

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 March 2025

DOCKET NUMBER: AR20240010156

APPLICANT REQUESTS: in effect, notification of her eligibility for Reserve retirement at the age of 60

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- August 2004 Leave and Earnings Statement (LES)
- Department of Veterans Affairs (VA) Rating Decision
- Marriage License

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 when she got out of the military, in August 2004, she was rated at 30 percent disabled and the Army has her at 0 percent and closed her case in 2015. She is not eligible for retirement according to the Army records. She is seeking her 20 year award letter. She served her country honorably and she deserves to say she retired from the service. She did not receive a letter from the Army in 2015. She assumed at age 60 she would retire with 20 years of service. She recently found out she cannot retire because she has a 0 percent disability rating. She needs a 20 year letter to retire.
3. The applicant provides an August 2004 LES, which shows she has 20 years of service. She also provides a VA rating decision, 26 October 2004, which shows she received 20 percent disability for reduction mammoplasty and 10 percent for degenerative joint disease.

4. The applicant's service record shows she was in the Army National Guard from 8 September 1982 through 7 September 1990. She was in the Regular Army from 2 October 1995 through 26 August 2004. She was honorably discharged for disability with severance pay in the amount of \$47,358. Her service record was void of a Physical Evaluation Board.
5. On 27 February 2015, the Physical Disability Board of Review reviewed her application and found her separation rating and her separation from the Army for disability with severance pay to be accurate. Her application was denied.
6. On 11 February 2025, the Chief, Personnel Services Division, U.S. Army Human Resources Command provided an advisory opinion stating, the Gray Area Retirement (GAR) branch reviewed the applicant's military records. A Soldier who elects to receive severance pay forfeits their eligibility for retired status. Regular Army Soldiers do not receive a 20 year letter. It is the opinion of GAR that she is not eligible for retirement or a 20 year letter.
7. On 27 February 2025, the advisory opinion was provided to the applicant to allow her the opportunity to respond. She did not respond.

BOARD DISCUSSION:

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 review based on law, policy, and regulation. The Board majority reviewed and concurred with U.S. Army Human Resources Command's advising official finding the applicant elected to receive severance pay and forfeited her eligibility for retired status. The Board minority found the applicant's assertion to be compelling.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:XX	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:XX	:XX	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.


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. 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, USC, section 12731 (Age and service requirements), provides that, a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person has attained the eligibility age of 60 years and 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 of paragraph (2) (20 years of service computed under section 12732) before 25 April 2005, performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before 5 October 1994, the number of years of such qualifying service under this paragraph shall be eight.

3. Army Regulation 135-180 (Retirement for Non-Regular Service) implements statutory authorities governing the granting of retired pay for non-regular service to Soldiers in the Army National Guard (ARNG), Army National Guard of the United States (ARNGUS) or the U.S. Army Reserve (USAR).

a. Paragraph 2-2 (Basic qualifying service requirements) states, to be eligible for retired pay at or after the age (60 years of age) specified in paragraph 2-1, an individual need not have military status at the time of application, but must have completed one of the following: (1) A minimum of 20 years of qualifying service computed under Title 10, USC, section 12732; or, (2) Fifteen (15) years of qualifying service, and less than 20, computed under Title 10, USC, section 12732, if the individual is to be separated because the Soldier has been determined unfit for continued Selected Reserve service, and none of the conditions in 10 USC 12731b(b) exist.

b. Paragraph 2-3 (Other service requirements) states in pertinent part, additional Reserve Component (RC) service requirements include — (1) For Soldiers who completed the years of qualifying service on or after 5 October 1994, but before 25 April 2005, the last 6 years of qualifying service must have been in a component other than a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve. (2) For Soldiers who completed the years of qualifying service on or after 25 April 2005, there is no minimum RC service requirement. (3) The service required in paragraphs 2-3a(1) and 2-3a(2) do not need to be continuous years of qualifying service. (4) Any period of service as a member of a regular component between periods of Reserve

service counted toward the 8 or 6 years requirement will be included in the determination of the Soldier's years of qualifying service in paragraph 2–2 toward eligibility for non-regular retired pay, but will not count toward the last 8 or 6 years. Any Reserve service served in conjunction with regular service will not count toward the last 8 or 6 years (that is, partial year credit). An applicant must (1) not be entitled to retired pay from the Armed Forces under any other provision of law; (2) not have elected to receive disability severance pay in lieu of non-regular retired pay. Reserve personnel involuntarily relieved from active service who are not eligible for retired pay at time of release, but who are paid readjustment pay are eligible to receive retired pay under this regulation provided they are otherwise qualified at a later date; (3) not be a person who is convicted of an offense under the Uniform Code of Military Justice (Title 10, USC, Chapter 47) and whose sentence includes death; or is separated pursuant to sentence of a court-martial with a dishonorable discharge, a bad conduct discharge, or (in the case of an officer) a dismissal, because Title 10, USC, section 12740 provides that such persons are not eligible for non-regular retired pay.

c. Paragraph 2-4 (Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter)) states, (1) Under Title 10, USC, section 12731a RC Soldiers who complete the eligibility requirements in section I will be notified in writing within 1 year after completion of the required service in accordance with AR 140–185 or National Guard Regulation (NGR) 680–2. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued to Soldiers credited with 20 years of qualifying service and should be issued prior to discharge or transfer to the Retired Reserve. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued by: (a) HRC for all USAR Soldiers except for those who are within 2 years of qualifying for an active duty retirement and can remain on active duty to complete the required service. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format determined by HRC. (b) The State Adjutant General (Military Personnel Management Office (MPMO/G1) for all Army National Guard (ARNG) Soldiers serving in an active status in the State, where the eligible Soldier was assigned at the time they become eligible. The Notification of Eligibility for Retired Pay at Age 60 (20 Year Letter) will be issued in the format shown in NGR 680–2. (2) After a Soldier has been notified of their eligibility for retired pay for non-regular service, the Soldier's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed, unless it resulted directly from the fraud or misrepresentation of the individual concerned. However, the number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination, and when such a correction is made the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date they are granted retired pay.

//NOTHING FOLLOWS//