

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240007406

APPLICANT REQUESTS:

- reconsideration of his previous request to be issued a 20-year notice of eligibility (NOE) for retirement from the U. S. Army
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 28 February 1988
- Army National Guard (ARNG) Retirement Point History Statement, dated 24 December 1998
- NGB Form 22 (Report of Separation and Record of Service) , for the period ending 29 June 1999
- DD Form 214, for the period ending 21 July 2007
- A letter issued by [REDACTED] Army National Guard ([REDACTED] ARNG), dated 23 January 2024
- A letter issued by the [REDACTED] ARNG to [REDACTED] dated 6 March 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210013421 on 20 April 2022.

2. The applicant states, in effect, he is requesting reconsideration of his previous request to be issued a 20-year NOE for retirement from the U. S. Army. There was a change in Army Regulation 135-180 (Retirement for Non-Regular Service), which he believes now makes him eligible for retirement. During the process of his separation from active duty, personnel services were not aware of the change in regulatory guidance, nor were they familiar with how time served in the ARNG would contribute to his retirement. He was not advised on how to proceed and has been attempting for quite some time to find the correct answer.

3. The applicant provides:

a. An ARNG Retirement Point History Statement, dated 24 December 1998 accounts for of all retirement points he has earned through various types of service to date, including active duty, inactive duty for training (IDT), annual training (AT) and other qualifying service, for a total of 12 years, 9 months and 14 days.

b. A letter issued by the [REDACTED] ARNG, dated 23 January 2024, which is available in its entirety for the Board's review, shows in pertinent part that the Regular Army (RA) should have issued a 20-year NOE prior to the applicants expired term of service (ETS) on 21 July 2007. Furthermore, that it is reasonable to assume that a Soldier with over 20 qualifying years toward a 20-year retirement would not knowingly forfeit his retirement if he was aware of the situation of needing a 20 Year NOE prior to his ETS to apply for retirement. The applicant was not properly advised of the requirements to be eligible for retirement at age 60.

c. A letter issued by the [REDACTED] ARNG to [REDACTED] dated 6 March 2024, which is available in its entirety for the Board's review, references the applicant's prior application to ABCMR in Docket Number AR20210013421 on 20 April 2022. This document further provides the opinion of the of the [REDACTED] ARNG, in regard to the applicants prior case. Is it the opinion of the [REDACTED] ARNG, that the ABCMR Board made an error and failed to consider changes made in 2005 by the National Defense Authorization Act. Their analysis further indicated that based on the 2005 change, the applicant is eligible to receive retirement pay.

4. The applicant's service record shows:

a. On 29 February 1984 he enlisted in the RA and was honorably released from active duty on 28 February 1988 at his ETS. He completed 4 years of active service. His grade at the time of discharge was sergeant (SGT)/E-5.

b. On 29 February 1988 he reenlisted in the ARNG, followed by multiple extensions to his Oath of enlistment.

c. NGB Form 22 for the period ending 29 June 1999, shows he was honorably discharged from [REDACTED] ARNG ([REDACTED] ARNG), so he may reenlist into the RA. He completed 10 years, 8 months, 23 days of service, and a total of 12 years, 9 months, and 14 days of service for retired pay.

d. On 30 June 1999 he reenlisted in the RA, followed by multiple reenlistments and one extension to his Oath of enlistment.

e. His DD Form 214 shows he was honorably released from active duty on 21 July 2007 due to the completion of his required active service. He completed 8 years, and 22 days of active service. His grade at the time of discharge was SGT/E-5. This document also shows in item 12 (Record of Service):

- 12d (Total Prior Active Service): 4 years, 2 months, 16 days
- 12e (Total Prior Inactive Service): 11 years, 4 months, 1 day

4. In a prior ABCMR Docket Number AR20210013421 on 20 April 2022, wherein the applicant requested issuance of his NOE for retired pay at age 60 (20-Year Letter), the Board found that relief was not warranted based on the following:

a. On 15 February 2022, Chief, Operations and Readiness Division, Human Resources Command (HRC) provided an opinion. The advisory official states the NOE for retired pay at 60 (20 Year Letter) would be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve. The applicant completed his duty as an active-duty member and was not transferred into the retired reserve as required per regulation. Therefore, regulatory guidance dictates the applicant is not eligible for a NOE.

b. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records, and HRC's advisory, the Board determined there is insufficient evidence that shows the applicant achieved 20-years of retirement credit that would authorize issuance of a NOE.

5. Army Regulation 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

#### 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. Upon review of the applicant's petition and available military records, the Board determined the applicant completed the appropriate amount of time to be issued a 20-Year Letter and his record does not reflect as such; therefore, it should be amended to show he received his Notice of Eligibility Letter for 20 years of qualifying service.



