

SECOND ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2017-03220-3

XXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

The Board reconsider her request to be given constructive credit towards her retirement and issued a 20-year letter for an Air Force Reserve (AFR) retirement.

RESUME OF THE CASE

The applicant is a former AFR major (O-4) who was honorably discharged on 3 Mar 15.

On 9 May 18, the Board considered and denied her request to remove her referral Office Performance Report (OPR) from her record and be reinstated into the AFR. In the alternative, the applicant asked that she be given points credit in order to secure an AFR retirement. The Board found the applicant had provided insufficient evidence of an error or injustice to justify relief concurring with the recommendation of ARPC/DPTS which found no basis to remove the contested OPR or to reinstate her in the AFR. Additionally, the Board found the applicant had not provided sufficient evidence of an error or injustice to warrant granting her alternative request.

On 13 Nov 19, the Board reconsidered and denied her request to remove her referral OPR from her record, she be granted Special Selection Board (SSB) consideration, and be reinstated into the AFR. In the alternative, the applicant again asked that she be given points credit in order to secure an AFR retirement. After reviewing all Exhibits, the Board remained unconvinced the evidence presented demonstrated an error or injustice. The Board concurred with the rationale and recommendation of AFPC/PB and found a preponderance of the evidence did not substantiate the applicant's contentions; specifically finding no evidence showing the applicant's separation was contrary to governing policies.

For an accounting of the applicant's original request and the rationale of the earlier decisions, see the AFBCMR Letters and Records of Proceedings at Exhibit J.

On 15 Apr 22, the applicant requested reconsideration of her request that she be given constructive service credit in order to secure an AFR retirement. She contends, through counsel, she served in the AFR for over 20 years but because of when the creditable years were split; taking a leave of absence to pursue an advanced degree in Psychology for the benefit of Airmen returning from deployment and increasing her potential for promotion; and the inflexible attitude towards her fitness tests and potential for continued service after she was passed over for promotion; she was only credited with 17 plus years of service for retirement. She was only two years short of reaching a 20-year retirement when she was forced out. At the time of her discharge, she should have been credited with 18 years towards retirement and was only a few days shy of a good year for the other two years in question. She had attained 3397 points towards retirement as of 21 Dec 13, which shows she far exceeds the necessary points for retirement.

It is in the interest of justice and equity, the applicant should be allowed to be credited for a good year in 2002 by carrying over seven days from 2001 and to be credited a good year in 2009 by carrying over eleven days from 2008, giving her enough “good years” to retire. She exceeded the required points in 2012, 2013, and 2014, granting her constructive credit for the points necessary to retire in 2015 rather than be separated due to reaching her mandatory separation date. The applicant was passed over for promotion in 2013 and 2014 under highly questionable circumstances and was recommended by her commander that her mandatory separation date be extended to allow her to take over as Chief Nurse for three years. At the time of her separation, her unit was understaffed in nursing and she was the only qualified nurse to take over as Chief Nurse in 2014 but was separated after being passed over for promotion. Title 10 U.S.C. Section 14701 is the authority for allowing officers to remain in the service after being passed over for promotion. She was not given proper consideration for an extension. She has asked the Board to reinstate her on numerous occasions to no avail.

In support of her reconsideration request, the applicant submitted the several letters of recommendation as new evidence.

The applicant’s complete submission is at Exhibit K.

AIR FORCE EVALUATION

ARPC/DPTSP recommends denying the applicant’s request to be credited with 20 satisfactory years of service towards retirement finding no evidence of an error or injustice. The applicant did not earn a minimum of 50 points towards retirement during the years she is requesting creditable service; so by rule, those years cannot be counted as creditable towards retirement. Additionally, the points may only be applied to the date the applicant actually performed duty. Points cannot be moved nor combined to create additional satisfactory years of service.

According to the applicant’s point credit accounting and reporting system (PCARS) report, she has 17 years, 2 months, and 10 days of satisfactory service. According to DoDI 1215.07, *Service Credit for Non-Regular Retirement*, Section 3.1.a. “...a qualifying year of creditable service toward a non-regular retirement is a full-year, as described in paragraphs 3.1.b and 3.1.c, during which a member of an Active Component (AC) or Reserve Component (RC) is credited with at least 50 retirement points...” Per the applicant’s PCARS, she did not attain a minimum of 50 retirement points in a full anniversary year during four full years. Per the excerpt from DoDI 1215.07, section 3.1.a, those years cannot be counted as creditable service towards a non-regular retirement. The applicant suggests she should have received credit for three years based upon the combination of several nearly “good” years. Unfortunately, points cannot be moved nor combined in this manner. The applicant did not participate during the time requested and per AFM 36-2136, *Reserve Personnel Participation*, paragraph 2.2, “...Points may only be credited to the date a reservist actually performed the duty...” Finally, the applicant believes that credible years were split, which adversely impacted her satisfactory service total. This claim is not supported. Years of service are not split unless the applicant’s anniversary date is changed. The applicant may see partial year lines when she transitioned from a Reserve status to a Regular status, but those partial years are combined to create a full year of service. After careful review of the exhibits provided by the applicant, ARPC finds no evidence that points are missing nor finds any anniversary years that should be changed from non-creditable to creditable.

The complete advisory opinion is at Exhibit L.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 14 Jul 22 for comment (Exhibit M), and the applicant replied on 1 Aug 22. In her response, the applicant's counsel contends the advisory opinion relies upon the presumption of regularity to justify the recommendation to deny the applicant's requested relief, but it fails to take into account the evidence that rebuts that presumption. This includes references in the applicant's file that she performed duties on her own time – thereby denying her points that would otherwise have earned her a satisfactory year – as well as evidence that she was not afforded the time and opportunity to perform additional inactive duty training (IDT) or Annual Training (AT) prior to the scheduled discharge date but that she did perform duties after her discharge. The totality of circumstances supports the inference the applicant had 19 satisfactory years, not 17, and that she was denied the ability to extend to serve as the Chief Nurse in 2015 where she would have had ample opportunity to earn enough points to reach her 20-year retirement.

The applicant's complete response is at Exhibit N.

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. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Furthermore, the Board concurs with the rationale and recommendation of AFPC/DPTSP and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds the applicant did not have enough qualifying years of creditable service toward a non-regular retirement and the recommendation letters submitted were insufficient to overcome the previous Board's decision. Her counsel's claim that she be awarded points for duty performed on her own time and a change to her anniversary date which would allow her to obtain 20 years towards retirement is not warranted by the evidence presented. Therefore, the Board recommends against correcting the applicant's 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-2017-03220-3 in Executive Session on 18 Nov 22:

- , Panel Chair
- , Panel Member
- , Panel Member

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

Exhibit J: Addendum Record of Proceedings, w/ Exhibits F-I, dated 13 Nov 19.

Exhibit K: Application, DD Form 149, w/atchs, dated 15 Apr 22.
Exhibit L: Advisory Opinion, ARPC/DPTSP, w/atchs, dated 13 Jul 22.
Exhibit M: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Jul 22.
Exhibit N: Applicant's Response, dated 1 Aug 22.

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.

X

Board Operations Manager, AFBCMR