

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03771

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Her Reserve retirement order, dated 6 May 21, effective 1 Aug 19, be rescinded due to her pending Medical Evaluation Board (MEB).

APPLICANT'S CONTENTIONS

She is currently undergoing a MEB which started in 2016. She was put in a no pay/no points status in Jan 17 and due to a large turnover in personnel and a backlog of cases, she has sat in this status for four years. It is the unit's responsibility to ensure members are coded correctly in the system. For some reason, her status was not coded correctly and she was retroactively retired, effective 1 Aug 19. This action has put her in extreme financial hardship. Her medical and dental benefits have been cancelled and are now being retroactively cancelled back to her retirement date. She had these benefits up until May 2021 until her retirement order was published which cancelled them.

In addition to email inquiries and other documents pertinent to her case, the applicant submitted a congressional response letter from her unit wing commander, dated 7 Jan 21, stating her retirement needs to be reversed as she is going through a MEB. This error was due to an administrative mistake by her unit when they failed to place her in a medical hold status. She also submitted a letter, dated 23 Apr 21, from the Aeromedical Staging Squadron indicating she was identified as having a duty-related disqualifying condition and her case was now being processed through the MEB/Integrated Disability Evaluation System (IDES).

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve (AFR) major (O-4) awaiting retired pay at age 60.

Dated 29 Jan 18, a letter from ARPC/DPTTS indicates the applicant's mandatory separation date (MSD) was extended until 31 Jan 19 at which time she would be automatically transferred to the Retired Reserve.

Dated 6 May 21, Reserve Order XXXXX, indicates the applicant was assigned to the retired Reserve section and placed on the USAF Reserve Retired list effective 1 Aug 19.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C, E, and F.

AIR FORCE EVALUATION

ARPC/DPTT recommends denying the applicant's request to reverse her Reserve retirement, effective 1 Aug 19 due to her pending MEB finding no evidence of an error or injustice. A review of the applicant's records show that she was not assigned an Assignment Availability Code (AAC) 37 in accordance with DAFI 36-2110, *Total Force Assignments*, paragraph 3.7.2 which states medical treatment facilities (MTFs) submit an AF Form 469 on airmen with physical limitations not of a temporary nature that interfere with worldwide assignability, to indicate a MEB is being processed. The automatic Personnel Delivery System (PDS) interface updates an AAC 37. If the airman's personnel record reflects an AAC 31, *Temporary Medical Deferment*, the AAC is automatically removed and replaced with AAC 37, MEB or Physical Evaluation Board (PEB). Per AFI 36-3212, *Physical Evaluation for Retention, Retirement and Separations*, an airman pending a MEB or PEB may not be reassigned permanent change of station (PCS) or temporary duty (TDY) or granted leave outside the local area, separated or retired until the MTF determines the medical disposition. Due to the AAC 37 not being assigned to the applicant's records, ARPC processed the member's Reserve retirement based on expiration of the member's MSD of 1 Aug 19, per AFI 36-3203 *Service Retirements* paragraph 9.6.4.4, which states AFR officers separated due to non-selection for promotion (twice deferred) who have completed the years of service required for retired pay under 10 U.S.C. Section 1223 or who must be separated for MSD will be automatically transferred to the retired Reserve, if qualified, unless the member applies to be discharged. All AFR enlisted members who must be separated due to maximum age or high year tenure (HYT) will also be automatically transferred to the retired Reserve, if qualified, or discharged. The member was issued a Reserve retirement order XXXX, dated 6 May 21.

Should the Board elect to grant the request, the applicant's date assigned to retired Reserve would need to be amended. The Board would also need to verify the date the member's MEB has been completed and provide the date the applicant will be placed on the Reserve retired list.

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 27 Jul 22 for comment (Exhibit D), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

AFRC/SGO recommends granting the applicant's request to rescind her Reserve retirement, effective 1 Aug 19 due to her pending MEB finding. AFRC/SGO feels that the applicant should not have been retired in the middle of her Line of Duty (LOD) processing which in this case took a couple of years. A LOD was submitted on 28 Jun 17 and was not finalized until Feb 20. It appears the applicant was in the middle of requesting and undergoing an appeal to the LOD

which means she should not have been retired based on DAFI 36-2910, *Line of Duty, Determination, Medical Continuation , and Incapacitation Pay*. As soon as the appeal was approved, the medical case should have proceeded to a MEB to evaluate fitness for duty and disability recommendations by the PEB. Unfortunately, the Physical Evaluation Board Liaison Office (PEBLO) is unable to process a MEB when a member is no longer in the service. Policy states that the member should not be retired until the LOD has been finalized and should also not be retired if undergoing a medical board. Understandably the code 37 is very important to track this information and at present time, AFRC/SGO does not have access to the applicant's Aeromedical Services Information Management System (ASIMS) records to determine the date at which time she was reviewed by Airmen Medical Readiness Optimization (AMRO) or placed on a code 37. The p-waiver requested noted mobility requirements as early as Mar 15. The applicant should not have been retired either while undergoing a LOD or while undergoing MEB/IDES processing.

The complete advisory opinion is at Exhibit E.

Based on the advisory opinion from AFRC/SGO, ARPC/DPTT recommends granting the applicant's request to reverse her Reserve retirement, effective 1 Aug 19 due to her pending MEB finding. After review of the advisory opinion from AFRC/SGO dated 19 Aug 22, it was confirmed the applicant was facing two LOD determinations and should not have been retired based on this evidence.

ARPC Reserve Separations office has determined that if the member was processed correctly, coordination with an Air Force Personnel Center (AFPC) Medical Case Manager would have been established to extend her MSD. If the extension required Secretary of the Air Force approval, it was confirmed that an MSD extension would have been approved by SAF/MBR depending on where the member was in the LOD process.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 30 Aug 22 for comment (Exhibit G), 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 conflicting advisory opinions prepared in this case; however, after thoroughly reviewing this application, we concur with the rationale and recommendation of AFRC/SGO dated 19 Aug 22 and ARPC/DPTT dated 30 Aug 22, and finds a

preponderance of the evidence substantiates the applicant's contentions. 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 on 1 August 2019, the applicant was not assigned to the retired Reserve section and placed on the USAF Reserve retired list, rescinding Reserve Order XXXX.

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-2021-03771 in Executive Session on 21 Sep 22 and 1 Oct 22:

- , Panel Chair
- , Panel Member
- , Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 11 Nov 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, ARPC/DPTT, dated 22 Jun 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 27 Jul 22.
- Exhibit E: Advisory opinion, AFRC/SGO, dated 19 Aug 22.
- Exhibit F: Advisory opinion, ARPC/DPTT, dated 30 Aug 22.
- Exhibit G: Notification of advisory, SAF/MRBC to applicant, dated 30 Aug 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

Board Operations Manager, AFBCMR