

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

RONALD D. CASILLAS,

*Plaintiff,*

Civil Action No. 20-52 C

v.

THE UNITED STATES OF AMERICA

*Defendant.*

**COMPLAINT**

Plaintiff Ronald D. Casillas, for his complaint against the Defendant, The United States of America, states as follows:

**JURISDICTION**

1. This Court has jurisdiction over this action pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1). The Tucker Act does not create a substantive right for money damages against the United States, but rather is a jurisdictional statute. *United States v. Testan*, 424 U.S. 392, 398 (1976). A plaintiff must show that he is entitled to money damages from an additional source of substantive law. Plaintiff is entitled to retired pay under 10 U.S.C. § 12731, which defines the age and service requirements for retired pay. In matters of retirement pay, this Court has jurisdiction because under 10 U.S.C. § 1552(c) a plaintiff is entitled to "payment of claims consequent upon the correction of military records," including correction of retirement status. *Mitchell v. United States*, 930 F.2d 893, 896 (Fed. Cir. 1991); see also 10 U.S.C. § 1552(c) (2015).

2. Plaintiff applied for retirement from the U.S. Army Reserve in January, 2018. The Army denied his request on October 24, 2018. This action is filed within the six-year time limit of 28 U.S.C. § 2501 and is thus timely.

**PARTIES**

3. Plaintiff Ronald D. Casillas is a citizen of the United States who resides in Germany and has an additional residence in California.

4. Defendant is the United States of America, acting by and through the Department of the Army, a United States government agency.

**STATEMENT OF THE CASE**

5. Plaintiff Ronald D. Casillas was a Captain in the U.S. Army Reserve. Around the year 2000, he was not selected for promotion to Major for the second time. In order to continue in the Reserve, he resigned his commission and began the process of reenlisting at his former enlisted grade. Before this action was completed, the U.S. Army Reserve sent him an order transferring him to the Retired Reserve based on completion of 20 or more years of service. As such, he would be entitled to retired pay upon reaching age 60. Right before his 60<sup>th</sup> birthday, CPT Casillas applied for retired pay, effective at age 60. The Army Reserve denied his request, stating that he did not have 20 or more years of service.

**STATEMENT OF FACTS**

6. Ronald D. Casillas entered the United States Army under the delayed enlistment program on Feb 28, 1983.

7. He entered on active duty on April 23, 1983.

8. He served in the enlisted ranks until October 16, 1987 when he was commissioned as a Second Lieutenant in the Army in the Army.

9. He remained on active duty until he transferred to the United States Army Reserve on October 1, 1992.

10. On September 14, 1998, he was notified that he had failed to be selected for promotion to the rank of Major, and would be involuntarily separated.

11. Based on 10 U.S.C. § 3258, he decided to resign his commission and reenlist in the Army at his former enlisted rank<sup>1</sup>.

12. He received an acknowledgement of his resignation.

13. He then received an order rescinding his resignation.

14. That was followed by another order, dated July 30, 2001, that placed him in the Retired Reserve for the stated reason of completion of 20 or more years of Reserve duty.

15. Uncertain that he actually had the required years of service, he contacted the Army Reserve Personnel Center and was told that he did meet the requirement.

16. He requested, and was issued a United States Uniformed Services Privilege and Identification Card, colored red, signifying him as a member of the retired reserve.

17. From that point on, CPT Casillas believed he was entitled to retirement pay at the age of 60, based on his 20 years of service.

18. On December 30, 2004, CPT Casillas received an email from the Army Human Resources Command addressed to “Dear Retired Soldier”, letting him know that the Army was

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<sup>1</sup> The statute states: (a) Any former enlisted member of the Regular Army who has served on active duty as an officer of the Army, or who was discharged as an enlisted member to accept an appointment as an officer of the Army, is entitled to be reenlisted in the Regular Army in the enlisted grade that he held before his service as an officer, without loss of seniority or credit for service, regardless of the existence of a vacancy in his grade or of a physical disability incurred or having its inception in line of duty, if (1) his service as an officer is terminated by an honorable discharge or he is relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and (2) he applies for reenlistment within six months (or such other period as the Secretary of the Army prescribes for exceptional circumstances) after termination of that service. 10 U.S.C. § 3258 (2011).

calling for volunteers to return to active duty, stating “the Army has once again opened the door for retirees to rejoin the ranks.”

19. In 2013, CPT Casillas got married and the government entered his wife in the Defense Enrollment Eligibility Reporting System (DEERS) and issued her a dependent’s ID card.

20. His children, born in 2015 and 2017, are also enrolled in DEERS and have been treated at U.S. military hospitals in Germany.

21. Approaching the age of 60, CPT Casillas submitted his Application for Retired Pay Benefits and the accompanying data sheet in January of 2018. He asked that his retirement pay begin at the attainment of age 60 – March 29, 2018.

22. The application was rejected, claiming that CPT Casillas only had 14 years, 7 months, and 20 days of creditable service and that he needed a “20 Year Letter”.

23. Through his attorney, he resubmitted his application on February 9, 2018.

24. In March, 2018, the Army replied that his application would not be processed without the 20-year letter.

25. In May 2018, CPT Casillas requested assistance from the office of Senator Diane Feinstein to try to get his retired pay approved. The Senator’s office contacted the Army in July 2018.

