

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03505

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her separation status be changed to retirement eligible and she be placed on the Reserve Retired List.

APPLICANT'S CONTENTIONS

She completed over 24 years of satisfactory service in the United States Air Force Reserve and would like to have her records corrected to reserve retired instead of an Expiration Term of Service (ETS) separation. She suffered a medical condition (stroke) and was not able to return to duty. She would also like to apply for retirement on her 60th birthday. As it stands now, she cannot apply for retirement because of her ETS separation.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged Air Force Reserve technical sergeant (E-6).

On 21 Jul 12, according to the applicant's Military Personnel Data System Service History, she was credited with 20 years satisfactory service following Retention/Retirement year 22 Jul 11 through 21 Jul 12.

On 30 Sep 12, according to Reserve Order XXXX, dated 14 Mar 12, the applicant was relieved from current assignment, assigned to the Retired Reserve Section, and placed on the USAF Reserve Retired List.

On 30 Jul 12, according to Reserve Order XXXX, Reserve Order No. XXXX, dated 14 Mar 12, was revoked.

On 12 Jul 14, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant reenlisted in the Air Force Reserve for a period of six years.

On 12 Jul 20, according to Reserve Order XXXX, the applicant was honorably discharged, with REENL ELIG STAT: Member Declined to Reenlist.

On 7 Jan 22, after her discharge, HQ ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing her that she has completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C. § 12731) and is entitled to retired pay upon application prior to age 60. In addition, she was eligible to participate in the RCSBP.

On 18 Jan 22, according to Reserve Order Number XXXX, dated 18 May 22, the applicant was authorized retired pay per Title 10, United States Code, Section 12731 and was placed on the USAF Retired List, Retired Reserve Section ZB.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-3203, *Service Retirements*, dated 29 Jan 21, paragraph 9.3. *Former Members*. A former member is defined as an individual who qualified for retirement but elected not to transfer to the retired reserve and was subsequently discharged for physical disqualification, misconduct, upon expiration of the member's contract, or resigned the officer's commission. These members have no military status but are authorized certain entitlements and benefits in accordance with AFI 36-3026V1_IP, *Identification Cards for Members of the Uniformed Services, Their Eligible Family Members, and Other Eligible Personnel*.

According to paragraph 9.4.10, transfer to the retired reserve is not automatic. The following members must apply online through vPC: (1) AFR members who meet retirement eligibility requirements of 10 U.S.C. § 12731 except for attainment of age 60; (2) Air Force Reserve (AFR) members not on EAD who have been found physically disqualified are transferred to the retired reserve if the members apply and meet the requirements outlined in 10 U.S.C. § 12731. Effective date will be 30 days from the date of application; or (3) AFR members whose selective early removal from the RASL [Reserve Active] Status List as directed by the Secretary of the Air Force.

Air Force Instruction 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, dated 14 Apr 05. Paragraph 1.2.1. *Former Members*. All members who are eligible for transfer to the Retired Reserve and choose discharge must be formally counseled concerning this policy and its effects on their benefits.

AIR FORCE EVALUATION

ARPC/DPTT recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant did not re-apply to be transferred to the Retired Reserve prior to being discharged.

On 12 Feb 12, the applicant applied for a Reserve retirement, effective 30 Sep 12. That application was approved and Reserve Order XXXX, dated 14 Mar 12 was published. On 15 Jun 12, the applicant requested her Reserve retirement be withdrawn to allow her opportunity to continue her knowledge, skills, and ability. The withdrawal request was approved and Reserve Order XXXX, dated 30 Jul 12, revoking the previous retirement order was published. The applicant never submitted a new Reserve retirement application prior to being discharged on 12 Jul 20. Per AFI 36-3203, paragraph 9.4.10., transfer to the Retired Reserve is not automatic. Members must apply online through vPC for transfer to the Retired Reserve.

The applicant is eligible for a former member identification card at this time, and is still eligible to apply for Reserve retired pay at age 60 (or at an approved reduced retirement pay age date, if applicable).

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 14 Jun 22 for comment (Exhibit D), 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 the victim of an error or injustice. While the Board notes the recommendation of ARPC/DPTT against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. The Board finds that if the applicant had known the proper procedures for the retirement application process, she would have adhered to them since she served sufficient time to be eligible for a Reserve retirement. To deny relief in this circumstance would be to place form over substance, to the detriment of the applicant. Therefore, the Board recommends correcting the record as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that she was not discharged from the Air Force Reserve on 12 Jul 20, but on that date, she was assigned to the Retired Reserve Section, and her name was placed on the Retired Reserve List, and she was eligible for retired pay at age 60, under the provisions of 10 U.S.C. § 12731, or if applicable, under reduced retired pay age authorized by the National Defense Authorization Act for 2008.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03505 in Executive Session on 18 Aug 22 and 16 Mar 23:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, dated 12 Oct 21.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 17 Mar 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Jun 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR