

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 April 2025

DOCKET NUMBER: AR20240009284

APPLICANT REQUESTS: paid retired pay for the period of 26 June 2007 through 26 May 2018.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) service ending 18 November 1970
- DD Form 214 (Report of Separation from Active Duty) service ending 18 November 1976
- DD Form 214 (Certificate of Release or Discharge from Active Duty) service ending 30 April 1983
- National Guard Bureau (NGB) Memorandum dated 2 May 1988, Subject: Notification of Eligibility for Retired Pay at Age 60
- NGB Form 22 (Report of Separation and Record of Service)
- NGB Form 23 (Army National Guard (ARNG) Retirement Points History Statement) shows 22-years, 6-months and 17-days of creditable service with 4,649 points for retired pay
- Screenshot of Soldier Management Services - WEB Portal (SMS WEB) Retirement Information shows 23-years, 4-months, and 23-days of qualifying service for retired pay with 4,979 retirement points
- Orders Number C05-495426, dated 30 May 2024, placed on the retired list effective 26 June 2007 in the grade of E-6
- DA Form 5016 (Retirement Accounting Statement) formerly known as Chronological Statement of Retirement Points, shows 23-years, 4-months, and 23-days of service qualifying for retirement with 4,979 creditable points
- Department of Veterans Affairs (VA) Form 10-0137 (VA Advance Directive Durable Power of Attorney for Health Care and Living Will) power of attorney granted to his daughter

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,

- due to his inability to apply for retired pay timely, he was not placed on the Retired List until 30 May 2024 with the effective date of 26 June 2007
- due to the 6-year limit to file a claim, he could not get back retired pay prior to 26 May 2018
- Veterans Service Organizations attempted to assist him apply for retired pay but could not get his retired pay started as he got the run around

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

- DD Form 214 shows active service in the U.S. Marine Corps (USMC) during the period of 31 January 1967 through 18 November 1970
- DD Form 214 shows active service in the USMC during the period of 19 November 1970 through 18 November 1976
- on 15 January 1977, the applicant enlisted in the TXARNG
- on 9 March 1982, the applicant extended his enlistment in the TXARNG for 3-years
- DD Form 214 shows active service in the ARNG States during the period of 8 March 1982 through 30 April 1983
- on 15 December 1985, the applicant extended in the TXARNG for 6-years
- on 3 July 1990, Orders Number 136-40 honorably discharged the applicant from the ARNG and assigned him to the U.S. Army Reserve (USAR) Control Group (Reinforcement)
- NGB Form 22 shows the applicant completed 13-years, 5-months, and 19-days of service during the period of 15 January 1977 through 3 July 1990 with 9 years, 9 months, and 18 days of prior active federal service
- On 5 April 1995, Orders Number C-04-511703 assigned the applicant to the USAR Control Group (Retired Reserve) for completion of 20 or more years of service

4. On 20 February 2025, in the processing of this case, DFAS advised the applicant's current retirement date was 26 June 2007 and his pay started on 1 July 2024.

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 available documentation showing the applicant completed 20 years of qualifying military service for non-regular retirement and the record showing he reached his 60th birthday on 26 June 2007, the Board concluded the applicant should begin receiving retirement pay on that date. He was prevented based upon the Barring Statute preventing retroactive payment greater than 6 years; resulting in the applicant receiving retirement pay in 2018, instead of 2007. The Board concluded this was an injustice warranting relief.

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 retired pay for the period of 26 June 2007 through 26 May 2018.

//SIGNED//

X

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. Title 10 United States Code (USC), section 12731 (Age and service requirements), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person:

- has attained the eligibility age applicable under subsection (f) to that person;
- has performed at least 20-years of service computed under section 12732 of this title;
- in the case of a person who completed the service requirements but not while a member of a regular component, the number of years of such qualifying service under this paragraph shall be eight; and
- 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 or the Fleet Marine Corps Reserve.

Application for retired pay must be made to the Secretary of the military department, 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. The notice shall be sent, in writing, to the person concerned within one year after the person completes that service. The notice shall include notice of the elections available to such person under the Survivor Benefit Plan and the Supplemental Survivor Benefit Plan and the effects of such elections. The date of entitlement to retired pay shall be the date on which the requirements of subsection (a) have been completed. The eligibility age for purposes of subsection (a)(1) is 60-years of age.

3. Title 37 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.

//NOTHING FOLLOWS//