

RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXXXXXX

DOCKET NUMBER: BC-2022-00543

COUNSEL: NONE

HEARING REQUESTED: NOT INDICATED

APPLICANT'S REQUEST

His official military record be corrected to reinstate him into the Air National Guard (ANG).

APPLICANT'S CONTENTIONS

On 1 Aug 14, at the age of 55, he entered the service. He is a physician and was recruited to fill a Flight Surgeon position at the grade of major (O-4). There are no Mandatory Separation Dates (MSD) for majors, so he did not have an MSD established. Over the next seven years, he met challenges getting fully qualified, from the death of his son to course cancellations related to COVID, and training lines moved to active duty as a priority. He was finally able to complete training in Jan 21, was fully qualified, and could be promoted to lieutenant colonel (O-5).

He reached age 62, and on 1 Aug 21, was promoted under the Reserve Officer Personnel Management Act (ROPMA). Upon promotion, he was given an MSD of 30 Jun 19 (sic). At that point, he was told he could no longer attend drills or perform military service. He intended to continue his military career as long as he was allowed and would have requested an MSD extension waiver beyond his 62nd birthday.

He wishes to be allowed back into the ANG to serve as a Flight Surgeon as long as allowed under Title 10, United States Code, Section 14703 (10 USC 14703). He was one of five Flight Surgeons and served a vital role in the operation of his unit. He understands that he is not able to attain 20 years of service and wishes only to continue in service to the ANG, the United States Air Force, and his country.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an honorably discharged ANG major (O-4).

On 1 Aug 14, according to AF IMT 133, *Oath of Office (Military Personnel)*, the applicant was commissioned as a Reserve of the Air Force.

On 1 Aug 14, according to NGB Form 337, *Oath of Office*, the applicant was commissioned in the ANG.

On 1 Aug 14, according to Special Order Number XXXXX, dated 24 Mar 16, the applicant was extended Federal Recognition, in the grade of major (O-4).

According to NGB Form 22, *Report of Separation and Record of Service*, dated 5 Oct 21, the applicant was honorably discharged on 1 Jun 21, in the grade of lieutenant colonel (O-5), with a date of rank (DOR) of 1 Aug 21.

On 30 Jun 21, according to Special Order XXXXX, dated 5 Oct 21, the applicant was honorably discharged from the Air National Guard and as a member of the Reserve of the Air Force.

On 22 Apr 22, according to NGIL-ZA Memorandum to NGB/A1PP, the state Adjutant General recommended approval of the applicant's MSD extension to 30 Jun 25, in accordance with 10 USC 14703.

According to NGB Form 22A, *Correction to NGB Form 22*, dated 27 Jun 22, the applicant was honorably discharged on 30 Jun 21, in the grade of major (O-4), with a date of rank (DOR) of 1 Aug 14.

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

APPLICABLE AUTHORITY/GUIDANCE

10 USC 14509 - Separation at age 62: reserve officers in grades below brigadier general or rear admiral (lower half)

Each reserve officer of the Army, Navy, Air Force, or Marine Corps in a grade below brigadier general or rear admiral (lower half) who has not been recommended for promotion to the grade of brigadier general or rear admiral (lower half) and is not a member of the Retired Reserve shall, on the last day of the month in which that officer becomes 62 years of age, be separated in accordance with section 14515 of this title.

10 USC 14703 - Authority to retain chaplains and officers in medical specialties until specified age

(a) *Retention*. Notwithstanding any provision of chapter 1407 of this title and except for officers referred to in sections 14503, 14504, 14505, and 14506 of this title and under regulations prescribed by the Secretary of Defense -

(3) the Secretary of the Air Force may, with the officer's consent, retain in an active status any reserve officer who is designated as a medical officer, dental officer, Air Force nurse, Medical Service Corps officer, biomedical sciences officer, or chaplain.

(b) *Separation at Specified Age*.

(1) Subject to paragraph (2), an officer may not be retained in active status under this section later than the date on which the officer becomes 68 years of age.

