

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20240009061

APPLICANT REQUESTS: reconsideration of his previous request for:

- correction of his retirement pay, with entitlement to back payment of allowances, based on his rank upon retirement as a lieutenant colonel (LTC)/O-5
- correction of his retirement points

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

- DD Form 149 (Application for Correction of Military Record)
- Two Applicant Letters 18 September 2023 and 25 April 2024
- DD Form 214 (Certificate of release or Discharge from Active Duty), 21 August 1990
- Memorandum for Record (MFR), Subject: Permanent Appointment, Naval Military Personnel Command Permanent Appointment Letter, 1 April 1998
- Fitness Report and Counseling Record (E7-O6), period of report from 25 June 1998 to 30 September 1999
- DA Form 2-1 (Personnel Qualification Record) (one page)
- USN Annual Retirement Point Record, 25 November 1999
- Request for Conditional Release, 4 February 2000
- Oaths of Office, 13 April 2000
- Honorable Discharge certificate, 12 April 2000
- MFR, Subject: Resignation from Colorado Army National Guard (COARNG), 23 October 2004
- NGB Form 22 (Report of Separation and Record of Service), 1 December 2004
- Orders Number 337-002, 2 December 2004
- Defense Finance and Accounting Service (DFAS) Summary of Retired Pay Account, 30 November 2020
- Retiree Account Statement (RAS), 23 August 2021
- Statement of Service for Navy Reserve Retirement, 11 January 2024
- Army Review Boards Agency (ARBA) Letter: AR20230013705, 23 February 2024
- MFR, Subject: Discharge from U. S. Navy Reserve (USNR), 8 April 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 AR20220012132 on 13 June 2023.

2. The applicant states his retirement date was 30 July 2000 and since the error was discovered, he has contacted the following: State, HRC, DFAS and most recently, Naval Personnel Command in an attempt to resolve this issue. The original ABCMR board requested documentation confirming that he was honorably discharged from the Navy at the rank of LTC/O5. During this process, it was found that the Navy did not properly discharge him, and the appropriate documentation needed to be corrected. This has been corrected and the updated documentation is included in this appeal. Specifically the corrected Statement of Service for Navy Reserve Retirement, his Honorable Discharge Letter (DD Form 256) and the Honorable Discharge Certificate. He requests that his retirement pay be adjusted to properly reflect his O5 rank as well as the back pay accumulated from 30 July 2000.

a. From the original appeal: In 1999 the applicant was discharged from the Navy reserve as an O5 and transferred to the COARNG as a CW2 and retiree in 2004. He submitted his retirement package with the State National Guard office May 2000 office. After his 60th birthday (30 July 2000), he did not receive any retirement pay so he contacted the State Guard Office and found that his package had not been submitted. Three months later, he received his first paycheck and back pay (for only that three months), however his RAS stated that he was still being paid as a CW2. After several calls with State, HRC, and DFAS they were able to correct the rank to O5 (LTC), however the monthly pay did not reflect the amount-based rank achieved, retirement points and equivalent years. Following the ABCMR Docket Number AR20220012132, 14 (sic) June 2023 decision, he contacted Navy Personnel Command and discovered that mistakes were made with his discharge from the Navy. These have been corrected and the updated Honorable Discharge documentation has been provided.

c. Upon further investigation, the Navy did not properly discharge him upon transfer to the Army. This has been corrected and is included in this appeal. It has taken over three years to find the problem and correct it.

3. The applicant provides:

a. MFR, Subject: Delivery of Permanent Appointment, 1 April 1998, shows the accepted permanent appointment to the rank of Commander (CDR)/O-5 with a DOR and effective date of 1 April 1998.

b. Fitness Report and Counseling Record (E7-O6), period of report from 25 June

1998 to 30 September 1999, shows in pertinent part, his grade/rate as CDR/O-5 and his primary duty as Command Inspector.

c. DA Form 2-1, one page shows in item 18 (Appointments and Reductions) his service in USNR in the rank of CDR/O-5 with a DOR of 1 April 1998 and COARNG in the rank of CW2 13 April 2000.

d. Naval Reserve Personnel Center, Annual Retirement Point Record, 25 November 1999 shows 67 total points qualifying and service of 1 year.

e. The applicant's request for conditional release, 4 February 2000 shows his pay grade as O5 in the USNR.

f. Oaths of Office shows the applicant executed an oath of office and was appointed as a Reserve warrant officer in the rank of chief warrant officer/CW2 on 13 April 2000 in the COARNG.

g. Orders Number 337-002, 2 December 2004 honorably separated the applicant from the COARNG and transferred him to the Retired Reserve in the grade of CW2. Effective 1 December 2004.

h. DFAS Summary of Retired Pay Account, 30 November 2020 shows the applicant's date of retirement, retired pay rank, service for basic pay, gross pay, service for basic pay, pay based on High 3 Base Amount, and total points upon which retired pay computed in the rank of CW2.

i. RAS, 23 August 2021 shows the applicant's retired pay, allowances, and benefits in the grade of O-5.

j. A Navy Personnel command, Statement of Service for Navy Reserve Retirement shows qualifying years of service 17 years, 10 months, and 22 days and total retirement points creditable for pay 3756, verified as honorable service on 11 January 2024.

k. ARBA letter in Docket Number AR20230013705, 23 February 2024 shows applicant was notified that if after he received his USN records and any other supporting evidence or materials, he may submit a new request.

l. MFR, Subject: Discharge from the USNR, 8 April 2024 shows the applicant was honorably discharged from the USNR, effective 12 April 2000 due to his transfer to the COARNG. His grade is shown as CDR/O5.

