



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, D. C.

AUG 27 1998

Office of the Assistant Secretary

AFBCMR 97-02678

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that:

- a. On 30 December 1993, he resigned his Regular Air Force commission.
- b. On 31 December 1993, he was released from active duty and transferred to the Air Force Reserve.
- c. On 1 January 1994, he was retired for length of service in the Reserve grade of captain under the provisions of Section 8911, Title 10, United States Code.

  
JOE G. LINEBERGER  
Director  
Air Force Review Boards Agency

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02678

AUG 27 1998

COUNSEL: None

HEARING DESIRED: No

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APPLICANT REQUESTS THAT:

His records be corrected to show that he resigned his regular commission and retired as a reserve officer.

Examiner's Note:

The applicant originally requested a waiver to the dual compensation law; however, in his response to the Air Force evaluation, he amended his request as indicated above.

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APPLICANT CONTENDS THAT:

The reasons the applicant believes the records to be in error or unjust and the evidence submitted in support of the appeal are at Exhibit A.

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STATEMENT OF FACTS:

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force. Accordingly, there is no need to recite these facts in this Record of Proceedings.

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AIR FORCE EVALUATION:

The Staff Judge Advocate, AFPC/JA, reviewed this application and states that while the applicant arguably has an equitable grounding for his request for a waiver of the dual compensation law, by law, waiver authority in these matters lies with the Office of Personnel Management (OPM), and they recommend he seek his remedy in that venue.

A complete copy of the Air Force evaluation is attached at Exhibit C.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluation and provided a response which is attached at Exhibit E.

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Sufficient relevant evidence has been presented to demonstrate the existence of a probable error or injustice to warrant correcting the applicant's records to indicate that he resigned his regular commission and was retired as a reserve officer. In support of the applicant's request, he has provided a statement from the Acting Civilian Personnel Officer at [REDACTED]

[REDACTED] Based on this statement, it appears the applicant was miscounseled by personnel representatives at both [REDACTED] AFB and [REDACTED] AFB that he would not be effected by the dual compensation act. The Staff Judge Advocate has indicated that the applicant has an equitable grounding for his request. We also note that the applicant has amended his application to indicate that he resigned his regular commission and was retired as a reserve officer. In view of this and since the applicant has substantiated that he was miscounseled, we believe the applicant should be provided the requested relief. Therefore, we recommend his records be corrected to the extent indicated below.

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THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. On 30 December 1993, he resigned his Regular Air Force commission.

b. On 31 December 1993, he was released from active duty and transferred to the Air Force Reserve.

c. On 1 January 1994, he was retired for length of service in the Reserve grade of captain under the provisions of Section 8911, Title 10, United States Code.

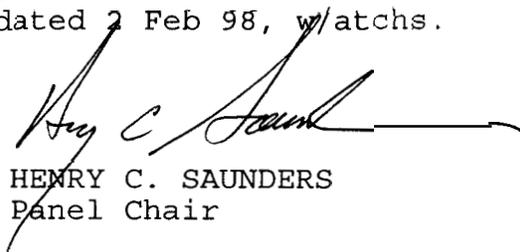
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The following members of the Board considered this application in Executive Session on 18 August 1998, under the provisions of AFI 36-2602:

Mr. Henry C. Saunders, Panel Chair  
Mr. Dana J. Gilmour, Member  
Ms. Ann L. Heidig, Member  
[REDACTED] Examiner (without vote)

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 25 Aug 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/JA, dated 14 Nov 97.
- Exhibit D. Letter, AFBCMR, dated 1 Dec 97.
- Exhibit E. Letter, Applicant, dated 2 Feb 98, w/atchs.



HENRY C. SAUNDERS  
Panel Chair



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE PERSONNEL CENTER  
RANDOLPH AIR FORCE BASE TEXAS



14 November 1997

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/JA (██████████)  
550 C Street West Suite 44  
Randolph AFB TX 78150-4746

SUBJECT: Application for Correction of Military Records ██████████

**REQUESTED CORRECTION:** The applicant is asking the AFBCMR to change his military records to show that he was granted an exemption to the dual compensation law when he was hired as a civilian Meteorological Technician at ██████████.

**BASIS FOR THE REQUEST:** On 8 July 1996, the applicant, a retired regular officer, applied for and was offered a civilian Air Force position as a meteorological Technician at ██████████. Prior to accepting the position, the applicant asked at least three different Civilian Personnel Offices whether he would be subject to the dual compensation rules which apply to retired regular officers. He was counseled by the Civilian Personnel Office at ██████████ AFB and by personnel at the Air Force Personnel Center that the dual compensation law applied only to field grade officers and since he retired in the grade of Captain, the law would not apply to him. Relying on that counseling, the applicant accepted the civilian position and moved from ██████████ to ██████████. In August 1996, the applicant was informed by DFAS, Cleveland that he was covered by the Dual Compensation Act of 1964 and that deductions would be made from his retired pay. The significant reduction in pay has apparently caused the applicant severe financial hardship, and he is seeking relief from congressional sources as well as the AFBCMR.

**RECOMMENDATION:** While we sympathize with the applicant's situation, we are nevertheless compelled to recommend the AFBCMR deny the applicant's requested relief. The AFBCMR is not authorized to act on this request. While the applicant arguably has an equitable grounding for his request, clearly, the path he is compelled to follow lies outside the AFBCMR's charter. He is not seeking to correct any military records. What the applicant is asking for is a

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waiver of the dual compensation law applicable to all retired, regular officers who seek employment with the federal government. By law, waiver authority in these matters lies with the Office of Personnel Management (OPM), and we recommend he seek his remedy in that venue.'

  
Staff Judge Advocate, USAF



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<sup>1</sup> 32 C.F.R. § 84.33 outlines the process for seeking a waiver from the provisions of the dual compensation act and designates the Director of OPM as the waiver authority. 5 CFR part 553 and AFI 36-802, Chapter 2 set forth the specific procedures for obtaining a waiver from OPM.

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