RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2016-00152

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her retired pay be recomputed at age 62 based upon her public service.

APPLICANT CONTENDS THAT:

She was not aware of the need to register for Public Service Credit before retiring from the military.

The applicant’s complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant initially entered the Regular Air Force on 10 Oct 76.

On 1 Sep 94, the applicant retired under the Temporary Early Retirement Act (TERA) after serving 17 years, 10 months, and 21 days of total active service.

The remaining relevant facts pertaining to this application are contained in the memorandum prepared by the Air Force office of primary responsibility (OPR), which is attached at Exhibit C.

AIR FORCE EVALUATION:

The AFPC Military Retirements and Separations Office recommends denial indicating there is no evidence of an error or an injustice. The FY93 National Defense Authorization Act (NDAA) enacted the TERA, which permitted selected military members having more than 15 years but less than 20 years of service to retire early. Section 4464 of the FY93 NDAA allowed eligible members retired under TERA to perform public and community service (PACS) following retirement and receive credit for this service to be used to recompute military retired pay, and where applicable, the Survivor Benefit Plan (SBP) base amount when the retired member attains or would have attained 62 years of age. Public and community service job vacancies included education, conservation, environmental protection, law enforcement, and public health care positions.

However, MPFL 93-024, paragraph 3b, indicated information would be provided to the member by the Family Support Center (FSC); the member could register for this program at the FSC prior to departure; and registration “MUST BE CONFIRMED” before members were permitted to out process. Paragraph 7 also indicated members must initiate the registration process prior to applying for the early retirement program. In addition, per DoDI 1340.19, *Certification of Public and Community Service Employment of Military Retirees*, the veteran must have performed public/community service “within the period beginning on the date of retirement and ending on the date the retired member would have attained 20 years of creditable service for computing retired pay.” This is referred to as the veteran’s “enhanced retirement qualification period” or ERQP. All reporting under this program should have been completed no later than one year following the ERQP. The law allows no provision to retroactively register for employment in the public or community service organizations.

The applicant retired effective 1 Sep 94 under the TERA. Any creditable service must have been completed prior to 10 Oct 96, the date the applicant would have attained 20 years of TAFMS if she had continued to serve on active duty. Based on the reporting instructions established by the Defense Manpower Data Center (DMDC), the applicant was required to submit final records of creditable service within a year, or by 10 Oct 97. Finally, the retirement application submitted by the applicant, dated 22 Nov 93, states *“I understand that I must register on the public and community service registry at the FSC and that my retirement cannot be consummated until my registration has been confirmed.”* The applicant signed under the statement to acknowledge it. Title 10 United States Code (USC) Section 1143a does not allow any provision to retroactively register for employment in public or community service organizations. We recommend denial of the applicant’s request.

A complete copy of the AFPC Military Retirements and Separations evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 17 Jun 16 for review and comment within 30 days (Exhibit D). As of this date, no response has been received by this office.

FINDINGS AND CONCLUSIONS OF THE BOARD:

Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. After a careful review of the applicant's contentions, documentation submitted in support of the request, and the available evidence of record, we are not convinced the applicant has provided sufficient evidence for us to conclude she is the victim of an error or injustice. We also note the applicant did not file the application within three years after the alleged error or injustice was discovered, or should have been discovered, as required by Title 10, United States Code, Section 1552 and Air Force Instruction 36-2603. While the applicant claims a date of discovery of less than three years prior to receipt of the application, we believe a reasonable date of discovery was more than three years prior to receipt of the application. Therefore, because we do not find it would be in the interest of justice to recommend granting relief, and the applicant has offered no plausible reason for the delay in filing the application, we cannot conclude it would be in the interest of justice to excuse the failure to timely file the application. Accordingly, we find the application untimely.

THE BOARD DETERMINES THAT:

The application was not timely filed and it would not be in the interest of justice to waive the untimeliness. It is the decision of the Board, therefore, to reject the application as untimely.

The following members of the Board considered AFBCMR Docket Number BC-2016-00152 in Executive Session on 21 Mar 17 under the provisions of AFI 36-2603:

Panel Chair

Member

Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2016-00152 was considered:

Exhibit A.  DD Form 149, dated 9 Jan 16, w/atchs.

Exhibit B.  Applicant's Master Personnel Records.

Exhibit C.  Memorandum, AFPC Military Retirements and Separations, dated 10 May 16.

Exhibit D.  Letter, SAF/MRBR, dated 17 Jun 16.

Pursuant to paragraph 1 of AFI 36-2603 (Title 32 Code of Federal Regulations, Part 865.1), it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.