

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240005126

APPLICANT REQUESTS:

- amendment of Department of the Army Orders Number 0006832326.00 dated 15 December 2023, reads as: effective 19 February 2024, change to: effective date 19 February 2023; and
- back retirement pay for the period of 19 February 2023 to 19 February 2024, minus Duty Pay collected for the same period
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Order Number 0006832326.00, 15 December 2023
- Applicant's reduced age retirement calculation worksheet

FACTS:

1. The applicant states:

a. He requests Retirement Order 0006832326.00 dated 15 December 2023, effective 19 February 2024, have the effective date corrected to 19 February 2023. Request back Retirement Pay for the period of 19 February 2023 to 19 February 2024 , minus Duty Pay collected for the same period.

b. Persons at the 99th Readiness Division (RD) calculated his Reduced Age Retirement in 2021 and again in 2022, based upon the guidance from the U.S. AHRC. One calculation was 56.25 and one was 56.5 with the age to apply for retirement and retirement pay being 55.5 and 55.75. He applied for retirement and retirement pay based upon those calculations. Once he received his Retirement Orders and applied for Retirement Pay, HRC calculated his Reduced Age Retirement and determined that he was eligible one year prior to the 99th RD calculations.

c. The U. S. AHRC retirement process for Reservists is flawed... all items and official calculations take place after retirement, when the official calculations should take

place prior to application for retirement. This leaves opportunity for uncorrected errors that negatively impact Soldiers.

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

a. Having prior U.S. Army Reserve (USAR) enlisted service, DA Form 71 (Oath of Office – Military Personnel) shows he was appointed as a Reserve commissioned officer in the grade of second lieutenant and executed his oath of office on 16 April 1993.

b. On 25 September 1998, DA Form 71 shows he was appointed as a Reserve commissioned officer, in the grade of first lieutenant (1LT), and executed his oath of office on 25 September 1998.

c. On 29 March 2006, he entered active duty in support to Operation Nobel Eagle.

d. On 22 July 2010, he was released from active duty and was transferred to his USAR unit. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 3 months, and 24 days net active service this period.

e. On 21 October 2010, AHRC notified the applicant that he had completed the required years of qualifying Reserve service and was eligible for Retired Pay at Age 60 (20-Year Letter).

f. DD Form 214 shows on 22 January 2011, he entered active duty in support of Operation New Dawn.

g. On 16 March 2012, the applicant was released from active duty and was transferred to his USAR unit. DD Form 214 shows he completed 1 year, 1 month, and 25 days net active service this period.

h. On 31 July 2012, he entered active duty for contingency operation for active duty operational support.

i. On 30 July 2013, the applicant was released from active duty and was transferred to his USAR unit. DD Form 214 shows he completed 1 year net active service this period.

j. DD Form 214 shows on 9 May 2014, he entered active duty in support of Operation Enduring Freedom.

k. On 4 July 2015, the applicant was released from active duty and was transferred to his USAR unit. DD Form 214 shows he completed 1 year, 1 month, and 26 days net active service this period.

l. DD Form 214 shows on 29 September 2016, he entered active duty in support of Operation Enduring Freedom.

m. On 12 May 2017, AHRC published Orders Number B-05-702728, which promoted the applicant to rank/grade of colonel (COL)/O-6, effective with a date of rank of 1 May 2017.

n. On 2 November 2017, the applicant was released from active duty and was transferred to his USAR unit. DD Form 214 shows he completed 1 year, 1 month, and 4 days net active service this period. Item 12d (Total Prior Active Service) shows 9 years, 1 month, and 5 days.

o. On 15 December 2023, the Department of the Army published Order Number 0006832326.00, which assigned the applicant to the USAR Retired Reserve, effective 19 February 2024.

p. On 15 April 2024, HRC published Orders Number C04-494017, which placed the applicant on the Army of the United States Retired List, effective 20 February 2024.

3. In support of his petition to the Board, the applicant provides a reduced age retirement calculation worksheet, which shows reduced age retirement "56.25" and age to apply for retired pay "55.5".