REFERENCES:

1. Army Regulation 15-185 Army Board for Correction of Military Records (ABCMR), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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. Army Regulation 600-8-7 (Retirement Services Program), prescribes policies governing military personnel retirement services, the Survivor Benefit Plan, the Career Status Bonus, and the Chief of Staff, Army Retired Soldier Council. This regulation implements DODI 1332.42. It applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. It also applies to all retirement services officers and Survivor Benefit Plan counselors.

a. Notification of Eligibility for Retired Pay for Non-Regular Service. The Retirement Points Accounting Management (RPAM) system will determine when a Soldier has completed the required qualified service for non-regular retirement and will automatically generate the 20-year notice of eligibility (NOE). The Soldier must perform at least 20 years of qualifying service computed under Title 10 (Armed Forces), U.S. Code, section 12732. The State RPAM noncommissioned officer will produce a Notification of Eligibility for Retired Pay for Non-Regular Service.

b. Army National Guard (ARNG) Soldiers who meet the qualification for Regular (active service) retirement will apply for retirement through the State AGR Office. Soldiers may be processed for retirement either at an installation transition center or at the State Joint Force Headquarters (JFHQ) location as ordered by the State AGR Office.

3. Army Regulation 135-180 (Retirement for Non-Regular Service), implements statutory authorities governing the granting of retired pay for non-regular service to Soldiers in the Army National Guard (ARNG), Army National Guard of the United States (ARNGUS) or the U.S. Army Reserve (USAR).

a. Notification Requirement. Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) under 10 USC 12731a Reserve Component (RC) Soldiers who complete the eligibility requirements in section I will be notified in writing within 1 year after completion of the required service in accordance with Army Regulation (AR) 140-185

(Training and Retirement Point Credits and Unit Level Strength Accounting Records) or National Guard Regulation (NGR) 680-2 (Automated Retirement Points Accounting Management). The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued by:

(1) Human Resources Command (HRC) for all USAR Soldiers except for those who are within 2 years of qualifying for an active-duty retirement and can remain on active duty to complete the required service. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format determined by HRC.

(2) The State Adjutant General (AG) (Military Personnel Management Office (MPMO/G1) for all Army National Guard (ARNG) Soldiers serving in an active status in the State, where the eligible Soldier was assigned at the time they become eligible. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format shown in NGR 680-2.

b. After a Soldier has been notified of their eligibility for retired pay for non-regular service, the Soldier's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed, unless it resulted directly from the fraud or misrepresentation of the individual concerned. However, the number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination, and when such a correction is made, the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date they are granted retired pay.

c. Effective control is essential to ensure that qualifying service is accurately computed and for the timely notification of Soldiers concerned. Controls and procedures will be established by the responsible officials to ensure that erroneous administrative determinations are avoided. Direct communication between custodians of personnel records is encouraged when necessary to verify periods of service and retirement point credits.

d. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the name of the appropriate official designated and will be authenticated by the handwritten signature of the official immediately responsible for the determination of the eligibility of the Soldier being notified. A copy of the notification will be filed in the Soldier's electronic Army Military Human Resource Record (AMHRR).

e. Retirement point statements. ARNG Soldiers will have an electronic copy of their NGB Form 23A (ARNG Current Annual Statement) and NGB Form 23A1 (ARNG

Retirement Points Statement Supplemental Detailed Report), sent to their unit annually by the State AG Military Personnel Management Office (MPMO/G1) for review. Soldiers will review their retirement point statement at least annually and provide supporting documents to correct any deficiencies through their chain of command to their State Retirement Point Accounting Management (RPAM) administrator in accordance with NGR 680-2 (Automated Retirement Points Accounting Management).

f. Computation of service. Upon receipt of a DD Form 108, a computation to determine the number of years of qualifying service, years for percentage purposes, and years for basic pay purposes will be made by the Commanding General (CG), HRC. Generally, service begins on the date of enlistment or induction for enlisted personnel. In determining the years for percentage purposes, credit of 1 day will be given for each point.

(1) One point for each day of active duty.

(2) One point for each authorized participation in drills or periods of instruction which conform to the requirements prescribed by the Secretary of the Army.

g. Active duty means full-time duty in the active military service of the United States. It includes:

- Actual duty on the active list
- Full-time training duty
- Annual training duty
- Attendance at a school designated as a service school by law or by the Secretary of the military department concerned while in active military service
- Full-time duty performed by a member of the ARNGUS, and the Air National Guard of the United States

h. Date retired pay begins. Retired pay will begin on the day in which the individual meets the requirements for age and service or the first day of any later month that the retiree may elect on the application form (DD Form 108). There is a 6-year statute of limitations for back pay of retired pay (31 USC 3702(b)). A claim for retired pay must be filed within 6 years after the date of eligibility for retired pay. If not filed within the 6-year limitation, 1 day's retired pay will be lost for each day of delay in filing the claim application. For example, if eligibility was attained on 2 July 1989 and the application for retired pay is not recorded by DFAS until 2 September 1995, payment can be made only from 2 September 1989.

4. Title 10 (Armed Forces), U.S. Code, section 12731 provides age and service requirements for all eligible Soldiers to receive this notification letter within 1 year after completing 20 qualifying years of service for retired pay purposes. Issuance of the

Notification of Eligibility for Retired Pay identifies Soldiers entitled to receive retired pay at non-regular retirement. In the case of a person who completed the service requirements before 25 April 2005, performed the last six years of qualifying service the number of years of such qualifying service under this paragraph shall be eight.

5. Title 10 (Armed Forces), U.S. Code, section 12732 provides entitlement to retired pay: computation of years of service. Each one-year period, after 1 July 1949, in which the person has been credited with at least 50 points (one point for each day) for active service; full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty; or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned.

//NOTHING FOLLOWS//