

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 April 2025

DOCKET NUMBER: AR20240009680

APPLICANT REQUESTS:

- paid retired pay for the period of 3 March 1995 through on or about 3 March 2019
- a personal appearance before the Board via video or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant self-authored statement
- DD Form 256 (Honorable Discharge Certificate), 30 January 1990
- Orders Number C03-492995, 15 March 2024; placed on retired list effective 3 March 1995
- DA Form 5016 (Chronological Statement of Retirement Points) now known as the Retirement Accounting Statement, 15 March 2024, 30-years of qualifying service
- U.S. Army Human Resources Command (AHRC) Letter, 15 March 2024, showing his retired pay was approved
- Power of attorney
- Applicant's son identification card

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,

- the Service Member (SM), his father served in the U.S. Army Reserve (USAR) for over 30-years
- did not received retirement benefits until May 2024 due to his incomplete service record, since been corrected
- received retire pay for the previous 6-years

- requests retired pay from 3 March 1995 through on or about 3 March 2019

3. The applicant's military records are not available for review in this case. The National Personnel Records Center - Military Personnel Records was unable to locate the applicant's military records upon request. However, the applicant provided sufficient records to conduct a fair and impartial review of this case. However, the limited records found in Soldier Management Services - WEB Portal (SMS WEB) are as follows:

- Orders Number 20-24, dated 30 January 1990, the SM was discharged from USAR, effective 30 January 1990
- National Archives and Records Administration Form 13038, dated 12 March 2024 shows the applicant served on active duty during the period of 4 October 1954 through 30 September 1956
- DA Form 5016, dated 14 March 2024 shows the SM has 30-years of qualifying service with current rank/grade Master Sergeant (MSG)/E-8, pay entry base date of 19 August 1957
- DD Form 108 (Application for Retired Pay Benefits) shows the applicant filed for the SM's retired pay on 14 March 2024
- On 15 March 2024, AHRC notified the SM his application for retired pay was approved under Title 10, USC, section 12731
- Orders Number C03-492995, dated 15 March 2024, the SM was placed on the retired list, effective 3 March 1995 in the rank of MSG
- SMS WEB screenshot shows the SM had been working with AHRC since 2009 to correct his records

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 30 years of qualifying military service for non-regular retirement and the record showing he reached his 60th birthday on 3 March 1995, 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. 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 forwarding the FSM's record to DFAS to determine appropriate retroactive payment to show the FSM began receiving retirement pay effective 3 March 1995.

//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.

4. 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 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.

//NOTHING FOLLOWS//