(2) The Secretary concerned may, with the consent of the officer, retain in an active status an officer in a medical specialty described in subsection (a) beyond the date described in paragraph (1) of this subsection if the Secretary concerned determines that such retention is necessary to the military department concerned. Each such retention shall be made on a case-by-case basis and for such period as the Secretary concerned determines appropriate.

AIR FORCE EVALUATION

NGB/A1PP recommends granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice.

The applicant was promoted to O-5 under ROPMA on 1 Aug 21, and given an MSD of 30 Jun 21, in accordance with 10 USC 14509, which states: "Each reserve officer of the Army, Navy, Air Force, or Marine Corps in a grade below brigadier general or rear admiral (lower half) who has not been recommended for promotion to the grade of brigadier general or rear admiral (lower

half) and is not a member of the Retired Reserve shall, on the last day of the month in which that officer becomes 62 years of age, be separated in accordance with section 14515 of this title."

While being processed for promotion under ROPMA, the applicant's record was not flagged in the Military Personnel Data System (MilPDS) with an MSD. The applicant intended on continuing his service and would have requested an MSD extension. Since the applicant did not have the ability to retire in accordance with Air Force Instruction (AFI) 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, he was separated effective 1 Aug 21.

The state was not aware the applicant had an MSD since the system of record was not updated. Furthermore, since ROPMA is mandatory, once the applicant was approved and promoted, there was no mechanism to request an MSD extension based on 10 USC 14703. Had the state been aware of the MSD, the applicant could have requested an MSD extension, with leadership's recommendation, based on 10 USC 14703.

NGB/A1PP contacted the applicant's state headquarters to obtain an MSD extension in accordance with 10 USC 14703. The Adjutant General concurred with allowing the applicant to remain in the state ANG, with a recommended MSD extension of 30 Jun 25, based on the overwhelming struggle to recruit and retain officers in the medical field.

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 29 Apr 22 for comment (Exhibit D), and the applicant replied on 23 May 22. In his response, the applicant stated he had no further rebuttal and asked that his case proceed. The applicant's complete response is at Exhibit E.

AMENDED AIR FORCE EVALUATION

In an amended advisory, NGB/A1PP notes an NGB Form 22A was accomplished to correct the rank/pay grade and effective date of separation of the applicant to reflect major (O-4), with a DOR of 1 Aug 14, and effective separation date of 30 Jun 21. Due to an administrative error, MilPDS was not updated to reflect an established MSD of 30 Jun 21. NGB/A1PP maintains its recommendation to grant the applicant's request to continue in the ANG with an MSD extension, as well as granting the promotion to lieutenant colonel (O-5) which occurred after the applicant's current MSD.

The complete amended advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AMENDED AIR FORCE EVALUATION

The Board sent a copy of the amended advisory opinion to the applicant on 2 Aug 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. The Board concurs with the rationale and recommendation of NGB/A1PP's amended advisory, dated 18 Jul 22 and finds a preponderance of the evidence substantiates the applicant's contentions. Due to administrative error, the applicant's MSD was not identified in time for him to request an extension, resulting in his separation and erroneous promotion processing via ROPMA. Considering the NGIL-ZA memorandum recommending extension of the applicant's MSD to 30 Jun 25, had the MSD been identified timely, more likely than not, the applicant would have continued in the ANG and his promotion to lieutenant colonel (O-5) consummated. Therefore, the Board recommends correcting the applicant's records as indicated below.

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:

- a. Competent authority extended his Mandatory Separation Date from 30 June 2021 to 30 June 2025, in accordance with 10 USC 14703.
- b. He was not discharged on 30 June 2021, but continued to serve as a member of the Air National Guard and as a Reserve of the Air Force.
- c. He was promoted to the grade of lieutenant colonel (O-5), under the Reserve Officer Personnel Management Act, with a date of rank and effective date of 1 August 2021.

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-2022-00543 in Executive Session on 21 Sep 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/atch, dated 14 Dec 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, NGB/A1PP, atchs, dated 24 Apr 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 29 Apr 22.
- Exhibit E: Applicant's response, dated 23 May 22.
- Exhibit F: Amended Advisory opinion, NGB/A1PP, atch, dated 18 Jul 22.
- Exhibit G: Notification of advisory, SAF/MRBC to applicant, dated 2 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.

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