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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-2018-01717

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request to be placed in non-pay retirement status.

RESUME OF THE CASE

The applicant is a former Air Force Reserve technical sergeant (E-6).

On 21 Oct 02, according to AFPC/DPPDS (Air Force Disability) message dated 19 Sep 02, the Secretary of the Air Force determined the applicant was physically unfit for continued military service and directed the applicant be discharged with severance pay (DWSP).

On 14 Mar 18, according to a myPers Retirement/Points Inquiry incident, prior to his separation in 2002, the applicant's record incorrectly indicated he was 17 days short of qualifying for retirement because he was not credited with satisfactory service during Retention/Retirement years 88-89 and 89-90.

On 30 Mar 18, according to a myPers Retirement/Points Inquiry incident, the applicant was informed his Points have been corrected and he was free to apply for retirement by completing AF IMT 131, *Application for Transfer to the Retired Reserve*.

On 12 Jun 18, according to the Military Personnel Data System, the applicant was credited with 20 years, 2 months, and 13 days satisfactory service for retirement.

On 21 Feb 19 and 27 Feb 19, the Board considered and denied the applicant's request to be placed in non-pay retirement status (Retired Reserve List); finding the applicant had provided insufficient evidence of an error or injustice to justify relief. ARPC/DPTT stated the applicant had the option of taking Discharge with Severance Pay (DWSP) or waiting to age 60 to apply for Reserve retired pay and elected DWSP. Receipt of DWSP prohibits entitlement to any benefits, to include an identification card. The Board agreed with the rationale and recommendation of ARPC/DPTT and found that a preponderance of the evidence did not substantiate the applicant's contentions. The Board also noted the prior request was not timely submitted and the applicant had offered no plausible reason for the delay in filing the application. As such, the Board found the application untimely and concluded it would not be in the interest of justice to excuse the delay.

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 I.

On 10 Apr 22, the applicant requested reconsideration. He contends the three-year filing requirement should be waived. His previous case was denied because he had the option to retire and refused. However, his retirement/points inquiry shows he was not eligible or offered any

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retirement options at the time. The untimely disability discharge created confusion because he was an Individual Mobilization Augmentee. He had no reason to protest his discharge within the required three years as it was presented as a disability payment for future pay at the age of 60. He was never afforded or explained his retirement options as years later he had to address a points discrepancy that made him ineligible for retirement. His contact with the Department of Veterans Affairs (DVA) in 2011 educated him on his situation.

As new evidence, the applicant provides: (1) An email dated 30 Mar 18, informing him that his points were corrected; (2) An email from the DVA dated 30 Aug 17, informing him he was granted a 30 percent disability rating for asthma effective 24 Aug 11; however, his benefits were withheld because he received severance pay when he was discharged.

The applicant's complete submission is at Exhibit J.

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 concludes the applicant is the victim of an error or injustice. The Board notes the point credit and reporting system indicated the applicant was 17 days shy of 20 satisfactory years for retirement when he was discharged in Oct 02. This error was not corrected until 2018 when the applicant was informed he could complete AF IMT 131 to apply for retirement; however, since he was already discharged, he was no longer eligible. The Board finds had the applicant's record been correct and had he known of the formalities of the retirement application process, he would have adhered to them since he had served the required time to be eligible for an Air Force Reserve retirement. To deny relief in this circumstance would be to place form over substance, to the detriment of the applicant. However, the applicant should be aware that his retired pay will be reduced by the amount of disability severance pay received. Therefore, the Board recommends correcting the applicant's records as indicated below.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

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

- a. He was not discharged from the Air Force Reserve on 21 Oct 02, but on that date, he was assigned to the Retired Reserve Inactive Status List, awaiting retired pay at age 60, under the provisions of Title 10, United States Code, Section 12731.
- b. In accordance with Department of Defense Financial Management Regulation Volume 7b, Chapter 4, the Defense Financial Accounting Service must recoup lump-sum disability severance pay by deducting from his retired pay each month until the total deducted equals the amount of the disability severance pay received.

CERTIFICATION

The following quorum of the Board, as defined in the Department of Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2018-01717 in Executive Session on 16 Feb 23:

Work-Product [REDACTED] Panel Chair

Work-Product [REDACTED], Panel Member

Work-Product [REDACTED], Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit I: Record of Proceedings, w/ Exhibits A-H, dated 25 Mar 19.

Exhibit J: Application, DD Form 149, w/atchs, dated 10 Apr 22.

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

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