

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 October 2024

DOCKET NUMBER: AR20240005496

APPLICANT REQUESTS:

- Correction of his records to show he qualifies for and was granted Non-Regular Reserve Retirement at the grade of captain (CPT)/O-3 effective 29 February 2012
- Correction of his records to show the start date for retired pay as 20 March 2013
- Any and all debts attributed to the applicant based on the Service's wholistic failure to correctly process his retirement be voided, canceled, and/or remitted
- The applicant be paid any and all back pay and any and all monies due to him including but not limited to Cost of Living Allowance (COLA) and Office of Personnel Management (OPM) interest rate adjustments based on the corrected Non-Regular Reserve Retirement
- The applicant be credited with additional retirement credit for the time period 27 August 1974 through 22 September 1974 and the period of 28 September 1980 through 26 May 1981
- Any other relief that is equitable and just
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney Supplemental Statement
- Exhibit A - Army Board for Correction of Military Records (ABCMR) Decision
- Exhibit B - Advisory Opinion
- Exhibit C - Action by the Deputy Assistant Secretary of the Army (DASA) (Review Boards)
- Exhibit D - Army National Guard (ARNG) Annual Statements
- Exhibit E - Orders
- Exhibit F - Notification of Eligibility of Retirement and Survivor Benefit Plan (SBP)
- Exhibit G - Application for Voluntary Retirement
- Exhibit H - Corrected Retirement Orders
- Exhibit I - Corrected NGB Form 22 (Report of Separation and Record of Service) and DD Form 215 (Correction to DD Form 214 (Certificate of Release or Discharge from Active Duty))

- Exhibit J - Defense Finance Accounting Service (DFAS) Memorandum, 23 July 2021
- Exhibit K - DFAS Memorandum, 1 March 2024
- Exhibit L - Declaration of the Applicant
- Exhibit M - NGB Form 23A (ARNG Current Annual Statement)
- Exhibit N - Comptroller/Government Accountability Office (GAO) Decision

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's attorney states, on behalf of the applicant, in pertinent part:
 - The applicant enlisted in the U.S. Navy on 23 September 1974
 - He was later appointed to the U.S. Naval Academy and was commissioned as an officer in the U.S. Navy
 - He was honorably discharged from active duty on 1 January 1992 and assigned to the U.S. Navy Reserve
 - On 27 July 2004, he enlisted in the ARNG
 - He served in a variety of statuses between 2004 and 2012, including time in the Active Guard/Reserve (AGR)
 - After achieving more than 18 years of credible Active Federal Service (AFS), he was retained in the Sanctuary Program on 20 April 2011 to complete 20 years of AFS
 - He was serving in the rank of staff sergeant (SSG)
 - He submitted a request for voluntary retirement, which was effective 29 February 2012
 - He was released from active duty and transferred to the retired reserve list effective 1 March 2012 in the rank of SSG
 - He contends his correct form of retirement is Non-Regular Reserve retirement at the grade of CPT effective 29 February 2012
 - Over the years, he has been awarded retirement both under the regular and non-regular retirement statuses at different ranks and various amounts of retirement pay that was then rescinded
 - At one point, he was correctly awarded a Non-Regular Retirement in the rank of CPT and was issued a corrected National Guard Bureau (NGB) Form 22 and DD Form 215 (Correction to DD Form 214) reflecting the same
 - He has made various attempts to correct his record and retirement; none have been successful

