



**CUI//SP-MIL/SP-PRVCY**

**UNITED STATES AIR FORCE**  
**BOARD FOR CORRECTION OF MILITARY RECORDS**

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-00820

*Work-Product*

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

His medical disability retirement be changed to a 20-year active duty retirement.

**APPLICANT'S CONTENTIONS**

He was medically retired with over 20 years of service and his retirement should be classified as a regular 20-year retirement. He was not aware of the difference until it was explained to him why he is not getting his full pay.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a medically retired Air Force master sergeant (E-7).

On 5 Dec 16, AF IMT 618, *Medical Board Report*, indicates the applicant was referred to the Informal Physical Evaluation Board (IPEB) for large granular lymphocytic leukemia.

On 9 Feb 17, the Department of Veterans Affairs (DVA) proposed a disability rating for his Category I unfitting medical condition of large granular lymphocytic leukemia with splenomegaly, leukopenia, neutropenia, and anemia at 100 percent. The DVA also proposed disability ratings for several other service-connected disabilities.

On 13 Feb 17, AF Form 356, *Informal Findings and Recommended Disposition of USAF Physical Evaluation Board*, indicates the applicant was found unfit due to his medical condition of large granular lymphocytic leukemia with splenomegaly, leukopenia, neutropenia, and anemia with a disability compensation rating of 100 percent with a recommendation of "Permanent Retirement."

On 23 Feb 17, AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, indicates the applicant agreed with the findings and recommended disposition of the board and waived his rights to a formal hearing.

**AFBCMR Docket Number BC-2022-00820**  
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Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
Limited Dissemination Control: N/A  
POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

Dated 27 Feb 17, Special Order Work-Product, indicates the applicant was permanently disability retired in the grade of master sergeant with a compensable percentage for physical disability of 100 percent, effective 29 May 17. It is noted the applicant had 20 years and 8 days of active service for retirement.

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

### **AIR FORCE EVALUATION**

AFPC/DP3SA recommends denying the application finding no evidence of an error or injustice that occurred relating to length of service retirement eligibility, or that would warrant the applicant being given preferential treatment over other members who were medically retired by converting the medical retirement to a length of service retirement. Legal requirements for a length of service retirement are outlined in 10 U.S.C., Section 09314, *Twenty to thirty years; regular enlisted members*. The applicable version, then 10 U.S.C., Section 08914, states "Under regulations to be prescribed by the Secretary of the Air Force, an enlisted member of the Air Force who has at least 20, but less than 30, years of service computed under section 8925 of this title may, upon his request, be retired." Length of service retirements must be effective on the first day of the month to comply with Title 5, U.S.C., Section 8301, *Uniform retirement date*, which requires retirements to be effective on the first day of the month following the month in which retirement would otherwise be effective. Since the applicant completed 20 years of service on 20 May 17, he would have had to retire 1 Jun 17 to comply with this provision of law.

At the time of the applicant's medical retirement, AFI 36-3203, *Service Retirements*, dated 18 Sep 15, governed the provisions to qualify for a length of service retirement under 10 U.S.C., Section 08914. Table 2.1, *Conditions Prohibiting Initial Submission or Suspending Processing of Previously Submitted Retirement Applications*, rule 5 which stated an airman pending evaluation by a Medical Evaluation Board (MEB) or Physical Evaluation Board (PEB) is ineligible to apply for a voluntary (length of service) retirement until the MEB/PEB process is completed and a determination of service fitness is made. Members found fit for continued service may then apply for retirement. No evidence was provided by the applicant to confirm he was found fit for continued service; and since the member was medically retired, AFPC concludes the MEB/PEB determined the applicant was unfit for continued service. As such, he did not meet the parameters for a length of service retirement.

The complete advisory opinion is at Exhibit C.

AFPC/DPFDD recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no indication an error or injustice occurred at the time of disability processing. On the date of the applicant's disability retirement, he had 20 years and 8 days of creditable service towards retirement. Concurrent Retirement and Disability Pay (CRDP) eligibility is determined by the Defense Finance and Accounting Service (DFAS) and the DVA and is not a determining factor in establishing the Air Force disability retirement date. However, based on the applicant's records he should be entitled to the most beneficial retirement

pay calculation and CRDP. It is recommend DFAS provide an advisory to determine if the applicant is receiving full retirement pay entitlements.