4. On 3 February 2025, the HRC, Chief, Personnel Service Division provided an advisory opinion for this case and states:

a. The Gray Area Retirement (GAR) branch has reviewed the applicant's military records and determined that he qualified for a 60-month reduced age drop making him eligible to retire on 19 May 2023. However, he was placed into the Retired Reserves on 19 February 2024, order number 0006832326.00. Therefore, GAR retired him on the following day, which was 20 February 2024, because we cannot retire a Service Member prior to the date they went into the Retired Reserves.

b. Therefore, it is the opinion of GAR, that the applicant would need to have his Retired Reserve order 0006832326.00 amended by calling the Veterans Inquiry Branch at [REDACTED]. If the Retired Reserve order gets amended, then GAR could correct his retirement order.

5. On 10 February 2025, the applicant was provided with a copy of the HRC advisory opinion to allow for comments or rebuttal. As of today, he did not respond.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the information reflected in the HRC advisory opinion, a lack of rebuttal submitted by the applicant of those facts and recommendations, and the ABCMR board having the authority to direct such a change, the Board concluded there was sufficient evidence to amend the applicant’s retirement order to reflect an effective date of 19 May 2023.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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 amending the applicant's retirement order (Orders Number 0006832326.00, dated 15 December 2023), to reflect an effective date of 19 May 2023. Additionally, based upon the change, the Board recommends that all appropriate back pay be paid to the applicant as a result of the amended order.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any other relief not reflected above.

//SIGNED//

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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. The U.S. Army Human Resources Command, Gray Area Retirements Branch website provides the following information and resources related to Reduced Age Retirement:
 - a. The National Defense Authorization Act (NDAA) for 2008 reduced the retirement age for Reserve Component service members from 60 to a lesser age, not to be any earlier than age 50. The reduced retired pay age is calculated with qualifying service days on or after 29 January 2008.

 - b. Active Duty (AD) for this purpose means service under Section 688, 12301 (a), 12301 (d), 12301 (h)(1), 12304, 12304 a, 12304 b, 12305, 12406, and Chapter 13 (Insurrection) of Title 10 U.S. Code. Authorization may be subject to restrictions based on effective date of the amendment.

 - c. Active Guard Reserve (AGR) will not be included as service on active duty for determining eligibility for reduced age retired pay for non-regular service.

d. NDAA for 2015 authorizes active duty or active service in any two consecutive fiscal years after 30 September 2014 and it is not retroactive.

e. NDAA for 2020 added 12304 b.

f. Full-time National Guard when under a call to active service by a governor and authorized by the President or the Secretary of Defense under section 502(f) or 115 and 502 (f) of Title 32 USC for purposes of responding to either a national emergency declared by the President, or a national emergency supported by Federal funds.

g. If a Soldier is wounded or otherwise injured or becomes ill while serving under a provision of law mentioned above, and the member is then ordered to AD under section 12301 (h) (1) to receive medical care for the wound, injury, or illness.

2. Department of Defense Instruction 1215.07 (Service Credit for Non-Regular Retirement) states in paragraph 3.5. (Reduced Eligibility Age for Receipt of Retired Pay for Nonregular Service), in accordance with Section 12731 of Title 10, U.S. Code (USC), as amended by Section 604 of Public Law 116-92, a Ready Reserve member who serves on active duty or full-time National Guard duty as defined in Section 101 of Title 10, U.S.C., under the limited circumstances specified in Paragraphs 3.5.b (1) through 3.5.b (3), after January 28, 2008, will have their eligibility age for receipt of retired pay reduced below 60 years of age by 3 months for each aggregate of 90 days for which the Service member serves on active duty or full-time National Guard duty in any fiscal year after January 28, 2008, or in any 2 consecutive fiscal years after September 30, 2014. In accordance with Section 12731 of Title 10, U.S.C., the eligibility age for receiving retired pay may not be reduced below 50 years of age.

3. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, the regulation states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states 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.

//NOTHING FOLLOWS//