- They have enclosed the advisory opinion from his ABCMR case with docket number AR20210005516 and the final action taken by the DASA (Review Boards)
- The ABCMR concluded there was an error and injustice and directed his rank be changed to CPT and his date of retirement be changed to 19 November 2017
- The DASA (Review Boards) directed the advancement to CPT have an effective date of 8 February 2022 based on the incorrect application of requirements for Regular Retirement
- The service failed the applicant in that his retirement packet was not processed correctly from the start
- The advisory opinion recognizes the dysfunction that has surrounded the Service's efforts to process his retirement
- There is no dispute the applicant is entitled to a military retirement
- He served his country honorably in excess of 20 years of AFS
- The questions are which form of retirement is correct; what is the applicant's correct rank; and what is the correct start date for retirement pay
- The applicant was on AGR status when he received notice of his eligibility for a Reserve Retirement
- The service incorrectly processed him for both regular and non-regular retirements at various points over the past 12 years
- He was originally and correctly processed for retirement under Title 10 U.S. Code (USC) Section 12731
- He received pay and back pay based on that retirement
- For reasons that are unclear, his Reserve retirement orders were rescinded, which was improper and constitutes an obvious error and injustice
- The previous ABCMR decisions have misunderstood the issue here by addressing this as a Regular Active Duty retirement
- The ABCMR used active duty rules leading to an erroneous result
- The applicant seeks Non-Regular Reserve Retirement
- He was entitled to retire at the highest grade held of O-3 with pay starting on 20 March 2013
- DFAS has issued two opinions both of which incorrectly treat this case as a Regular Active Duty retirement
- The applicant was never properly counseled on the ramifications of reaching sanctuary in an active duty status
- He remained on active duty rather than requesting to move back to a reserve status
- If he had known that remaining on active duty and reaching sanctuary he would lose his reserve retirement, he would not have remained on active duty
- The Service's failure to properly assist and counsel the applicant about his retirement options caused him to retire in an active status, which he did not want

- But for the Service's failure to properly counsel and advise the applicant he would have elected non-regular reserve retirement
- The applicant is entitled to retired pay under more than one provision of law and the non-regular retirement is most favorable to him
- He should be granted relief in light of this provision of law
- If the Board concludes he should remain under the Regular Active Duty retirement system, they assert he should have been immediately retired in the grade of O-3 and should not have been required to wait until the 30 years of service mark as required by Title 10 USC section 7344
- The applicant should be granted a Non-Regular Reserve retirement in the grade of O-3 starting 20 March 2013 or, in the alternative, granted a Regular Active Duty retirement starting 29 February 2012 in the grade of O-3
- The ABCMR holding that the applicant must wait to be advanced in rank until 30 years of service was based on the incorrect assumption his retirement was being processed under a Regular retirement instead of non-regular retirement
- His record clearly shows he served as a commissioned officer on active duty in the U.S. Navy for over 10 years and 8 months
- He served as a commissioned officer in the grade of O-3 for more than six calendar months, which renders his service in that rank satisfactorily for the purposes of retired pay
- Under Non-Regular Reserve retirement, he should have been retired in the highest grade held immediately with pay to start on the appropriate start date
- He was originally and correctly retired in the grade of O-3 under the non-regular Reserve retirement system
- The correct start date for his retirement pay is 20 March 2013
- Members become eligible for Reserve retirement pay at age 60; however, the National Defense Authorization Act for 2008 reduced the retirement age for Reserve Component airmen from 60 to a lesser age, not to be any earlier than age 50; the reduced retired pay age is calculated with qualifying days on or about 29 January 2008
- His date of eligibility for retired pay at age 60 was 20 December 2015; he was credited with 2 year and 9 months of early drop time which adjusted his retirement pay eligibility date to 20 March 2013
- The applicant requests retirement credit for 27 August 1974 through 22 September 1975 when he was enrolled in the Delayed Entry Program
- He requests retirement credit from 28 September 1980 through 26 May 1981 while he was enrolled in the U.S. Naval Academy

3. The applicant provides and his service record shows:

- He was in the U.S. Navy from 23 September 1974 through 5 July 1977; his last duty assignment was the U.S. Naval Academy; he was honorably discharged in the grade of E-4