On 13 Feb 17 the PEB found the applicant unfit for continued service and recommended permanent disability retirement with a 100 percent compensable disability rating. On 27 Feb 17, Special Order Work-Product was issued executing this decision with a 29 May 17 retirement effective date. This order indicates he had 20 years and 8 days of creditable service towards basic pay, active service for retirement, and service per 10 U.S.C., 1405. Per AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*, dated 2 Feb 06, paragraph 1.1, the purpose of the Disability Evaluation System is to maintain a fit and vital force, disability law allows the Secretary of the Air Force to remove from active duty those who can no longer perform the duties of their office, grade, rank or rating and ensure fair compensation to members whose military careers are cut short due to a service-incurred or service-aggravated physical disability. Additionally, paragraph 1.6 states the Air Force disability system will not retain, retire, or discharge a member for disability solely to increase Air Force retirement or discharge benefits.

For disability retirees DFAS performs two retirement pay calculations to determine which is more beneficial to the member. These two calculations are known as Method A (which uses the disability percentage) and Method B (which uses the years of active service). Since the applicant had a 100 percent disability rating, DFAS would have used 75 percent of base pay (highest allowable by law) for calculation of Method A. Since he had 20 years of active service then Method B would have utilized 50% of base pay. Therefore DFAS should have used Method A when establishing his retirement pay since it was the most beneficial formula. Additionally DFAS and the DVA administer a joint program called CRDP which allows retirees to receive both military retired pay and DVA disability compensation and is applicable to both regular and disability retirees as long as basic eligibility requirements are met. Disability retirees may be eligible for CRDP if they earned entitlement to retirement pay under any provision of law other than solely by disability (20-year retirement) and have a DVA disability rating of 50 percent or greater. Therefore since the applicant had over 20 years of active service towards retirement and a 100 percent disability rating he would also qualify for CRDP.

The complete advisory opinion is at Exhibit D.

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

The Board sent a copy of the advisory opinion to the applicant on 1 Jun 22 for comment (Exhibit E), but has received no response.

#### **ADDITIONAL AIR FORCE EVALUATION**

On 23 Aug 22, an email was sent to DFAS requesting an advisory opinion based on the recommendation from AFPC/DPFDD. On 26 Aug 22, DFAS responded by stating the following:

Members retired by reason of physical disability will have retired pay computed under two methods; disability rating and service (10 U.S.C. 1401). The applicant was retired with a disability

rating of 100 percent. Method A is 75 percent of his high average base, rounded down to the next whole dollar, or \$3,268.00. Method B is based on 20 years of creditable service, rounded down to the next whole dollar, or \$2,178.00. Since Method A yields the greater amount, his retired pay is based on his disability rating. Title 10 U.S.C. 1414(b) special rule for chapter 61 retirees states the retired pay of a member retired under chapter 61 of this Title with 20 or more years of creditable service under chapter 1405 of this Title, or 20 or more years of service as computed under chapter 12732, at the time of the member's retirement is subject to reduction under Title 38 section 3505, but only to the extent that the member's pay under chapter 61 exceeds that amount of pay to which the member would have been entitled under any other provision of law.

The applicant is entitled to CRDP based on 20 years and 8 days of qualifying active service. Currently, he is entitled to \$2,462.00 based on an otherwise qualifying law, 10 U.S.C. 8914 (enlisted, voluntary retirement, 20+ years of service). His gross pay is \$3,695.00, based on his disability rating. Since his disability gross pay is greater than service gross pay, the difference is considered to be dual compensation for the same injury and, therefore, must be waived in order to receive DVA compensation.

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 26 Aug 22 for comment (Exhibit G), 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 Board concurs with the rationale and recommendation of offices of primary responsibility and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board does not find that an error or injustice occurred at the time of the applicant's disability processing. He was ineligible to apply for a voluntary (length of service) retirement because he was found unfit for continued service and did not meet the parameters for a length of service retirement. Additionally, DFAS performed a pay calculation due to his length of service being greater than 20 years and determined his medical retirement pay was more beneficial to which the Board agrees. Furthermore, the Board notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. 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.

**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-2022-00820 in Executive Session on 26 Oct 22:


 <i>Work-Product</i>	Panel Chair
 <i>Work-Product</i>	Panel Member
 <i>Work-Product</i>	Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 18 Feb 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP3SA, dated 12 Apr 22.
- Exhibit D: Advisory Opinion, AFPC/DPFDD, w/atchs, dated 25 May 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Jun 22.
- Exhibit F: Advisory Opinion, DFAS, w/atch, dated 26 Aug 22.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 26 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.

3/17/2023

 <i>Work-Product</i>	_____
Board Operations Manager, AFBCMR Signed by: USAF	