26. On July 26, 2018 the Army sent CPT Casillas orders honorably discharging him from the United States Army Reserve, effective July 31, 2001.

27. On July 28, 2018, the Army Human Resources Command sent CPT Casillas a letter stating that he had reached the maximum age for membership in the Active Reserve, and

giving him the option of transferring to the Retired Reserve or requesting discharge, “whichever you prefer.”

28. On October 10, 2018, the Army published an order rescinding the order of July 26, 2018 that honorably discharged CPT Casillas effective July 31, 2001.

29. On October 12, 2018, the Army published orders revoking the order of July 31, 2001 that transferred CPT Casillas to the Retired Reserve based on 20 years of service.

30. On October 15, 2018, the Army published orders releasing CPT Casillas from the U.S. Army Control Group due to his non-selection for promotion and assigning him to the Retired Reserve effective July 31, 2001. The order includes, among other things, instructions to apply for Veterans Group Life Insurance within 120 days of the transfer. The order also states that “SM [service member] is being transferred to the retired reserve for the purpose of VSI.”

31. On October 25, 2018, the Army responded to Senator Feinstein stating: “The United States Army Human Resources Command (HRC) has reviewed CPT Casillas's personnel file and determined he was involuntarily separated as a result of his being twice non-selected for Major. Although he was not retirement eligible, IAW DoDI 1215.19 later replaced by DoDI 1215.06, a Soldier who is receiving Voluntary Separation Incentive (VSI) payments and is ineligible for an active or inactive status due to failure to select for promotion is eligible, upon request, to be transferred to the Retired Reserve with or without 20 qualifying years. The Retired Reserve orders with an effective date of July 30, 2001, did not have the Special VSI statement; however, HRC has corrected the orders to reflect the VSI statement”.

### CLAIMS

32. Eligibility for retirement from the National Guard or the Reserve is dependent on earning enough points to qualify. Points are awarded for a number of things. Members earn

points for participating in the traditional “one weekend a month, two weeks per year” (commonly known as drill) obligation that comes with membership. However, there are many other ways to earn points. One can volunteer or be called up for a period of active duty and earn points toward retirement. One can take certain military training to earn points. Thus, keeping track of the points one has earned is a complicated process. It was even more complicated during the time attendance at drill weekends, training events, correspondence courses, etc. was dependent on paper attendance sheets and mail sent to the Reserve Headquarters before much of the process was automated.

33. To alleviate the confusion, in 1966, Congress added a requirement to 10 U.S.C. § 1331 as follows: “(d) The Secretary concerned shall provide for notifying each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice must be sent, in writing, to the person concerned within one year after he has completed that service.” *In the matter of Lieutenant Colonel William P. Cassedy, USAFR*, 58 Comp. Gen. 390.

34. Congress also added 10 U.S.C. 1406, which stated:

§ 1406. Limitations on revocation of retired pay

After a person \* \* \* has been notified in accordance with section 1331(d) of this title that he has computed the years of service required for eligibility for retired pay under chapter 67 of this title, the person'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 as required by section 1331(a)(2) of this title, unless it resulted directly from the fraud or misrepresentation of the person. 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 he is granted retired pay.

*Id.*

35. The law, then, requires that the Reserve Component formally notify a member when he or she reaches twenty years of creditable service and is, therefore, eligible for retired pay. Because the methodology for accumulating retirement points is complicated and is revalidated at retirement, Congress prevented the Defense Department from later discovering a miscalculation in retirement points and denying retired pay to a member to whom it had issued notification of eligibility for retired pay based on 20 or more years of service. The Army sent CPT Casillas official notification via military orders that he had completed 20 or more years of service. By trying to deny retired pay to CPT Casillas, the Army is violating the law.

**CONCLUSION AND PRAYER FOR RELIEF**

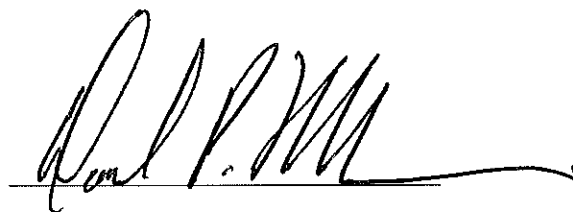
36. The Army notified CPT Casillas that he had 20 or more years of service. It confirmed that when he contacted them. The fact that the notice was given to him in official orders rather than some form letter actually makes the Army's notification even more reliable in the mind of a military member. Notification of completion of 20 or more years of service in military orders meets the criteria established in *Cassedy* and lies within the ambit of the statute.

37. CPT Casillas requests this Court order the United States of America, through the Secretary of the Army, to approve his request for retired pay, immediately begin payments of his monthly retired pay, and ensure payment of back retired pay from his 60<sup>th</sup> birthday.

38. Additionally, CPT Casillas requests the Court order the United States of America, through the Secretary of the Army, to reimburse him for medical expenses he has incurred since his 60<sup>th</sup> birthday that should have been covered under the health insurance program for retired military members.

Date:

01/15/2019

A handwritten signature in black ink, appearing to read "David P. Sheldon", written over a horizontal line.

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