- He was in the U.S. Navy from 6 July 1977 through 27 September 1980; his last duty assignment was the U.S. Naval Academy; he was honorably discharged in the grade of E-4
- On 27 May 1981, he took the oath of office in the U.S. Navy
- On 1 January 1992, he was honorably discharged from the U.S. Navy in the grade O-3
- On 27 July 2004, he enlisted in the ARNG
- On 1 August 2008 and 12 August 2008, he was notified he had attained 20 qualifying years of service for eligibility for a reserve Retirement
- On 1 March 2011, orders were published ordering him to Active Duty with a report date of 20 April 2011 for a period of 316 days to obtain 20 years of AFS
- On 1 December 2011, orders were published reassigning him for separation processing and his release from active duty with a reporting date of 29 February 2012; his retired grade was SSG
- On 16 December 2011, he completed an Application for Voluntary Retirement which shows his highest grade held was O3; he requested transfer to the Retired Reserve as an enlisted member
- On 24 January 2012, he requested to retire from the Minnesota ARNG and transfer to the Retired Reserve effective 29 February 2012 concurrent with his release from the Active Duty Sanctuary Program
- On 29 February 2012, he was honorably transferred from the ARNG, in the rank of SSG, to the Retired Reserves; he had 24 years, 3 months, and 10 days total service for pay and retired pay
- On 29 February 2012, he was honorably transferred to the U.S. Army Reserve Control Group (Retired); he had entered active duty as a member of the ARNG, in the rank of SSG, on 20 April 2011
- On 9 September 2014, orders were published placing him on the retired list in the rank of SSG effective 20 March 2013
- On 9 September 2014, he received a letter from AHRC stating his application for retired pay had been approved
- On 15 September 2014, orders were published amending his retirement order changing his retired grade to CPT; on 8 December 2020, his retirement orders were revoked
- On 15 December 2014, an ARNG Current Annual Statement was published, which shows:
 - He was in the delayed entry program from 27 August 1974 through 22 September 1974
 - He was on active duty in the U.S. Navy from 23 September 1974 through 27 September 1980
 - He had a non-military civilian break from 28 September 1980 through 26 May 1981

- He was on active duty in the U.S. Navy from 27 May 1981 through 1 January 1992
- He had a non-military civilian break from 2 January 1992 through 26 July 2004
- He was an ARNG unit member from 27 July 2004 through 9 February 2009
- He ARNG mobilized service from 10 February 2009 through 29 February 2012
- He had 24 years, 3 months, and 10 days of creditable service for retired pay
- On 11 August 2020, he received a letter from AHRC, which provided him with a DD Form 215 adding retired list grade CPT to his DD Form 214
- On 23 July 2021, DFAS replied to an inquiry on behalf of the applicant stating in pertinent part:
 - On 9 September 2014, AHRC received amended orders correcting the applicant's rank to CPT; they issued him a retroactive credit of \$41,255 for the period of 1 March 2012 to 31 October 2014
 - In 2015, the Army corrected the amended orders to include his enlisted time; this resulted in an additional gross retroactive credit of \$8,184 for the period 1 March 2012 through 31 March 2015
 - As stated in Title 10 USC section 12731(a)(4), a member is entitled to retired pay based on reserve service if the member is not entitled to retired pay under any other provision of law
 - Since he first became entitled to pay as a regular enlisted, he is not entitled to pay under Title 10 USC Section 12731
 - Conversion accounts are for members who perform additional service as a member of the active reserves for a period not less than two years
 - The applicant's most recent point statement, December 2014, shows no additional service after 29 February 2012, so he is not entitled to a conversion
 - Since he is not entitled to retired pay under section 12731, he cannot be advanced at retirement to his highest grade held; as such he was reverted to his prior grade until March 2022 when he will be eligible for advancement as combined active/inactive service at 30 years
 - In December 2020, the Army revoked the 2014 amendment changing his rank back to SSG, which reversed his rank from CPT to SSG
 - On 15 July 2021, DFAS updated their records to show the rank change
 - They recalculated his pay and determined he owes a gross debt of \$184,228
- An undated memorandum from AHRC, states in pertinent part:

- after having achieved more than 18 years AFS, he was retained under the Sanctuary Program on 20 April 2011 to complete 20 years of AFS;
 - his active duty retirement was 29 February 2012 and he was retired at the highest rank held in active duty status;
 - a request was submitted to the Minnesota ARNG to be transferred to the retired reserve on 29 February 2012, this order was published in error;
 - on 28 June 2012 he contacted AHRC in reference to his retired rank and was referred to the Board who denied his request to change his rank from SSG to CPT;
 - an application for non-regular retirement was received on 2 September 2014 which included a request for a reduced age retirement;
 - the Gray Area Retirement (GAR) Branch erroneously processed the application and retired him as a non-regular retiree in the rank of SSG;
 - a request for a change in his retired rank was received on 16 September 2014, processed and forwarded to DFAS and an adjustment in retired pay from SSG to CPT
 - a request was received regarding his years of service on 15 June 2020
 - his request was to adjust his credible years of service from 20 years, 1 month, and 16 days to 24 years, 3 months, and 10 days
 - at that time it was discovered he was retired under both the regular and non-regular retirement laws
 - this promoted him to be advised to file a request with the Army Review Board Agency to have the documents corrected
 - in an attempt to correct the erroneous actions, the non-regular retirement order has been revoked
 - DFAS will not be required to audit his records to ensure he is in receipt of the correct retired pay
 - it is the opinion of GAR that due to many erroneous actions taken by the Minnesota ARNG, the GAR, and DFAS that he should be granted full relief of any debt incurred by the actions to correct his retirement status
- On 14 December 2021, the Board made a decision in ABCMR Docket Number AR20210005516, in pertinent part, the applicant was erroneously retired under both Title 10 USC section 3911 and Title 10 USC section 12731; the Board recommended any debt from the error be waived/rescinded and/or returned to the applicant; the Board determined the applicant is authorized to have his retired rank adjusted to CPT
 - On 21 June 2023, the DASA (Review Boards) states although he concurred with the Board granting relief, he determined an administrative error occurred in determining the date for advancement in grade; he directed the advancement in grade to CPT have an effective date of 8 February 2022 vice the recommended date of the Board

