

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 May 2025

DOCKET NUMBER: AR20240008894

APPLICANT REQUESTS: Backpay for retired pay for the period of 30 September 2001 through 23 June 2014. A personal appearance before the Board via video or telephonically.

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

- DD Form 149 (Application for Correction of Military Record)
- The City of New York (NY) Certification of Birth shows the applicant was born to the Service Member (SM)
- City of NY Certificate of Marriage Registration shows the applicant was married to A- Johnson on 25 November 2015
- Power of Attorney shows on 9 December 2019 the SM granted the applicant power of attorney for various actions including retirement benefit transactions, claims and litigation
- DA Form 5016 (Retirement Accounting Statement (formerly known as the Chronological Statement of Retirement Points)) dated 17 April 2020, shows the SM obtained 20-years of qualifying service for retired pay
- U.S. Army Human Resources Command (AHRC) letter dated 13 July 2020 shows the SM's application for retired pay was approved
- AHRC Orders Number C07-096204 dated 13 July 2020 shows the SM was placed on the retired list, effective 30 September 2001
- Defense Finance and Accounting Service (DFAS) letter dated 22 July 2020 welcomed the SM to the retired rolls of the U.S. Army
- State University of NY Downstate Health Sciences University letter dated 12 August 2020 states the SM suffered from memory loss an impairment associated with dementia which is permanent, progressive and degenerative disease of the brain
- Brookdale Hospital Medical Center letter dated 13 August 2020 states in the doctor's medical opinion the SM has biparietal strokes and moderate dementia, the applicant informed the doctor the SM began having memory loss after a fall in 2012
- Applicant's letter to DFAS dated 20 August 2020 appealing the denial of retroactive retired pay citing the SM's medical condition and inaccuracy of her service record caused the delay in applying for retired pay

- Downstate Health Sciences University letter dated 14 July 2022 states the SM suffered from memory loss an impairment associated with dementia which is permanent, progressive and degenerative disease of the brain
- Applicant's letter to DFAS dated 13 December 2022 regarding the SM's retroactive retired pay, she was informed by DFAS the power of attorney was not valid as it was not durable though attorneys have stated it was durable

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:

- SM suffers from mental illness and post-traumatic stress disorder which was triggered by a fall
- SM's qualifying years of service for retired pay was incorrect which took several years to get corrected due to her mental illness
- The applicant was able to facilitate the necessary steps to get the SM's record corrected and apply for retired pay
- Due to the statute of limitations on filing claims the SM has not been paid for 13-years of retired pay
- In light of the circumstances of the SM, the applicant requests back pay for retirement for the period of 30 September 2001 through 23 June 2014

3. A review of the SM's service record shows:

- On 11 September 1981, the SM executed her oath of office and was appointed as a Reserve commissioned officer and was subsequently assigned to a U.S. Army Reserve (USAR) Troop Program Unit by Orders Number C-09-021186 dated 28 September 1981
- On 17 January 2003, the SM was assigned to the USAR Control Group (Retired Reserve) by Orders Number 03-017-00082 dated 17 January 2003
- Orders Number 03-017-00082 was amended to reflect the effective date of 1 October 2001 by Orders Number 03-071-00014 dated 12 March 2003
- On 30 September 2001, the SM was placed on the retired list by Orders Number C07-096204 dated 13 July 2020

4. On 28 April 2025, in the processing of this case, DFAS provided information regarding the SM's retired pay. The official stated the SM was placed on the retired

rolls, effective 30 September 2001 and is receiving retired pay in the amount of \$992.00 per month. She received back pay in the amount of \$58,417.47 for the period of 24 June 2014 through 30 June 2020. The gross pay from the date of her retirement through the 6-year bar date the period of 30 September 2001 through 23 June 2014 is in the amount of \$105,145.87. DFAS also provided a letter sent to the SM dated 22 July 2020 in which she was informed her claim was denied in part citing the Barring Act which prevented any claim not received within 6-years from the date it accrues. She could appeal her claim to the Defense Office of Hearings and Appeals by filing an appeal with DFAS within 30-days of the date of the letter.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the information in the DFAS memorandum showing the applicant failed to receive all appropriate retirement pay due to the limitations by the Barring Act, the Board concluded there was sufficient evidence of an injustice warranting paying the applicant the additional retirement pay as determined by DFAS.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:XXX	:XXX	:XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 paying the applicant all appropriate back retirement pay as determined by the Defense Finance and Accounting Service.

//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. Title 10, U.S. Code (USC), 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 (AR) 15-185 (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.
3. Title 31 USC, section 3702 (Authority to settle claims), (b) (1) A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6-years after the claim accrues except: (A) as provided in this chapter or another law; or (B) a claim of a State, the District of Columbia, or a territory or possession of the United States.
4. Department of Defense Financial Management Regulation 7000.14-R, Volume 7B (Military Pay Policy - Retired Pay), Officers and enlisted members of the military may be retired for voluntary or involuntary reasons. Military retired pay is divided into three

general categories: retired pay for Regular service, retired pay for non-Regular (Reserve/Guard) service, and retired pay for physical disability. With the exception of retirement for physical disability and certain temporary authorities for early retirement, a member must complete the requisite years of service (generally at least 20-years of service) in order to be eligible for retired/retainer pay. (Age Requirement), the eligibility age for a Non-regular retirement for age and service is 60 years of age. (Non-Regular Retirement), Reservists are entitled to pay effective on the date on which the requirements for age and service have been met, or on the first day of any later month that the retiree may elect. Chapter 10 (Correction of Records), if a payment is due as a result of a correction of record, the claim for such payment accrues on the date of the correction. A claimant has 6 years from the date of the correction of record to claim the payment owed as a result of the correction of record.

//NOTHING FOLLOWS//