

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-01834

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

She receives satisfactory service credit for three Retention/Retirement (R/R) years from 26 May 16 through 25 May 19.

### APPLICANT'S CONTENTIONS

On 1 Nov 16, the applicant's civilian position was designated an Emergency-Essential (EE) (also referred to as a Key Employee) position. As a result of the designation and under the provisions of AFI 36-507, *Mobilization of the Civilian Work Force*, the applicant was required to be removed from military mobilization status but should have been afforded the opportunity to transfer to the Non-Affiliated Reserve Section-ND (NARS-ND), which would have allowed her to participate for non-paid points. However, due to an administrative oversight her servicing civilian personnel office mistakenly sent confirmation of her appointment to the Assistant Secretary of Defense for Reserve Affairs instead of to the ARPC Reserve Service Programs office. In-turn, this oversight caused the applicant to be transferred to the Obligated Reserve Section-RA (ORS-RA) of the Individual Ready Reserve (IRR) as she still had a Military Service Obligation (MSO). Once her MSO was complete, she was then erroneously transferred to the Non-Obligated Non-Participating Reserve Personnel Section (NNRPS) of the IRR on 26 May 18.

Although she made multiple inquiries from 2016 to 2018 regarding her status and her ability to participate, she continued to receive misinformation and it was not until contacting the correct office in ARPC/DP that she discovered that she should have been offered and allowed to serve in the NARS-ND. She then fixed the error and accepted an assignment on 14 Nov 18 with an effective date of 15 Jan 19 and even with her civilian workload, she was able to earn the required retirement points for her 2019-2020 R/R year. However, had the Emergency-Essential notification been routed correctly to ARPC/DP in 2016, she would have been correctly placed in the NARS-ND, would have continued to participate, and would have accumulated points toward retirement.

Furthermore, despite her inability to participate for pay or points, she continued to serve during the 2016-2019 timeframe by enrolling in Squadron Officer School (SOS) on 27 Feb 17 and the National Intelligence University (NIU) on 7 July 17. She also served as a voluntary civilian Admissions Liaison Officer (ALO) during the contested period and attempted to pursue ALO in a Participating Individual Ready Reserve (PIRR) capacity.

In support of her appeal, the applicant provides documents from her military record that indicate she was a key employee (emergency-essential civilian personnel) that could not be mobilized in her Air Force Reserve capacity. She also provides various e-mails and other documents that indicate that she has since been assigned to the NARS-ND; a memorandum from the USAFE ALO office that indicates that she participated for no points/no pay at various times from 2016-2019; copies of her SOS certificate and NIU diploma with completion dates in 2020; and a Point Credit Summary Inquiry (PCARS) report that shows she earned 62 points during R/R year 2019-2020.

The applicant's complete submission is at Exhibit A.

## STATEMENT OF FACTS

The applicant is an Air Force Reserve (AFR) captain (O-3).

On 3 Oct 16, according to Reserve Order XX-XXXXX, dated 3 Oct 16, the applicant was transferred to the IRR in accordance with AFI 36-2115, Table 4.2 Rule 15, *Conflict with Civilian Employment*.

On 31 May 18, the applicant received a letter from ARPC indicating that she had been assigned to the Individual Ready Reserve (IRR) in the NNRPS for one and a half years and would be administratively discharged at the two-year mark.

On 24 Oct 18, according to documents provided by the applicant, ARPC properly identified the applicant as a "Key Employee" with her civilian employer and given the option to transfer into the NARS-ND. On 14 Nov 18, she elected to transfer to the NARS-ND with an effective date of 15 Jan 19.

According to the applicant's ANG/USAFR PCARS, the applicant received the following Active Duty (AD), Inactive Duty for Training (IDT), extension course institute (ECI), membership (MBR), and retirement points for R/R year 2016-2020:

R/R Year	AD	IDT	ECI	MBR	Retirement	Satisfactory Service (Year)
26 May 16 - 25 May 17	7	5	0	15	27	000000
26 May 17 - 25 May 18	0	0	15	15	30	000000
26 May 18 - 25 May 19	0	1	10	15	26	000000
26 May 19 - 25 May 20	0	35	12	15	62	010000

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

## APPLICABLE AUTHORITY/GUIDANCE

AFI 36-507, *Mobilization of the Civilian Work Force*, Attachment 5, *Key Positions and Employees and Reserve Screening*.

A5.1. Background. Some Air Force civilian employees are also Reserve members of the Armed Forces. All members of Reserve Components of the Armed Forces are immediately available for recall to active military service unless they are exempt from military mobilization obligations. A potential conflict of obligation occurs when an employee is also a member of the Reserves and occupies a Key civilian position (definition A 1.11). You must resolve such conflicts before a mobilization occurs.

