

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240007795

APPLICANT REQUESTS: conversion from a lieutenant colonel (LTC)/O-5 Regular Retirement to a colonel (COL)/O-6 Non-Regular Retirement effective 25 March 2017.

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum – Subject: Request for Voluntary Conversion of Regular Retirement as a LTC/O-5 to Receive Non-Regular Retirement Benefits as a COL/O-6
- DD Form 108 (Application for Retired Pay Benefits), 19 September 2022
- DD Form 2656 (Data for Payment of Retired Personnel), 19 September 2022
- National Guard Bureau (NGB) Form 23B (Army National Guard (ARNG) Retirement Points History Statement), 18 August 2022
- DA Form 2142 (Pay Inquiry), 6 March 2012
- Memorandum – Subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), 2 June 2005
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 3 February 2012
- Special Orders Number 18 AR, 20 January 2012
- List of Names
- Orders Number 003-800, 3 January 2012
- NGB Form 22 (Report of Separation and Record of Service), 31 January 2013
- DD Form 2656
- Orders Number C03-392235, 8 March 2023
- U.S. Army Human Resources Command (AHRC)– Gray Area Retirement letter, 8 March 2023
- Defense Finance and Accounting Service (DFAS) letter, 4 October 2023

FACTS:

1. The applicant states on 19 September 2022, he submitted a request to have his retirement pay converted from Regular Retirement to Non-Regular Retirement. On 8 March 2023, AHRC approved his request and issued orders reflective of this change. However, upon submission and denial by DFAS, he was advised that this request

required a correction of his military records and therefore would need to be considered by this Board.

2. A review of the applicant's service records reflects the following:

a. On 27 May 1979, the applicant was appointed a Reserve commissioned officer.

b. On 26 September 1991, the NGB issued Special Orders Number 160 AR announcing Federal recognition of the applicant's initial appointment into the ARNG from the U.S. Army Reserve, effective 21 August 1991, in the rank/grade of major/O-4.

c. On 22 March 2001, the NGB issued Special Orders Number 78 AR announcing Federal recognition of the applicant's promotion to the rank/grade of LTC/O-5, effective 22 March 2001.

d. On 2 June 2005, the applicant was issued his 20-year letter.

e. On 11 February 2010, the MNARNG issued Orders Number 042-021 ordering the applicant to active duty in the Active Guard/Reserve (AGR), effective 26 February 2010.

f. On 20 January 2012, the NGB issued Special Orders Number 18 AR announcing Federal recognition of the applicant's promotion to COL, effective 18 January 2012.

g. On 3 February 2012, the applicant was released from active duty. DD Form 214 reflects the following:

- Item 4a. (Grade, Rate or Rank) LTC
- Item 4b. (Pay Grade) O05
- item 12c. (Net Active Service this Period) – 11 months and 8 days
- item 12d. (Total Prior Active Service) – 19 years and 14 days
- item 12e. (Total Prior Inactive Service) – 11 years, 8 months, and 12 days
- item 12i. (Effective Date of Pay Grade) 22 March 2001

h. On 29 February 2012, a DD Form 215 (Correction to DD Form 214 Certificate of Release or Discharge from Active Duty) to reflect the following changes to the DD Form 214 for the period ending on 3 February 2012:

- Item 4a/b; – COL/O-6
- item 12c. – 1 year, 11 months, and 8 days
- item 12f. (Foreign Service) – 0 years 0 months 0 days
- item 12i; – 18 January 2012

i. On 18 January 2013, the MNARNG issued Orders Number 018-1012 releasing the applicant from the ARNG and reassigning him to the U.S. Army Reserve Control Group (Retired Reserve), effective 31 January 2013.

j. On 31 January 2013, the applicant was released from the ARNG for completion of maximum service and transferred into the Retired Reserve. NGB Form 22 reflects following:

- Item 5a. (Rank) COL
- Item 5b. (Pay Grade) O-6
- item 10a. (Net Service this Period) – 21 years, 5 months, and 10 days
- item 10b. (Prior Reserve Component Service) – 10 years, 6 months, and 10 days
- item 10c. (Prior Active Federal Service) – 5 years, 5 months, and 10 days
- item 10d. (Total Service for Pay) – 37 years and 5 months

k. On 8 March 2023, AHRC issued Orders Number C03-392235 placing the applicant on the Retired List, effective 25 March 2017, at the rank of COL.