- On 1 March 2024, DFAS responded to a request for information on behalf of the applicant, in pertinent part:
 - The inquiry started with a letter dated 21 July 2021 when they received amended order for the applicant
 - These orders created a debt for him in the amount of \$184,228 plus a credit for Survivor Benefit Plan premiums of \$11,963.45 for a total debt of \$172,264.55
 - On 13 October 2023, DFAS received a correction from the Board, which changed his rank from SSG to CPT and changed his regular retirement date from 1 March 2012 to 8 February 2022
 - On 26 January 2024, DFAS updated their records to show the rank changed, calculation of pay, and years of service for the applicant
 - The applicant was due retroactive payment of \$21,254.35 for the period 8 February 2022 through 31 December 2023
 - DFAS has been collecting on the debt since August 2021, the balance was \$172,264.55 and they applied the retroactive credit which makes the current debt \$141,307.29
 - His retired pay account is currently correct due to his reserve retirement that took effect on 8 February 2022; DFAS does not owe him any additional funds
- On 22 April 2024, the applicant made a declaration to the Board stating when you retire you are supposed to retire using the most favorable formula if you qualify for more than one retirement; he was never given that option; he requested to be placed into the retired reserves; he trusted the retirement service personnel and AHRC to guide him

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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 public law, policy, and regulation.

a. The evidence of record shows the applicant was appointed as a commissioned officer in the U.S. Navy on 27 May 1981 and on 1 January 1992 he was honorably discharged from the U.S. Navy in the grade O-3. On 27 July 2004, he enlisted in the ARNG and, after serving additional years of active service, he submitted a voluntary application for regular retirement. Since he was not a commissioned officer in any component or service at the time of retirement, he was appropriately retired as an E-6 and began receiving retired pay. However, an error occurred when the ARNG also transferred him to the Retired Reserve and AHRC subsequently approved him for non-regular retired pay at the retired grade of O-3. Since an individual cannot retire twice, the second set of retirement orders were revoked on 8 December 2020 which resulted in a large debt to the applicant. The Board determined it could be considered an injustice that the applicant was unaware of the financial disadvantage of seeking a regular retirement vice a non-regular retirement. This potential injustice was compounded by the subsequent non-regular retirement errors, corrections, and the resulting overpayment. The Board voted to grant relief and correct the record to show the applicant retired under the more favorable non-regular retirement calculations.

b. The evidence of record shows the applicant was a member of the USAR as an enlisted Soldier under the delayed entry program for the period 27 August 1974 through 22 September 1974 and is entitled to retirement credit under the provisions of the governing financial management regulation. Furthermore, for the period of 28 September 1980 through 26 May 1981, the applicant was a student at the U.S. Naval Academy and is entitled to calculation of his retirement eligibility under the applicable statute. Therefore, the Board granted relief.

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
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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show:
 - applicant did not apply for a regular retirement and did not receive one
 - applicant applied to be transferred to the Retired Reserves upon the conclusion of his active duty service and was so transferred
 - applicant applied for non-regular retirement as an O-3 to begin upon reaching his earliest retirement-eligible age for a non-regular retirement and was approved
 - applicant is credited with additional retirement credit for the time period 27 August 1974 through 22 September 1974 (Delayed Entry Program as an enlisted Soldier) and the period of 28 September 1980 through 26 May 1981 (U.S. Naval Academy)
2. Any adjustments in payments owed to the applicant or debts rescinded will be determined by DFAS based on the application of laws and regulations to the corrected record.

