

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-01245

XXXXXXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXXXXXXXXXX

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

1. He receive retired pay for 24 years of service, rather than 20 years of service.
2. He receive an increase in retired pay for award of the Bronze Star Medal (BSM).

### APPLICANT'S CONTENTIONS

He served 24 years of active duty service and should be properly compensated. In addition, he was awarded the BSM, which should increase his retirement pay.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 24 July 1953, the applicant initially entered active duty in the Regular Air Force and on 23 July 1957, he was released from active duty and transferred to the Air Force Reserve (AFR). He was credited with four years of active service.

According to DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, dated 30 September 1962, the applicant served a period of active duty in the AFR from 1 October 1961 to 30 September 1962. He was credited with one year of active service.

On 9 October 1962, he reentered active duty in the Regular Air Force.

DD Form 13, *Statement of Service*, dated 11 March 1966, reflects the applicant's Total Active Federal Military Service Date (TAFMSD) as 24 September 1957 and his pay date as 24 July 1953.

On 29 January 1969, according to Special Order X-XXX, the applicant was awarded the BSM for meritorious service for the period 10 March 1968 to 12 January 1969.

On 30 September 1977, the applicant was released from active duty and retired on 1 October 1977. He was credited with 20 years and 7 days of active service and 4 years and 2 months of inactive service.

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

### APPLICABLE AUTHORITY/GUIDANCE

AFI 36-2604, *Service Dates*, states Headquarters Air Force Personnel Center (HQ AFPC) computes service dates for members in the Regular Air Force and prepares a statement of service. A member can have different service dates for different purposes ranging from

promotion eligibility to military pay. Generally, service dates are established upon original entry into the military. However, these dates may be modified due to a break in service or promotion. The TAFMSD includes all periods of active federal military service in commissioned, warrant, flight officer, or enlisted status. When there is no break in active duty from the date of original entry of such duty, the TAFMSD is the date of original entry on active duty. When there is a break in active duty, the TAFMSD is later than the date of original entry on active duty by a period equal to the break. Service members in the Regular component receive credit for active duty, including active duty training for active Reserve and National Guard personnel as a commissioned officer, commissioned warrant officer, Army field clerk and enlisted member of the uniformed services.

## **AIR FORCE EVALUATION**

AFPC/DP2SSR recommends denying the application, indicating the applicant provided no evidence to show he is entitled to an adjustment of retired pay or that an error or injustice occurred. The applicant's service history includes active duty periods as well as time served in the AFR. An official of the Air Force Personnel Center Service Dates Verification office reviewed the applicant's record and confirmed his TAFMSD is 24 September 1957.

AFMAN 35-7, *Service Retirements*, dated 8 October 1971, Table 7-1 outlined the rules for calculating retired pay at the time of the applicant's retirement. The retired pay is calculated by multiplying the monthly basic pay the member received on active duty by 2.5 percent of the years of active service performed before retirement and, when applicable, adding 10 percent of the product for extraordinary heroism performed in the line of duty, not to exceed a total of 75 percent. Active service for this calculation is determined using the applicant's TAFMSD and computing the service completed from that date through the last day of active duty prior to retirement (i.e., from 24 September 1957 through 30 September 1977). As stated on the applicant's retirement order and DD Form 214, *Report of Separation from Active Duty*, dated 30 September 1977, he completed 20 years and 7 days of active service.

The applicant stated he completed 24 years of service; therefore, it appears he is requesting his pay date of 24 July 1953 be used to calculate his retired pay. Since a service member's pay date includes both active and inactive service, it is not appropriate to use this date in the calculation of his retired pay.

The applicant received a BSM for service performed for the period of 10 March 1968 through 12 January 1969. Title 10 United States Code, Section 09361 (then Section 8991) allows for a 10 percent increase in retired pay when enlisted service members are credited with extraordinary heroism in the line of duty. Certain decorations provide for an automatic increase in retired pay. Those include the Medal of Honor, Air Force Cross, or equivalent Army or Navy decoration. Service members who receive the Silver Star, Distinguished Flying Cross for heroism, or the Airman's Medal, may request a Secretarial determination of additional pay entitlement if the determination was not made at the time of award. Since the BSM is not one of the medals considered for extraordinary heroism, adjustment of the applicant's retired pay is not appropriate. In addition, the citation for the BSM does not mention acts of extraordinary heroism performed by the applicant during the award period.

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 19 January 2022 for comment (Exhibit D), and the applicant replied on 19 February 2022. In his response he contends AFPC/DP2SSR's analysis is flawed. They count his years of service from 1957 to 1977, which includes four years of active duty Reserve, but seem to ignore four years of active duty service from 1953 to 1957. He again asserts he should be paid for 24 years of service.

The applicant's complete response is at Exhibit E.

## **FINDINGS AND CONCLUSION**

1. The application was not 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 that he served and should be compensated for 24 years of active duty service. While the applicant's active duty and inactive Reserve periods of service span 24 years, his active duty service creditable toward retired pay totals 20 years and 7 days. In addition, the applicant's BSM does not meet the established criteria for extraordinary heroism to qualify for an increase in retired pay. Therefore, the Board found the applicant's retired pay was calculated accurately in accordance with Air Force instructions in effect at the time of his retirement and the evidence provided does not warrant an adjustment. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and 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 application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2021-01245 in Executive Session on 6 April 2022:

, Chair, AFBCMR  
, 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 November 2020.

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

Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 24 November 2021.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 19 January 2022.

Exhibit E: Applicant's Response, dated 19 February 2022.

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.

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Board Operations Manager, AFBCMR