3. The applicant provides the following:

a. Memorandum – Subject: Request for Voluntary Conversion of Regular Retirement as an LTC/O-5 to Receive Non-Regular Retirement Benefits as a COL, reflective of the applicant's submitted request for conversion of his retirement type from Regular to Non-Regular. The applicant notes that he was promoted to COL on 18 January 2012 and served satisfactorily for over 12-months. On 31 January 2013, he was transferred into the Retired Reserve due to reaching the maximum years of service as a COL. He contests that in accordance with Title 10, United States Code (USC), Section 1370a.(c)(2)(A) an officer who completes at least 6-months of satisfactory service in the grade in which serving at the time of transfer or discharge, notwithstanding failure of the person to complete 3-years of service in that grade, if the person is transferred from an active status or discharged as a Reserve commissioned officer solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service. The applicant notes that he completed 20 years of qualifying Reserve service effective 29 May 2005 and 20 years of active Federal service on or about 7 December 2010, but remained in an active federal status until 3 February 2013.

b. DD Form 108 dated 19 September 2022, reflective of the applicant's submitted application for retired pay at the rank of COL with a proposed start date of 25 March 2017.

c. DD Form 2656 dated 19 September 2022, reflective of the applicant's submitted request to start receiving non-regular retired pay. The applicant annotates that he was retired/transferred to the Retired Reserve on 25 March 2017.

d. NGB Form 23B dated 18 August 2022, reflective of a summary of the applicant's qualifying service performed between 1 September 1975 – 29 May 2009. This document is incomplete i.e. it does not reflect the total qualifying service completed during this period.

e. DA Form 2142 dated 6 March 2012, reflective of the applicant's submitted request to be paid the difference between O-5 and O-6 pay for the period of 18 January 2012 – 3 February 2012.

f. List of Names reflective of an alphabetical list of names. This document is void of a subject line or other content information other than "Nominee."

g. Orders Number 003-800 dated 3 January 2012, reflective of the applicant being released from the AGR program, effective 3 February 2012.

h. AHRC – Gray Area Retirement letter, dated 8 March 2023, reflective of the applicant being advised that his submitted request to receive retired pay under Title 10, USC, Section 12731 being approved.

i. DFAS letter dated 4 October 2023, reflective of the applicant being advised that changes in his retirement factors are a correction of military records under the provisions of Title 10, USC, Chapter 79, Sections 1551 through 1557. Therefore, he was redirected to this Board for consideration.

BOARD DISCUSSION:

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, available military records and the applicant's Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter) issued on 2 June 2005, the Board concluded the applicant did complete qualifying service for a non-regular retirement in the rank/grade of colonel (COL)/O-6 and should be paid as such. The Board noted the U.S. Army Human Resource Command has published orders amending his rank/grade on the retired list; however, the Defense Finance and Accounting Service needs a Board action to be able to pay said order.

BOARD VOTE:

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| ■ | ■ | ■ | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was 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:

- accepting Orders Number C03-392235, issued by the U.S. Army Human Resources Command on 8 March 2023 to show he was placed on the retired list effective 25 March 2017 at the grade of COL
- paying him any back retired pay as a result of this correction

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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, USC, Section 12741 (Retirement for Service in an Active Status Performed in the Selected Reserve of the Ready Reserve After Eligibility for Regular Retirement) provides that a person may not receive retired pay under this chapter when the person is entitled, under any other provision of law, to retired pay or retainer pay, a person may elect to receive retired pay under this chapter, instead of receiving retired or retainer pay under chapter 65, 741, 841, or 941 of this title, if the person—

- satisfies the requirements specified in paragraphs (1) and (2) of such section for entitlement to retired pay under this chapter
- served in an active status in the Selected Reserve of the Ready Reserve after becoming eligible for retirement
- completed not less than two years of satisfactory service (as determined by the Secretary concerned) in such active status (excluding any period of active service)

The Secretary concerned may reduce the minimum two-year service requirement specified in paragraph (1)(C) in the case of a person who –

