are computed by adding; (1) his years of active service; (2) the years of service, not included in clause (1), with which he was entitled to be credited on May 31, 1958, in computing his basic pay; and (3) the years of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 12733 of this title if he were entitled to retired pay under section 12731 of this title. (b) fractional Years of Service: in determining a member's years of service under subsection (a) (1) each full month of service that is in addition to the number of full years of service creditable to the member shall be credited as $\frac{1}{12}$ of a year; and (2) any remaining fractional part of a month shall be disregarded.

6. Financial Management Regulation 7000.14-R, Volume 7B Military Retire Pay, provides information for the specific qualifications and entitlement for military retired pay, describes the basic types of retirement (regular, non-regular, and disability), discusses voluntary and involuntary retirements, and explains basic qualifications for the differing military retired pay programs.

a. Paragraph 010201 B (Computation of Creditable Service), For most members who enter and serve on active duty without a break in service, the basic pay date is the date the member enters active or inactive service. If, however, there is a break in service, the time between periods of service usually is not included. Also, there are statutory periods when service in a particular component may not be counted. Conversely, there are periods for which some members are given constructive service, even though they were not actually serving on active or inactive duty.

b. Paragraph 03020 (Voluntary Retirement), the retired pay base pay for a voluntary retirement is determined when a member entered service, for a member who entered service before 8 September 1980, the retired pay base is the monthly basic pay rate applicant on the service member's retirement for the grade or rank in which the member was retired or which the member advances on the retired list. d. For warrant officers,

compute the retired pay base on the monthly basic pay to which the member would be entitled if serving on active duty in the retired grade on the day before retirement. If the member, however, is entitled to a higher rate of pay using any other warrant officer grade satisfactorily held by the member on active duty, retired pay may be computed using the basic pay for that warrant officer grade.

//NOTHING FOLLOWS//