

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-00465

XXXXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His separation status be changed to retirement eligible with placement on the Reserve Retired List.

### APPLICANT'S CONTENTIONS

He switched to Inactive Ready Reserve on 10 April 2016. He tried to retire multiple times through myPers but was recently told that he had separated versus retired. He served in the Army, Air Force and Air Force Reserve (AFR) and has sufficient points to retire. He received his 20-year letter; however, his status was never changed to retired. He should be allowed to retire after long and honorable service to his country.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force Reserve lieutenant colonel (O-5).

On 13 August 2007, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant resigned his Regular Air Force commission and transferred to the AFR. He was credited with 12 years, 2 months, and 19 days of active service.

On 3 February 2017, according to Reserve Order X-XXX, dated 30 January 2017, the applicant was assigned to the Individual Ready Reserve (IRR), Air Reserve Personnel Center (ARPC).

On 30 August 2018, ARPC notified the applicant he had been assigned to the IRR in the Non-obligated Non-participating Ready Personnel Section (NNRPS) for one and a half years of the two-year maximum retention, and that he would be discharged in six months.

On 7 January 2022, ARPC/DPTT notified the applicant he had completed the required years of service under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C. § 12731) and entitled to retired pay upon application, normally at age 60.

On 11 October 2022, Reserve Order XX-X was published indicating the applicant was relieved from NNRPS and honorably discharged from the AFR, effective 2 February 2019.

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 January 2021, 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) 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 Reserve Active Status Listing as directed by Secretary of the Air Force.

According to paragraph 9.5, categories of personnel who are not eligible for transfer to the Retired Reserve include members who were administratively discharged for cause, personnel who elected discharge or resigned the individual's commission in lieu of transfer to the Retired Reserve (former members) or AFR members who have been found physically disqualified and placed on the temporary disability retired list or permanent disability retired list.

Members awaiting pay at age 60 who are eligible for Reserve retired pay under 10 U.S.C § 12731, but have not reached eligibility age, normally age 60 will receive: (1) appropriate Armed Forces of the United States identification card per AFI 36-3026V1\_IP; (2) unlimited commissary privileges; (3) base exchange privileges; (4) other base privileges, including Information, Ticket and Tours programs and theater; (5), membership in an open mess, if authorized by the base commander; (6) authorization to wear the uniform on special occasions; (7) some travel entitlements as advised by the Transportation Management Office; (8) full-time coverage under Veterans' Group Life Insurance when elected; (9) TRICARE Retired Reserve; and (10) Federal Employees Dental and Vision Insurance Program.

AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, dated 14 April 2005, paragraph 1.2.1 states previous policy allowed AFR members who chose discharge instead of transfer to the Retired Reserve to be reappointed or reenlisted for the purpose of transfer to the Retired Reserve any time prior to age 60. These members became eligible for partial use of some benefits prior to age 60, and upon attainment of age 60, they were eligible for full benefits whether they were re-affiliated or not. This criterion has changed. Members who are discharged today, instead of retired, will not be allowed to re-affiliate and will only be entitled to retired pay and medical care at age 60. These former members and their eligible family members will be issued the DD Form 1173, *Uniform Service Identification and Privilege Card*, on the member's 60th birthday. 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 and analysis of the facts, there is no evidence of an error or injustice. In accordance with AFI 36-3203, paragraph 9.4.10, transfer to the Retired Reserve is not automatic, members must apply for

transfer online through vPC. On 3 February 2017, the applicant was transferred to the NNRPS, and discharged effective 3 February 2019. However, he failed to apply for transfer to the Retired Reserve prior to being discharged. 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 11 April 2022 for comment (Exhibit D), but has received no response.

### **ADDITIONAL AIR FORCE EVALUATION**

ARPC/DPTT provided an amended advisory correcting the applicant's discharge effective date to 2 February 2019.

If the Board grants relief, the applicant's discharge of 2 February 2019 would need to be rescinded and the Board would need to direct the applicant be placed on the Reserve Retired List, effective 2 February 2019.

The complete advisory opinion is at Exhibit E.

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

The Board sent a copy of the advisory opinion to the applicant on 14 October 2022 for comment (Exhibit F), 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, he would have adhered to them since he 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. In addition, Therefore, the Board recommends 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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that his discharge from the Air Force Reserve, effective 2 February 2019, be rescinded, he be assigned to the Retired Reserve Section, and placed on the United States Air Force Reserve Retired List, effective 2 February 2019.

## 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-2022-00465 in Executive Session on 8 November 2022 and 10 January 2023:

, 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 13 January 2022.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, ARPC/DPTT, dated 5 April 2022.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 11 April 2022.  
Exhibit E: Amended Advisory Opinion, ARPC/DPTT, dated 13 October 2022.  
Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 14 October 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