- completed at least one year of service in a position of adjutant general required under section 314 of title 32 or in a position of assistant adjutant general subordinate to such a position of adjutant general; and
- failed to complete the minimum years of service solely because the appointment of the person to such position was terminated or vacated

As of the effective date of an election, the Secretary concerned shall –

- terminate the eligibility of the person to retire under chapter 65, 741, 841, or 941 of this title, if the person is not already retired under one of those chapters, and terminate entitlement of the person to retired or retainer pay under one of those chapters, if the person was already receiving retired or retainer pay under one of those chapters; and
- in the case of a Reserve commissioned officer, transfer the officer to the Retired Reserve

2. Title 10, USC, Section 12731 (Age and Service Requirements) provides that an application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of Homeland Security, as the case may be 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 under this chapter. The notice shall be sent, in writing, to the person concerned within one year after the

person completes that service. A person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person -

- has attained the eligibility age (60)
- has performed at least 20 years of service computed under section 12732 of this Title
- performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a Regular Component
- 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

3. Title 10, USC, Section 12732 (Entitlement to Retired Pay: Computation of Years) provides that for the purpose of determining whether a person is entitled to retired pay under section 12731 of this title, the person's years of service are computed by adding each one-year period after 1 July 1949, in which the person has been credited with at least 50 points on the following basis: one point for each day of active service; one point for each attendance at a drill or period of equivalent instruction; points at rate of 15 a year for membership in a Reserve component.

4. Department of Defense 7000.14-R (Financial Management) Section 070102 (Active Reserve Service after Regular Retirement or Eligibility for Regular Retirement) provides that a member who is entitled to regular retired pay or retainer pay based on years of active service (without regard to whether the member actually retired or received retired or retainer pay for regular service), and who serves in an active status as a member of a Reserve Component may apply for Reserve (non-regular) retired pay if the member:

- has attained the Reserve retired pay eligibility age of 60 years or such other reduced eligibility age as provided for in Title 10, U.S.C., Section 12731
- has performed at least 20 years of service qualifying for a Reserve (non-regular) retirement; and after 28 October 2009, has completed two or more years of satisfactory service, as determined by the Secretary concerned, in an active status (excluding any period of active service); A member who was eligible for regular retired or retainer pay on or before 27 October 2009, whose service was determined to be satisfactory by the Secretary concerned, is not subject to the 2-year service requirement

a. Section 70103 (Active Reserve Service after Reserve Retirement) provides that a member of the Retired Reserve serving in an active status in the Selected Reserves on 28 October 2009, or who thereafter serves in an active status in the Selected Reserves is entitled to recomputation of Reserve retired pay if the member serves in such status for not less than 2 years.

b. A commissioned officer of the Retired Reserve who is recalled to an active status under the provisions of this paragraph and completes not less than 2-years of service in such active status is entitled to an adjustment in the retired grade, subject to service requirements

5. Title 10, USC, Chapter 69 (Retired Grade) Section 1370a (Officers Entitled to Retired Pay for Non-Regular Service) provides that unless entitled to a different grade, or to credit for satisfactory service in a different grade under some other provision of law, a person who is entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest permanent grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary of the military department concerned in accordance with this section.

a. In order to be credited with satisfactory service in an officer grade above major, a person covered by subsection (a) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years. A person covered by paragraph (1) who has completed at least six months of satisfactory service in grade may be credited with satisfactory service in the grade in which serving at the time of transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade, if the person is transferred from an active status or discharged as a reserve commissioned officer –

- solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service; or
- because the person no longer meets the qualifications for membership in the Ready Reserve solely because of a physical disability, as determined in accordance with chapter 61 of this title, and at the time of such transfer or discharge the person (pursuant to section 12731b of this title or otherwise) meets the service requirements established by section 12731(a) of this title for eligibility for retired pay under chapter 1223 of this title, unless the disability is described in section 12731b of this title

b. In the case of a person to be retired in a grade below brigadier general or rear admiral (lower half) in the Navy, the Secretary of Defense may authorize the Secretary of a military department to reduce, subject to subparagraph (B), the three-year period of service-in-grade required by paragraph (1) to a period not less than two years. The authority of the Secretary of a military department under this subparagraph may not be delegated.

//NOTHING FOLLOWS//