X //SIGNED//

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. 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. Title 10 USC, section 3964 states:

a. Each retired member of the Army covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Army.

b. Subsection (b); this section applies to (1) warrant officers of the Army;(2) enlisted members of the Regular Army; and (3) Reserve enlisted members of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty).

3. Title 10, USC, section 7344 (Higher Grade after 30 years of service) states each retired member of the Army covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Army. (b) This section applies to-

- warrant officers of the Army;
- enlisted members of the Regular Army; and
- Reserve enlisted members of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty)

4. Title 10 United States Code (USC), section 12731 (Age and service requirements), a person is entitled, upon application , to retired pay computed under section 12739 of this title, if the person:

- has attained the eligibility age applicable under subsection (f) to that person has performed at least 20-years of service

- in the case of a person who completed the service requirements before 25 April 2005, performed the last 6-years of qualifying service while a member of any category but not while a member of a regular component, except that in the case of a person who completed the service requirements before 5 October 1994, the number of years of such qualifying service under this paragraph shall be 8
- is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve

Application for retired pay must be made to the Secretary of the military department having jurisdiction at the time of application over the armed force in which the applicant is serving or last served. The Secretary concerned shall notify each person who has completed the years of service required for eligibility for retired pay. The notice shall be sent, in writing, to the person concerned within 1-year after the person completes that service. The eligibility age is 60 years of age. In the case of a person who was a member of the Ready Reserve serves on active duty or performs active service after 28 January 2008, the eligibility age shall be reduced below 60 years of age by 3-months for each aggregate of 90-days on which such person serves on such active duty or performs such active service in any fiscal year after 28 January 2008, or in any two consecutive fiscal years after 30 September 2014. A day of duty may be included in only one aggregate of 90-days for purposes of this subparagraph. The eligibility age may not be reduced below 50 years of age.

5. Title 10 USC, section 12686 (Reserves on active duty within two years of retirement eligibility: limitation on release from active duty), under regulations to be prescribed by the Secretary concerned , a member of a reserve component who is on active duty (other than for training) and is within 2-years of becoming eligible for retired pay under a purely military retirement system may not be involuntarily released from that duty before he becomes eligible for that pay, unless the release is approved by the Secretary.

6. Title 10 USC, section 3911 (Twenty years or more: regular or reserve commissioned officers), the Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who has at least 20-years of service, at least 10-years of which have been active service as a commissioned officer. The Secretary of Defense may authorize the Secretary of the Army, during the period specified in paragraph (2), to reduce the requirement for at least 10-years of active service as a commissioned officer to a period (determined by the Secretary of the Army) of not less than 8-years. The period specified in this paragraph is the period beginning on 7 January 2011 , and ending on 30 September 2018.

7. Title 10 USC, section 3914 (Twenty to thirty years: enlisted members), under regulations to be prescribed by the Secretary of the Army, an enlisted member of the Army who has at least 20, but less than 30-years of service upon his request, be retired.

8. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. Paragraph 12-1, this chapter sets policies and procedures for voluntary retirement of Soldiers because of length of service and governs the retirement of Soldiers (Active Army, ARNGUS, and USAR) who are retiring in their enlisted status. Army Regulation 600-8-24, chapter 6, governs the retirement of eligible Regular Army Soldiers in commissioned or warrant officer grades. Prior service Soldiers serving on active duty as officers who are not qualified for retirement in their commissioned or warrant officer status, may qualify for retirement per this chapter.

b. Paragraph 12-3 (General provisions of laws governing retirement), Soldiers of the Regular Army must be on active duty when they retire. There is no statutory requirement that ARNGUS and USAR Soldiers be on Active Duty when they retire. Retirement normally will be in the regular or reserve grade the Soldier holds on the date of retirement. As an exception, ARNGUS and USAR Soldiers serving on active duty at the time of retirement, under paragraph 12-4, in a grade lower than their highest active duty enlisted grade, who were administratively reduced in grade not as a result of their own misconduct, will retire at the highest enlisted grade in which they served satisfactorily on active duty. The Army Grade Determination Review Board will make determination of the highest grade served in satisfactorily. Years of service for retirement are computed by adding all active Federal service in the Armed Forces and service computed under 10 USC 3925.

