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## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2006-00117-2

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

The Board reconsider her request for a regular 20-year retirement.

### RESUME OF THE CASE

The applicant is a medically retired Air Force major (O-4) who was found unfit by the Informal Physical Evaluation Board (IPEB) on 2 Jun 83 and placed on the Temporary Disability Retired List (TDRL), effective 26 Jul 83.

On 9 May 06, the Board considered and denied her request to correct her records to reflect her eligibility for Concurrent Retirement and Disability Pay (CRDP) finding the applicant had provided insufficient evidence of an error or injustice to justify relief. The Board concurred with the recommendation of the Defense Finance and Accounting Service (DFAS) which indicated the applicant did not complete the 20 years of service required to be eligible for CRDP.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit F.

On 21 Aug 24, the applicant requested reconsideration of her request for a regular 20-year retirement making her eligible for CRDP. She again contends when she met the medical board she already had an approved retirement date of 31 Aug 83 with 78 days of approved terminal leave, giving her over 20 years of active service. She was not aware of the injustice until she was awarded a Department of Veterans Affairs (DVA) disability rating of 90 percent and saw her disability pay was being deducted from her retirement pay. This injustice wrongfully penalizes her for less than a month of active duty supposedly not served.

In support of her reconsideration request, the applicant submitted the following new evidence: (1) her Regular Retirement Order [Work-Product] (2) a DVA Disability Letter dated 1 Oct 83; and (3) a DVA Disability Letter dated 21 Aug 24.

The applicant's complete submission is at Exhibit G.

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## ADDITIONAL STATEMENT OF FACTS

On 7 Sep 82, AF Form 1160, *Military Retirement Actions*, indicates the applicant applied retirement with an effective date of 31 Aug 83.

Dated 17 Sep 82, Special Orders Number [Work-Product] provided by the applicant, indicates she was relieved from active duty and retired, effective 1 Sep 83 with 20 years and 9 days of active service for retirement.

On 25 May 83, AF Form 1185, *Statement of Record Data*, indicates the applicant stated she already had an established retirement date of 31 Aug 83 with 78 days of approved terminal leave and desired to be relieved of active duty to comply with these dates.

## APPLICABLE AUTHORITY/GUIDANCE

Concurrent Retirement and Disability Pay (CRDP) eligibility is a joint program administered by the DFAS and the DVA. 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. The eligibility criteria are as follows:

You must be eligible for retired pay to qualify for CRDP. If you were placed on a disability retirement but would be eligible for military retired pay in the absence of the disability, you may be entitled to receive CRDP. Under these rules, you may be entitled to CRDP if (1) you are a regular retiree with a DVA disability rating of 50 percent or greater; (2) you 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; (3) you are retired under Temporary Early Retirement Act (TERA) and have a DVA disability rating of 50 percent or greater; or (4) you are a disability retiree who earned entitlement to retired pay under any provision of law other than solely by disability, and you have a DVA disability rating of 50 percent or greater. You might become eligible for CRDP at the time you would have become eligible for retired pay.

## 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 AFR in effect at the time. CRDP eligibility is determined by DFAS and the DVA and is not a determining factor in establishing the Air Force separation date. Additionally, CRDP did not exist when the applicant originally retired.

In accordance with AFR 35-4, *Physical Evaluation for Retention, Retirement, and Separation*, dated 12 Sep 80; paragraph 1-1, the purpose of the Disability Evaluation System (DES) is to maintain a physically fit military force and to compensate members whose military careers end

before they usually would. Thus, the disability laws were used to remove members from active service who could no longer perform the duties of their office and grade because of physical disabilities. Additionally, paragraph 1-7b states no member will be retained, retired, or discharged under this regulation just to increase Air Force retirement or discharge benefits.

On 2 Jun 83 the IPEB found the applicant unfit for continued service and recommended placement on the TDRL. Since she already had an approved retirement date the board determined her medical condition overcame the presumption of fitness in accordance with AFR 35-4, paragraph 3-33b. Under the presumption of fitness rules a member who is within 12 months of retirement is considered fit for duty for the remainder of their time in service. Service members may overcome the presumption of fitness if the preponderance of evidence indicates they are unfit for military service. The presumption of fitness may be overcome when: (1) an illness or injury occurs within the presumptive period that would prevent the member from performing further duty if they were not retiring; (2) a serious deterioration of a previously diagnosed condition, including a chronic one, occurs within the presumptive period, and the deterioration would preclude further duty if the member were not retiring; or (3) the condition for which the member is referred is a chronic condition and a preponderance of evidence establishes that they were not performing duties befitting either their experience in the office, grade, rank, or rating before entering the presumptive period because of the condition. On 14 Jun 83 she agreed with the board's findings; however, on 25 May 83 she submitted a request to allow her to keep her original 31 Aug 83 date of separation. Per AFR 35-4, paragraph 5-24, a disability date of separation normally could not exceed 20 calendar days from the date of Secretarial determination of unfitness due to rules imposed by the United States General Accounting Office in order to ensure fair and equitable treatment of all members as well as to speed disability evaluation procedures and thereby reduce the spending of appropriated funds on the retention (in a duty status) of physically unfit members. On 28 Jun 83 the Director of the Secretary of the Air Force (SAF) Personnel Council approved the IPEB's findings.

The law requires retirees waive a portion of their retirement pay dollar for dollar in the amount received in DVA disability compensation. Disability and retirement rules have greatly changed since the applicant retired. Per AFR 35-4, paragraph 3-68c disability retirees who entered military service prior to 25 Sep 75 received a tax exemption for the portion of retirement pay based on their percentage of disability. In the applicant's case it was more advantageous to be medically retired since the majority of her retirement pay would have been non-taxable due to her receiving a 40 percent disability rating. CRDP was prohibited until the CRDP program began on 1 Jan 04; therefore, how close a member was to 20 years of service was not taken into consideration for establishment of a disability retirement date in 1983.

The complete advisory opinion is at Exhibit H.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 15 May 25 for comment (Exhibit I) 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. The Board finds no error with the processing of the applicant's disability case. Records indicate she pressed for a Medical Evaluation Board (MEB) on two different occasions. She expressed how her medical condition negatively affected her daily activities and the MEB medical reviewer opined she was unable to perform her job adequately; therefore, her unfitting medical condition overcame the presumption of fitness standard, and she was medically separated on 25 Jul 83. She was given the maximum allowable time past the SAF's approval of the recommended IPEB decision per AFR 35-4. The Board acknowledges the applicant's desire to receive CRDP due to the change in law in 2004; however, this was not a consideration when she was medically separated in 1983 as she benefited from other factors related to her medical retirement at the time of separation. Furthermore, per AFR 35-4, members are not retained to increase retirement or discharge benefits. The purpose of the DES is to remove members from service who can no longer perform their duties. 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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2006-00117-2 in Executive Session on 18 Jul 25:

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Panel Chair

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Panel Member

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Panel Member

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

Exhibit F: Record of Proceedings, w/ Exhibit B, dated 9 May 06.

Exhibit G: Application, DD Form 149, w/atchs, dated 21 Aug 24.

Exhibit H: Advisory Opinion, AFPC/DPFDD, w/ atchs, dated 15 May 25.

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Exhibit I: Notification of Advisory, SAF/MRBC to Applicant, dated 15 May 25.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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Board Operations Manager, AFBCMR  
Signed by: USAF

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