A5.10.3. The Military Department Transfers Key employees' who are Ready Reservists to the Standby Reserves or the Retired Reserve or discharges them under 10 U.S.C.271(b).

Key Employee positions are those that cannot be vacated during a national emergency or mobilization without seriously impairing the capability of the parent Federal agency or office to function effectively. Federal employees in designated Key Employee positions cannot participate in the Air Force Reserve and will be re-assigned to the Standby Reserve where they will remain for the period in which they will fill a key position. The member may apply for an assignment to the Non-Affiliated Reserve Section (NARS)/ND of the Active Standby Reserve. If accepted, the member will continue to earn retirement points. This also applies to appointed or elected officials who want to earn points for retirement.

## **AIR FORCE EVALUATION**

ARPC/DPTS, recommends denying the applicant's request for three additional satisfactory years towards retirement from 26 May 16 through 25 May 19. In accordance with AFMAN 36-2136, *Reserve Personnel Participation*, Chapter 2, Paragraph 2.2, points may only be credited to the date a reservist actually performed the duty. In addition, DoDI 1215.07, *Service Credit for Non-Regular Retirement*, section 3, 3.1 (a) (Atch 2), states that, "Reserve Component members must be credited with at least 50 retirement points in an R/R year to be credited with a satisfactory year towards a non-regular retirement." In this regard, the applicant's PCARS report indicates that she did not have adequate participation to achieve 50 retirement points during the contested years.

The complete advisory opinion is at Exhibit C.

ARPC/DPA, recommends granting the applicant's request to amend Order XX-XXX, dated 3 Oct 16, to reflect transfer to NARS-ND effective 1 Nov 16. They also recommend that the Military Personnel Database System (MilPDS) be corrected to remove the erroneous assignment to the Obligated Reserve Section-RA and update the database to reflect that she was assigned to the NARS-ND from 1 Nov 16 to 25 May 18. Based on the documentation provided by the applicant and analysis of the facts, the applicant should have been afforded an opportunity under the Key Employee Program to move to NARS-ND and continue to participate for satisfactory service. Although the original notification letter was apparently sent out by the 86 FSS/FSE, it does not appear to have arrived at ARPC/DPAMR. Both AFI 36-507 and its successor, AFI 36-129, *Civilian Personnel Management and Admin*, state that the notification is to be sent to the servicing Military Personnel Center of the applicant. It should also be noted, that the ARPC address in both AFIs was outdated and incorrect. The applicant has provided evidence that, from 2016-2019, she attempted to find an avenue that would allow her to continue participating as a reservist while also performing duty in her civilian position. It also shows that she would have pursued an assignment to NARS-ND if it had been originally offered to her. Due to circumstances outside the applicant's control, the opportunity was not presented to her until 2018.

The complete advisory opinion is at Exhibit D.

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

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

The applicant's complete response is at Exhibit F.

## **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 concurs with the rationale and recommendation of ARPC/DPA and DPTS and finds a preponderance of the evidence substantiates the applicant's contentions in part. The Board concurs that an administrative oversight inappropriately assigned the applicant to the Obligated Reserve Section-RA, when she should have been given the option to join the NARS-ND. Considering that the applicant decided to join the NARS-ND on 14 Nov 18, was appointed to a position on 15 Jan 19 and has since been participating, the Board finds sufficient evidence to update her military record to reflect transfer to NARS-ND effective 1 Nov 16. However, in regard to the applicant's requests for satisfactory years for her R/R years 26 May 16 through 25 May 19, the applicant did not perform duty in an official capacity or in an unofficial capacity that would be considered equivalent or sufficient to award non-paid inactive duty points. Therefore, the Board recommends correcting the applicant's records as indicated below.

## **RECOMMENDATION**

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

1. Order XX-XXX, dated 3 October 2016, be amended to reflect transfer to the Non-Affiliated Reserve Section-ND effective 1 November 2016.
2. Her erroneous assignment to the Obligated Reserve Section-RA be removed from her records and be updated to reflect her assignment to the Non-Affiliated Reserve Section-ND from 1 November 2016 to 25 May 18.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

## **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-2021-01834 in Executive Session on 18 Aug 21:

, Panel Chair  
, Panel Member  
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 19 Mar 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, ARPC/DPTS, w/atchs, dated 7 Jun 21.
- Exhibit D: Advisory opinion, ARPC/DPA, dated 7 Jun 21.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 21 Jun 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.