c. Paragraph 12-4 (Twenty-year retirement law (10 USC 3914)), a Soldier who has completed 20 but less than 30-years of Active Federal Service (AFS) in the U.S. Armed Forces may be retired at his or her request. The Soldier must have completed all required service obligations at the time of retirement. A Soldier who holds a current commission in the USAR will be transferred to the Retired Reserve in the status he/she elects, if otherwise eligible.

d. Paragraph 12-6 (Advancement on the retired list (10 USC 3964)), retired Soldiers who have less than 30-years of active service, whose active service plus service on the retired list total 30-years, are entitled to be advanced on the retired list to the highest grade in which they served on active duty satisfactorily or, in the case of ARNGUS Soldiers, in which they served on full-time duty satisfactorily. This provision applies to warrant officers, RA enlisted Soldiers, and Reserve enlisted Soldiers who, at the time of retirement, are on active duty (or full-time National Guard duty). When these Soldiers complete 30-years of satisfactory service, their military personnel records are reviewed

to determine whether service in the higher grade was satisfactory. For advancement to a commissioned officer grade, the Soldier must have served satisfactorily on active duty in this grade for not less than 6 months.

e. Paragraph 12-18 (Retirement Orders), Retirement orders direct relief from active duty on the last day of the month and placement on the retired list on the first day of the following month. Relief from active duty and retirement occur on the dates specified in the orders unless the orders are amended or revoked by proper authority. If the orders are amended or revoked, this must take place before 2400 hours (local time) on the date of relief from active duty. Once an order has been issued, it will not be amended or revoked except for extreme compassionate reasons, the best interest of the Army, or when a change in the Soldier's status prevents retirement on the specified date. Orders may not be modified, amended, or revoked on or after the effective date of retirement in the absence of fraud, mistake of law, mathematical miscalculation, or substantial new evidence affecting the Soldier's basic eligibility for retirement.

9. Army Regulation 635-5 (Separation Documents), 15 August 1979 with interim changes, 1 July 1981 and 16 March 1982, prescribed the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. A DD Form 214 will be prepared for all active duty personnel at the time of their retirement, discharge, resignation, or release from the Active Army. It established standardized policy for preparing and distributing the DD Form 214. The specific instructions stated for:

a. item 12a, enter the beginning date of the enlistment period for which a DD Form 214 was not issued;

b. Item 12b (Separation Date this Period) states to enter the separation date this period. (Separation date may not be the contractual date if extended for make-up of lost time or Soldier has been held over for the convenience of the Government).

c. Item 12c (Net Active Service this Period) states to enter the amount of service this period (subtract 12a from 12b). Lost time and non-creditable time after expiration term of service, if any, will be deducted. For cadets, enter total time between dates in blocks 12a and 12b. (See item 18 for additional requirement pertaining to cadets.

d. item 12e, enter the total amount of prior inactive service, less lost time, if any. DEP time which begins before 1 January 1985 is creditable service for pay purposes; and

e. item 12i, this refers to the completion date of the 6-year service obligation for personnel who became members of the Armed Forces after 31 January 1978 under the Military Selective Service Act. Time lost under Title 10, U.S. Code, section 972, while on

active duty does not extend the Terminal Date of the Reserve Service Obligation under the Military Selective Service Act.

f. Item 18 (Remarks) states to use this block for entries required by Headquarters, Department of the Army for which a separate block is not available and for completing entries that are too long for their blocks. Among the required entries in this item includes an entry for those in a cadet status, the directions for which state in item 18 to enter dates of attendance at a U.S. Military Academy (USMA) in a cadet status, e.g., "Block 12c includes service as a USMA cadet from 850601 to 880615. Service not creditable for any purpose in commissioned officer status."

10. Title 10, U.S. Code, section 12646 (Commissioned Officers: Retention after Completing 18 or More, but Less than 20, Years of Service), provides that if on the date prescribed for the discharge or transfer from an active status of a Reserve commissioned officer, he/she is entitled to be credited with at least 18 but less than 19 years of service computed under section 12732 of this title, he/she may not be discharged or transferred from an active status under chapter 843, 1407, or 1409 of this title without his/her consent before the earlier of the following dates:

a. the date on which he/she is entitled to be credited with 20 years of service computed under section 12732 of this title; or

b. the third anniversary of the date on which he/she would otherwise be discharged or transferred from an active status.

11. Army Regulation 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

12. 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. 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.

//NOTHING FOLLOWS//