4. A review of the applicant's military record shows:

a. The applicant was born on [REDACTED] He turned 60 in [REDACTED] He had prior cadet and commissioned service in the USNR.

b. The applicant executed an oath of office and was appointed as a Reserve warrant officer in the rank of chief warrant officer/CW2 on 13 April 2000 in the COARNG.

c. Additionally, Orders 074-037, 14 April 2000, show the applicant was appointed in the COARNG in the grade of CW2.

d. The applicant was notified, 2 February 2003 that having completed the required years of service, he will be eligible for retired pay upon application at age 60.

e. The applicant executed an additional oath of office and was appointed as a CW2 in the COARNG on 17 December 2003.

f. ARNG Retirement Points History Statement, shows 17 October 2003 shows total points for retired pay, 4077 and creditable service for retired pay, 21 years.

g. The NGB published Special Orders Number 11 AR, 20 January 2004 extending Federal Recognition and appointed the applicant in the rank of CW2 in the ARNG, effective 17 December 2003.

h. ARNG Retirement Points History Statement, 8 January 2004 shows total points for retired pay, 4005 and creditable service for retired pay, 20 years.

i. MFR, Subject: Resignation form the COARNG, 23 October 2004 shows the applicant requested resignation from the COARNG and transfer to the USAR Control group (Retired) effective 11 December 2004.

j. NGB Form 22, 1 December 2004 shows the applicant was separated from the COARNG by reason of completing 20 years active or inactive service and transferred to the U.S. Army Reserve Control Group (Retired). The NGB Form 22 shows in item 5a (Rank) CW2 and item 6 (DOR) 13 April 2000.

k. Special Orders Number 359 AR, 28 December 2005 published by NGB withdrew Federal Recognition and transferred the applicant to the Retired Reserves, effective 1 December 2004.

l. Orders Number C11- 090562, 10 November 2020 placed the applicant on the Army of the United States Retired list in the retired grade of CW2, effective 30 July 2020.

5. In a previous ABCMR case, Docket Number 20220012132, 13 June 2023 the Board denied the applicant's request noting that when he applied for retired pay at age 60, he was entitled to retirement at the highest grade he satisfactorily held. By law, unless entitled to a higher grade under another provision of law, a reserve commissioned officer, other than a commissioned warrant officer, who is transferred to the Retired Reserve is entitled to be placed on the retired list established by section 12774(a) of Title 10 in the highest grade in which he served satisfactorily, as determined by the Secretary concerned and in accordance with section 1370a of this title, in the armed force in which he is serving on the date of transfer. However, due to the absence of the applicant's USN records, the Board was unable to determine if his service in the pay grade of O5 was satisfactory. As such, the Board determined there is insufficient evidence to support granting him the requested relief.

6. In the processing of this case an advisory opinion was obtained, 10 March 2025, from the Chief, Special Actions Branch who opined in pertinent part:

a. The applicant requests to be retired in the grade of O5 vice his current retirement grade of W2 and receive the difference of retirement pay and backpay.

b. Recommendation. Approval.

c. Discussion.

(1) The applicant served in the Navy at the grade of O5 before serving in the Colorado Army National Guard (COARNG) in the rank of CW2. He retired effective 1 December 2004 and was retired as a CW2. The applicant filed an ABCMR to change his retirement rank to O5, but it was concluded there was insufficient documentation in his file to show he satisfactorily served in the rank of O5. The Soldier was able to obtain documentation showing an honorable discharge from the Navy in the grade of O5.

(2) Title 10 United States Code (USC) 1370a states that commissioned officers shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily. The Soldier provided documentation showing that he satisfactorily served in the grade of O5 and should be retired as such.

d. It is the recommendation of this office that the applicant's request be approved. He satisfactorily held the grade of O5 and IAW 10 USC 1370a should be retired in the grade of O5 vice W2 and receive retirement pay as such.

e. The COARNG and National Guard Bureau Retirement Services Branch concur with this advisory opinion.

7. The applicant was provided with a copy of the advisory opinion with an opportunity to respond. No response as of 25 March 2025.

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. The Board reviewed and concurred with the National Guard Bureau's advisory noting the applicant was able to obtain documentation showing an honorable discharge from the U.S. Navy in the grade of O5. Title 10 USC, section)1370a states that commissioned officers shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily. The applicant provided documentation showing that he satisfactorily served in the grade of O5 and should be retired as such. Therefore, the Board granted relief. The Board deferred to the Defense Finance and Accounting Service for the applicable calculations.

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 amendment of the ABCMR's decision in Docket Number AR20220012132 on 13 June 2023. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by showing he was receiving O-5 pay effective 1 December 2004 using a high 36-month average.

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. Army Regulation 135-180 (ARNG and Army Reserve-Qualifying Service for Retired Pay Non-Regular Service) provides that a person granted retired pay will receive such pay in the highest grade (temporary or permanent) satisfactorily held by him or her during his or her entire period of service.
2. Title 10, USC, Chapter 69 (Retired Grade) provides that unless entitled to a different retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, subject to paragraph (2) and subsection (b), be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

//NOTHING FOLLOWS//