

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 February 2025

DOCKET NUMBER: AR20240006536

APPLICANT REQUESTS: is effect, issuance of a Notification of Eligibility for Retired Pay at Age 60 (20-Year letter) and non-regular retirement vice being discharged from the U.S. Army Reserve.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 his records were lost at Fort Lewis, WA and he has been unable to prove his full length of service. As a result, he thinks he has been deprived of a retirement pension. His incomplete record does not reflect the entire period he served. He has tried to correct the error all this time but has been unsuccessful. No one has put forth the effort to assist. He thought the error would be corrected upon his separation in 2009. It was not.
3. The applicant was born in J____ 1961. He turned 60 in J____ 2023.
 - a. He was appointed a Reserve commissioned officer of the Army and executed an oath of office on 29 August 1981.
 - b. He served in a variety of Reserve assignments. However, between 1993 and 2000, aside from Reserve membership points, he did not earn any qualifying retirement years.
 - c. On 14 November 2001, he was transferred from the Individual Ready Reserve to a Reserve unit in I Corps and Fort Lewis. He was promoted to lieutenant colonel in 2005.

d. He entered active duty on 4 December 2006 and subsequently served in Djibouti from December 2006 to May 2009.

e. He was honorably released from active duty on 24 July 2009 and transferred to the control of the U.S. Army Reserve. He was issued a DD Form 214 (Certificate of Release or Discharge from Active Duty) for this period of active service.

f. Upon release from active duty, he was transferred to the Individual Ready Reserve where, aside from Reserve membership points, he did not earn any qualifying retirement years.

g. On 20 May 2010, the U.S. Army Human Resources Command notified him that a Department of the Army Special Selection Board was convened to consider special selection board requests. The special selection board considered him under 2009 criteria, but unfortunately, he was not selected for promotion by the board.

h. On 15 November 2011, the U.S. Army Human Resources Command published orders honorably discharging the applicant from the U.S. Army Reserve effective 15 November 2011 due to having reached maximum years of service for his grade and/or reaching mandatory retirement date (MRD).

i. His DA Form 5016 (Chronological Statement of Retirement Points) shows he completed 16 qualifying years of service towards non-regular retirement.

4. By law and regulation, Reserve Component members are required to complete 20 years of qualifying service in order to be eligible for non-regular retired pay. A qualifying year of service for non-regular retired pay is a full retirement year during which a Regular or Reserve member is credited with a minimum of 50 retirement points.

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 law and regulation related to USAR retirements and the applicant's record failing to reflect he had 20 years of qualifying service for non-regular retirement, 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
:X	:X	:X	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.

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. Army Regulation 135-175 (Separation of Officer) established policies, standards, and procedures governing the administrative separation of officer of the Army National Guard and the USAR. This regulation states discharge will be accomplished when it has been determined that a Soldier is no longer qualified for retention unless the Soldier requests and is eligible for transfer to the Retired Reserve in accordance with applicable Army Regulations.

3. Army Regulation 135-180 (Qualifying Service for Retired Pay Non-Regular Service) states in paragraph 2-1 that to be eligible for retired pay an individual does not need to have a military status at the time of application for retired pay, but must have: (1) attained age 60, (2) completed a minimum of 20 years of qualifying service, and (3) served the last 8 years of his or her qualifying service as an RC Soldier. During the period October 1991 to December 2001, the requirement to serve the last 8 years in an RC was amended to the last 6 years, and on 26 April 2005 this requirement was reduced to zero years. This regulation also specifies, in part, that each RC Soldier who completes the service required to be eligible for retired pay at age 60 will be notified in writing with a 20-year letter within 1 year after he/she completes the service.

4. Army Regulation 140-10 (Army Reserve Assignments, Attachments, Details, and Transfers) sets forth the basic authority for the assignment, attachment, detail, and transfer of USAR Soldiers. Chapter 7 relates to the removal of Soldiers from an active status and states that Soldiers removed from an active status will be discharged or, if qualified and if they so request, will be transferred to the Retired Reserve.

5. Title 10, U.S. Code, section 12731 provides the legal age and service requirements for age and service for Reserve non-regular retirement. It states that a person is entitled, upon application to retired pay if the person has attained the applicable eligibility age, has performed at least 20 years of service computed under section 12732 of this Title; and 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.

//NOTHING FOLLOWS//