

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2020-03384

XXXXXXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His overpayment of indebtedness in the amount of \$30,000 from a 2016 Aviator Retention Pay (ARP) agreement be waived.

### APPLICANT'S CONTENTIONS

At the completion of year three of a four-year ARP bonus commitment, he transferred from the Massachusetts (MA) Air National Guard (ANG) to Active Duty under the Voluntary Limited Period of Active Duty (VLPAD) program to fill a critically manned billet. As a result, he incurred a \$30,000 debt. With the full support of his Wing leadership, he attempted to submit a DD form 2789, *Waiver/Remission of Indebtedness Application*, to have the debt remitted, but has been advised that his only recourse is to submit a BCMR application. In addition, he states that he was informed that there would be no recoupment penalty with a waiver, because he was continuing his full-time military service. Being that he never left the service of the Air Force, he requests to have the debt waived.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an active-duty Air Force lieutenant colonel (O-5) serving on a VLPAD tour.

On 16 Jul 16, according to FY 2016 Pilot – Aviator Retention Pay (ARP) Agreement (Statement of Understanding) provided by the applicant, he agreed to an Option 1, \$25,000 bonus contract with a four to six-year service commitment with effective dates 16 Jul 16 through 15 Jul 22. The agreement also states that he must provide his Air Guard Reserve (AGR)/statutory tour orders annually to cover the entire service commitment established by the agreement.

On 30 Mar 16, DD Form 214, *Certificate of Release or Discharge from Active Duty*, shows that the applicant entered a period of active-duty service for the Air National Guard and was released on 15 Jul 16.

On 16 Jul 16, according to Order Number **Work-Product**, dated 18 Jul 16, the applicant began an AGR Initial Tour for full-time duty under U.S.C. Title 32 with a release date of 16 Jul 19.

On 17 May 19, according to a memorandum "Request AvB Waiver for debt" provided by the applicant, he requested a waiver to the cancellation of his ARP contract that would incur a debt, along with the concurrence of the Group Commander and Wing Commander.

On 31 Jul 19, NGB Form 22, *Report of Separation and Record of Service* and Special Order **Work-Product** shows that the applicant was honorably discharged from the MA ANG and appointed to the USAF effective 1 Aug 19.

On 1 Aug 2019, according to Special Order (SO) [Work-Product] and SO [Work-Product] dated 14 May 19, the applicant was voluntarily ordered to active duty under the VLPAD program with a release date of 1 Aug 22.

On 29 Aug 19, the applicant signed an Aviation Bonus (AvB) Program Contract for the VLPAD program with effective date 1 Aug 19 and incurred a three-year Active-Duty Service Commitment (ADSC) with an end date of 31 Jul 22 in exchange for a \$35,000 bonus paid annually.

On 9 Mar 20, as noted in an e-mail from the [Work-Product] Comptroller Squadron and provided by the applicant, he was notified of an indebtedness for Overpayment of Pay and Allowances in the amount of \$30,000.

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

### **AIR FORCE EVALUATION**

NGB/A1P recommends denying the application. On 16 Jul 16, the applicant entered into an FY16 ARP Agreement and chose Option 1 for a period of six years from 16 Jul 16 through 15 Jul 22. Under the FY16 ARP Policy, members must serve a minimum of four years in order to receive the maximum annual bonus of \$25,000 and avoid incurring re-computation and recoupment. Upon completion of only three years of the six-year agreement, the applicant voluntarily chose to transfer to the active-duty Air Force under the VLPAD program and did not serve the minimum duration of four years.

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 12 Dec 22 for comment (Exhibit D), and the applicant replied on 12 Dec 22. In his response, the applicant contended that the OPRs recommendation appears to be based on incorrect data. It states that he "did not serve the minimum duration of four (4) years to avoid re-computation and recoupment actions," which he says is factually incorrect, because he never stopped serving. Instead, due to a shortage of pilots in the Regular Air Force, he voluntarily transferred back to Active Duty, and now it appears he is being penalized for it. He never stopped serving by separating or becoming a part-time Guardsman and he is not asking for something that he did not earn.

The applicant's complete response is at Exhibit E.

### **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 NGB/A1P and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board notes, that the applicant elected an Option 1 contract for \$25,000 a year, which is an option that can only be selected one time in his career. By selecting this option, the applicant was eligible to receive the \$25,000 annually for each year he served in the Air National Guard, as long as he served at least four of the six-year contract. However, when the applicant's initial set of

statutory tour orders, under U.S.C. Title 32 ended, he had only completed three years of his contract and then voluntarily elected to enter active duty, under U.S.C. Title 10, where he subsequently entered a new Aviation Bonus contract that paid \$35,000 annually. In this regard, the applicant's argument that he continued to serve full-time in the Air Force does not negate the fact that he had entered into a bonus contract with the Air National Guard, failed to fulfill the requirements of that bonus and instead voluntarily chose to transfer to the active-duty Air Force who had a higher bonus. Moreover, the applicant only has to remit \$10,000 a year for the three years he served as he was still authorized to retain the standard \$15,000 annual bonus for each year he completed under his FY16 ACP contract. 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-2020-03384 in Executive Session on 10 Jan 23:

, 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 8 Jul 20.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, NGB/A1P, w/atchs, dated 28 Nov 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Dec 22.  
Exhibit E: Applicant's Response, w/atchs, dated 12 Dec 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.