

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-02118

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His permanent disability retirement be changed to a retirement under the Temporary Early Retirement Authority (TERA).

### APPLICANT'S CONTENTIONS

He was not informed of the TERA program when he retired and recently became aware of it. With over 17 years of active service and a commitment through 20 years, he would have been eligible for TERA had he been aware of the program. He understands his status would convert to permanent disability at the end of his committed time (approximately 20 years). DD Form 214, *Certificate of Release or Discharge from Active Duty*, item 18 (Remarks) states "Subject to recall to active duty by the Secretary of the Air Force," which suggests he is in a temporary rather than permanent status. Therefore, his DD Form 214 should reflect TERA.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 3 Feb 93, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, the Informal Physical Evaluation Board (IPEB) found the applicant unfit for duty due to physical disability and recommended permanent retirement with a compensable disability rating of 30 percent.

On 24 Feb 93, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the IPEB findings and recommendation.

On 2 Mar 93, the Secretary of the Air Force Personnel Council directed the applicant be retired under the provisions of Title 10 United States Code, Section 1201, with a compensable disability rating of 30 percent.

On 23 Apr 93, according to DD Form 214, provided by the applicant, he was relieved from active duty for the purpose of permanent disability retirement. He was credited with 17 years, 3 months, and 6 days of total active service. Item 18 reflects, "Subject to recall to active duty by the Secretary of the Air Force."

On 24 Apr 93, according to Special Order Work-Product, dated 2 Mar 93, the applicant retired with a 30 percent disability rating.

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

## **APPLICABLE AUTHORITY/GUIDANCE**

Department of Defense Instruction (DoDI) 1352.1, *Management and Mobilization of Regular and Reserve Retired Military Member*. Regular retired members and members of the retired Reserve must be managed to ensure they are accessible for national security and readiness requirements. Retirees may be used as a manpower source of last resort after other sources are determined not to be available or a source for unique skills not otherwise obtainable.

Military retirees shall be ordered to active duty with full pay and allowances. In general, a retired member recalled to active duty will serve in the member's retired grade. Military retiree categories are defined as follows: (1) Category I: Non-disability retirees under age 60 who have been retired fewer than 5 years; (2) Category II: Non-disability retirees under age 60 who have been retired 5 years or more; and (3) Category III: Retired military members, including those retired for disability or any retired member over 60 years old.

## **AIR FORCE EVALUATION**

AFPC/DP2SSR recommends denying the application. Congress enacted TERA in the Fiscal Year 1993 National Defense Authorization Act, which permitted selected military members to retire with 15 or more, but less than 20 years of 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.

The Air Force provided specific instructions to the field through Military Personnel Flight Letter 93-024, *Voluntary Early Retirement Program*, dated 9 Apr 93, which included application instructions. Paragraph 6 listed exclusions to program eligibility. Specifically, paragraph 6e states, "Members not physically fit for retention under provisions of Air Force Regulation (AFR) 35-4, *Physical Evaluation for Retention, Retirement, and Separation*" are excluded from TERA eligibility. The applicant was medically retired effective 23 Apr 93, under the provisions of AFR 35-4, for permanent disability. Therefore, he did not meet the eligibility requirements to retire under the TERA program.

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 16 Feb 22, for comment (Exhibit D) but has received no response.

## **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 applicant infers he meets the requirements to retire under the TERA program because his DD Form 214 indicates he is subject to recall to active duty. However, according to DoDI 1352.1, retired members may be recalled to active duty as a manpower source of the last resource. Retired members, including those retired for disability are included in the last recall category. Furthermore, the evidence indicates the applicant was permanently disability retired pursuant to AFR 35-4; therefore, as noted above, he does not qualify to retire under the TERA program. Therefore, 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. 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 10, U.S.C., 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-2021-02118 in Executive Session on 29 Sep 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 29 May 21.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 24 Jan 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Feb 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.

**X**

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Board Operations Manager, AFBCMR