



CUI//SP-MIL/SP-PRVCY

UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2004-01901-3

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider his request for a 20-year active duty retirement changing his date of separation from 6 Jul 99 to 24 Sep 99 to qualify for Concurrent Retirement and Disability Pay (CRDP).

RESUME OF THE CASE

The applicant is a medically retired Air Force master sergeant (E-7) who served 19 years, 9 months and 12 days of active duty.

On 15 Sep 04, the Board considered and denied his request for a waiver of the requirement for a 20-year active duty retirement to qualify for Combat-Related Special Compensation (CRSC); finding the applicant had provided insufficient evidence of an error or injustice to justify relief.

On 25 Oct 04, the applicant filed a notice of disagreement in regards to the 15 Sep 04 Board decision stating he failed to meet the required 20-year active duty service requirement to qualify for CRSC due to his injury. He served his country for almost 20 years and would rather have had a regular retirement at 20 years and have his health back.

On 21 Dec 04, the AFBCMR staff sent a letter to the applicant denying his request for reconsideration of his case determining his case did not meet the criteria for reconsideration due to no newly discovered, relevant evidence presented.

On 10 Jun 14, under case number BC-2013-03667, the Board considered and denied his request for a 20-year active duty retirement to qualify for CRDP; finding the applicant had provided insufficient evidence of an error or injustice to justify relief and the prior request was not timely submitted. Even though the Board noted the applicant's permanent retirement for physical disability occurred so close to his attaining 20-years of active service, they found no evidence of an error or injustice in his disability processing, to include the manner in which his ultimate retirement date and creditable service for retirement was calculated.

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

For an accounting of the applicant's original request and the rationale of the earlier decision, see the previous case files at Exhibits E, F, and G.

On 23 Oct 20, the applicant requested reconsideration of his request for a 20-year active duty retirement. He again contends his service-connected back injury occurred during the Gulf War to which he was medically retired just two months shy of a 20-year active duty retirement. He did not ask for this injury and was not afforded light duty for the two months he needed for a 20-year retirement so he could receive his disability pay concurrently with his retirement pay. He was done an injustice by his leadership and was not afforded the respect due to him at his retirement. After his fourth back surgery in 2012, he is now rated by the Department of Veterans Affairs (DVA) as 100 percent disabled.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) a letter from the DVA Neurosurgery Services, dated 10 Oct 14, diagnosing him with post-operative arachnoiditis to which he was experiencing diffuse and severe pain to his hips, back, and paraspinal area; and (2) his DVA Disability Rating letter, dated 2 Nov 15, indicating he is 100 percent disabled.

The applicant's complete submission is at Exhibit H.

AIR FORCE EVALUATION

AFPC/DPFDD recommends denying the application finding no indication an error or injustice occurred at the time of disability processing. There was no error in the establishment of the original retirement date per the AFI in effect at the time. CRDP eligibility is determined by Defense Finance and Accounting Service (DFAS) and the DVA and is not a determining factor in establishing the Air Force separation date. Additionally, CRDP did not exist when he originally retired and according to the documentation that he provided, he would not have met eligibility until his DVA rating was increased around Nov 12 which was over 13 years after separation from the Air Force.

In accordance with AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, dated 1 Jan 98, paragraph 1.1, the purpose of the Disability Evaluation System (DES) is to maintain a fit and vital force, disability law allows the Secretary of the Air Force to remove from active duty those who can no longer perform the duties of their office, grade, rank or rating and ensure fair compensation to members whose military careers are cut short due to a service-incurred or service-aggravated physical disability. Additionally, paragraph 1.6 states the Air Force disability system will not retain, retire, or discharge a member for disability solely to increase Air Force retirement or discharge benefits.

On 29 Apr 99, the Informal Physical Evaluation Board (PEB) found the applicant unfit for continued service and recommended permanent retirement with a 40 percent compensable disability rating. On 3 May 99, he agreed with the Board's findings. On 25 May 99, Special Order **Work-Product** was issued executing this decision with a 6 Jul 99 date of separation and 7 Jul 99 retirement effective date. This retirement date was properly established in accordance with AFI 36-3212, paragraph 5.19.2 which states "If members have not previously sold 60 days of accrued

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leave after 10 Feb 76, they must sell the leave at separation or retirement. Members retiring or separating for disability may use accrued leave that they cannot sell back. If they have sold the maximum leave permitted by law, HQ AFPC/DPPD will add their accrued leave to the 20-day processing time (30 days if overseas) to arrive at the final discharge or retirement date.” Based on this guidance the member’s retirement date was properly established allowing the 20-day processing time and 20 days of Permissive Temporary Duty (PTDY) (in accordance with paragraph 4.15) for a total of 40 days between retirement order publication and separation date. Additionally, paragraph 5.19.4.3 authorized limited extensions, normally not to exceed 30 days, in cases where the member is facing an unusual personal hardship over and above that encountered by other members being retired or discharged for disability. There is no evidence in the PEB case file that the applicant applied for such an extension.

CRDP eligibility is a joint program administered by the DFAS and the DVA which is outside of the Air Force’s authority; however, the following DFAS article about CRDP contains information on eligibility criteria. A synopsis is as follows:

CRDP allows military retirees to receive both military retired pay and DVA compensation. This was prohibited until the CRDP program began on 1 Jan 04. Applicants must be eligible for retired pay to qualify for CRDP. If an individual was placed on a disability retirement, but would be eligible for military retired pay in the absence of the disability, they may be entitled to receive CRDP. Under these rules, they may be entitled to CRDP if:

- a. They are a regular retiree with a DVA disability rating of 50 percent or greater.
- b. They are a reserve retiree with 20 qualifying years of service, who has a DVA disability rating of 50 percent or greater and who has reached retirement age. (In most cases the retirement age for reservists is 60, but certain reserve retirees may be eligible before they turn 60. If they are a member of the Ready Reserve, their retirement age can be reduced below age 60 by three months for each 90 days of active service you have performed during a fiscal year).
- c. They are retired under Temporary Early Retirement Act (TERA) and have a DVA disability rating of 50 percent or greater.
- d. They are a disability retiree who earned entitlement to retired pay under any provision of law other than solely by disability, and they have a DVA disability rating of 50 percent or greater. They might become eligible for CRDP at the time they would have become eligible for retired pay.

The complete advisory opinion is at Exhibit I.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 4 Apr 22 for comment (Exhibit J), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board remains unconvinced the evidence presented demonstrates an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPFDD and finds a preponderance of the evidence does not substantiate the applicant's contentions. Therefore, he Board finds no error in the establishment of the applicant's original retirement date and recommends against correcting his records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2004-01901-3 in Executive Session on 21 Sep 22:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit E: Record of Proceedings, w/ Exhibits A-D, dated 15 Sep 04.
- Exhibit F: Non-viable case file – no new evidence, dated 21 Dec 04.
- Exhibit G: Record of Proceedings under case BC-2013-03667 with excerpts from official records, dated 10 Jun 14.
- Exhibit H: Application, DD Form 149, w/atchs, dated 23 Oct 20.
- Exhibit I: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 3 Mar 22.
- Exhibit J: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Apr 22.

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Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.



5/22/2023

Board Operations Manager, AFBCMR
Signed by: USAF