

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240008995

APPLICANT REQUESTS: in effect -

- to change his Special Separation Benefit election to election of the Temporary Early Retirement Authority (TERA) Act
- to be granted a regular retirement with retired pay
- to be eligible for Tricare health benefits

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

- DD Form 149, Application for Correction of Military Record
- Annex A, Certificate and Acknowledgement of Service Requirements for Individuals Enlisting or Reenlisting in the Individual Ready Reserve
- DD Form 4/1-E, Enlistment/Reenlistment Document-Armed Forces of the United States
- Orders 127-14, Headquarters, 573rd Personnel Service Company, Fort Bragg, North Carolina, with endorsement
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Notification to the Change in Benefits
- Orders D-01-604444, U.S. Army Reserve Personnel Center, St. Louis, Missouri
- Honorable Discharge Certificate
- Memorandum, U.S. Army Human Resources Command, Veterans Inquiry Branch

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, in effect, he is requesting retirement under the provisions of TERA so that he and his family can be eligible for health care benefits, and he can receive the retired pay earned.
3. The applicant enlisted in the Regular Army on 16 June 1976.
4. The applicant requested early separation in accordance with the Voluntary Incentive Program on 5 June 1992. He elected to receive the Special Separation Benefit (SSB).
5. Headquarters Department of the Army approved his request, and the applicant was given a release date of August 1992.
6. The applicant was discharged on 3 August 1992 in accordance with the Fiscal Year 1992, Enlisted Voluntary Early Transition Program. He completed 16 years, 1 month, and 19 days of net active duty service for the period. He received an SSB payment of \$43,702.94.
7. The applicant provides:
 - a. His U.S. Army Reserve (Individual Ready Reserve Prior Service Option) enlistment contract and additional instructions which show his enlistment date as 4 August 1992.
 - b. A letter from the Chief, Transition Assistance Management Program (TAMP), 5 March 1993, which notified the applicant of changes to his benefits; however, there is no information on the form indicating which benefits changed.
 - c. His honorable discharge certificate from the U.S. Army Reserve, effective 16 January 1996.
 - d. A letter from the U.S. Army Human Resources Command, Veterans Inquiry Branch, 29 May 2024, which responded to the applicant's request to have his retired pay account created due to the Temporary Early Retirement Authority (TERA) Act. This agency informed the applicant that they were unable to take action on his request because the applicant had been discharged with separation pay instead of being retired.
8. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. 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. One possible outcome was to provide partial relief with total recoupment of the Special Separation Benefit. However, the Board majority noted the applicant made the decision of his own free will and did so weighing the competing features of each program. Having made his selection, the member is obliged to accept the terms of their election.

2. The governing law, in effect at the time, provides that none of the drawdown incentive programs were an "entitlement" and the decision to participate was a voluntary one for those interested Soldiers who met strict eligibility requirements. For that reason, the Board recommended that denying the requested relief was appropriate. Based on this, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	:	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.

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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, 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) 635-200, Personnel Separations-Enlisted Personnel, prescribes the policy for early separation due to reduction in force, strength limitations, or budgetary constraints in Chapter 16-8. Soldiers may be separated prior to expiration of enlistment or fulfillment of active duty obligation when specifically authorized as set forth below.

a. When authorization limitations, strength restrictions, or budgetary constraints require the Regular Army (RA) or Reserve Component (RC) active duty enlisted force to be reduced in number, the Secretary of the Army, or his designee, may authorize voluntary or involuntary early separation. Statutory authority for Secretarial separation direction is Title 10, U.S. Code, sections 1169 or 1171 for RA Soldiers, and Title 10 U.S. Code, sections 12313(a) or 12681 for RC Soldiers.

b. Commander, PERSCOM (for RA) and Chief, National Guard Bureau, Chief, Army Reserve, and Commander, Army Reserve Personnel Center (for RC) will implement the Secretarial decision by issuing separation instructions pertaining to a specific class or

category of soldiers. For purposes of post service benefits, early separation under this paragraph is considered to be for the convenience of the Government.

3. The National Defense Authorization Act Fiscal Year 1992 (FY92) established two monetary incentive programs to assist in maximizing voluntary separations during the drawdown period of military forces. The two monetary incentives included the Special Separation Benefit (SSB), a lump sum payment equal to 15 percent of the Soldier's annual basic pay multiplied by his years of active service, and the Voluntary Separation Incentive (VSI), an annual annuity payment equal to 2.5 percent of the Soldier's annual basic pay multiplied by his years of service and paid for twice the number of years served.

a. The FY92 program provided that Soldiers electing the SSB would not forfeit any SSB or compensation received if they subsequently served on active duty, or on reserve duty in a pay status. Additionally, they were granted several nonmonetary transition benefits including commissary and exchange privileges, employment preference in non-appropriated fund positions, and transitional health care (CHAMPUS or medical treatment facility). The SSB was offered as an incentive for military members in certain career fields to leave active duty. This incentive was designed to drawdown or reduce the active duty force. The use of SSB was discontinued on 31 December 2001. Individuals must have met all the following requirements to be eligible to receive SSB:

- six years of active duty as of December 1991
- had served on active duty for less than 20 years
- five years of continuous active service at separation
- be in a rate or rank that has more people in it than are needed to maintain force readiness

b. The voluntary incentive program was just one of several programs instituted by Congress and implemented by the services to provide temporary management tools to reshape the military through FY95. Initially only a non-monetary voluntary separation program was announced and late in 1993 the early retirement program was announced providing retirement opportunities for some Soldiers who had less than 20 but more than 15 years of active military service. None of the drawdown incentive programs were an "entitlement" and the decision to participate was a voluntary one for those interested Soldiers who met strict eligibility requirements.

c. If a member later qualified for retirement pay after receiving the VSI or SSB, they were required to repay the full amount of separation payment.

4. The Temporary Early Retirement Authority (TERA) Act was enacted by Congress on 23 October 1992 as part of the National Defense Authorization Act of Fiscal Year 1993.

a. Its intent was to assist in the military draw-down of forces by permitting selected military members to retire early when they had between 15 and 20 years of service. Additional years of service could be accumulated, even though not serving in military uniform, during a period called Enhanced Retirement Qualification Period (ERQP).

b. The ERQP was that period from the date of retirement to the date on which the retiree would have attained 20 years of creditable service for the purpose of computing retired pay. The additional years were earned by service in military Reserve Components or employment in qualifying public or community service organizations – called the Public and Community Service (PACS) program.

c. At age 62, the TERA retiree was permitted to have their retired pay recomputed and increased accordingly.

d. The Secretaries or the respective services designated the ranks and military specialties that were eligible to apply according to the needs of the service. Retirement under this program was not a right, it is granted on an individual basis according to the requirements of the service.

e. The TERA program ended on 30 September 2001.

5. TRICARE is a healthcare program. It is not an agency, and it does not determine eligibility. The sponsor's uniformed service decides who is eligible for TRICARE and reports it to the Defense Enrollment Eligibility Reporting System (DEERS). The Transitional Assistance Management Program (TAMP) provides 180 days of health care benefits after regular TRICARE benefits end.

6. Army Regulation 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 begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//