

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2020-02501

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

Her retirement pay be recalculated to include her additional public service under the provisions of the 1993 Temporary Early Retirement Act (TERA).

### APPLICANT'S CONTENTIONS

She wants to submit additional employment information to her TERA and public and community service (PACS) files after her Enhanced Retirement Qualification Period (ERQP) expired. She was able to submit information and received two years and four months additional credit, but she did not submit information for her employment for the period of Aug/Sep 00 to May 01 when she worked full time as a school nurse at an elementary school. She left employment after having a baby in Mar 01 and was expecting to return to work, but she did not, so she later resigned and then had a Permanent Change of Station (PCS) from XXXXXX in Jun 01.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force major (O-4).

On 31 Jan 97, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was separated from active duty for the purpose of retirement. Item 18, *Remarks*, states "Member is retiring as provided by Section 4403 of the FY97 National Defense Authorization Act (PL 102-484) and May Qualify for a Re-computation of Retired Pay at Age 62 Pursuant to Section 4464 of the Same Law." She was credited with 15 years and 4 days of active service.

Dated 24 Oct 96, Special Order Work-Product, indicates the applicant was retired in the grade of major (O-4), effective 1 Feb 97.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

### AIR FORCE EVALUATION

AFPC/DP2SSR recommends granting the application correcting the applicant's record to show direct re-computation of applicant's retirement pay starting from her 62nd birthday to include the additional two years and four months of active service as allowed under the PACS program. In the National Defense Authorization Act for Fiscal Year 1993 (FY93 NDAA), Public Law (PL) 102-484, dated 23 Oct 92, Congress enacted TERA, which permitted early retirement for selected military members having more than 15 but less than 20 year of active service. Public Law 107-314, *National Defense Authorization Act for Fiscal Year 2003*, Section 554, extended TERA to 1 Sep 02 at which time that TERA authority expired. Section 4464 of the FY93 NDAA allowed eligible members retired under TERA to perform PACS following retirement and receive credit for this service to be used to re-compute 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. PACS job vacancies included education, conservation, environmental protection, law enforcement, and public health care positions. Program management was established and announced to the Services through the Assistant Secretary of Defense (ASD) Memorandum, *Active Duty Early Retirement Policy Guidance*, dated 12 Mar 93, and the ASD Memorandum, *Implementing Procedures for Temporary Early Retirement Authority (TERA) Programs*, dated 22 Apr 93. The Air Force also provided specific instructions to the field through a Military Personnel Flight Letter (MPFL) 93-024, *Voluntary Early Retirement Program*, dated 9 Apr 93. The Department of Defense (DoD) also provided specific information on obtaining public and community service credit through DoDI 1340.19, *Certification of Public and Community Service Employment of Military Retirees*, dated 17 Nov 93. The applicant retired effective 1 Feb 97 under the TERA authority, with 15 years and 4 days of total active federal military service (TAFMS). The NDAA required members retiring under TERA to register in advance of the projected retirement date on the PACS Registry maintained under 10 USC Section 1143a. The law allows no provision to retroactively register for employment in public or community service organizations. Applicants were required to turn in proof of public or community service to the Defense Manpower Data Collection (DMDC) team no later than one year after they would have attained 20 years TAFMS had they been continuously on active duty. This date is referred to as the individual's ERQP. The applicant retired 1 Feb 97, therefore, any creditable service must have been completed prior to 27 Jan 02 (the end of her ERQP). Based on the reporting instructions established by the DMDC, the applicant was required to submit a record of the creditable service within a year of that point (or 27 Jan 03). DMDC records show the applicant having TERA Retiree credits for 840 total credits, two years, four months, zero days. An update of TERA Retirees was submitted to DFAS as of Jun 13 and the applicant's records were included in this submission to DFAS. As DMDC understands it, there is a pending segment update for TERA benefit's to be released at the time of the members 62nd birthdate, or very shortly thereafter.

The complete advisory opinion is at Exhibit C.

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

The Board sent a copy of the advisory opinion to the applicant on 20 Apr 21 for comment (Exhibit D), but has received no response.

### **ADDITIONAL AIR FORCE EVALUATION**

AFPC/DP2SSR originally recommended granting the applicant's request but did not address the issue in the application whereas the applicant wants to submit additional employment information to her TERA and PACS files after her ERQP expired. Addressing this issue, AFPC/DP2SSR recommends denying the application stating, at the time the applicant was employed at the DoD School System in XXXXX, as verified by DMDC, it was not creditable since that agency was not an approved employer under the PACS program.

The complete advisory opinion is at Exhibit E.

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

The Board sent a copy of the advisory opinion to the applicant on 22 Oct 21 for comment (Exhibit F), 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 concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, at the time the applicant was employed at the DoD School System in XXXX, it was not counted as creditable service since that agency was not an approved employer under the PACS program. Therefore, the Board recommends against correcting the applicant's records.
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 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-2020-02501 in Executive Session on 26 Jan 22:

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

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

Exhibit A: Application, DD Form 149, w/atchs, dated 13 Jul 20.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory opinion, AFPC/DP2SSR, dated 9 Apr 21.

Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 20 Apr 21.

Exhibit E: Advisory opinion, AFPC/DP2SSR, dated 22 Oct 21.

Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 22 Oct 21.

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**

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Board Operations Manager, AFBCMR