

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-00823

XXXXXXXXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. He receive retroactive aviation career incentive pay (ACIP) in the amount of at least \$4,620.
2. He be approved for transfer of his Post-9/11 GI Bill benefit to his dependents.
3. His records reflect the medical conditions he suffered while in the Air National Guard (ANG) and the Air Force Reserve.
4. He be awarded the Southwest Asia Service Medal (SWASM), the Korea Defense Service Medal (KDSM) and four additional Humanitarian Service Medals. **(The Board will not consider at this time).**

APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contends he attempted to request transfer of his Post-9/11 GI Bill in 2009 and again in 2012. In 2009, he inquired about the transfer of education benefit (TEB) in preparation for retirement. The actual transfer was done from a computer in the consolidated base personnel office (CBPO). Shortly afterward, he transferred to the Air Force Reserve rather than retire. In 2012, he received a mandatory separation date (MSD) letter and was notified he would automatically be transferred to the Retired Reserve on his MSD. He was also notified the TEB was required to be accomplished prior to retirement. In Aug 12, he logged onto MilConnect to confirm the TEB. Instead, he read a message saying he was ineligible. Each time there was confusion as to whether the transfer was processed or how to verify its completion. Prior to retiring, he attempted to apply for TEB over the telephone and was left with the impression it was successful. Several years after he retired, he learned the TEB was not finalized because he failed to complete mandatory out-processing. His daughter has already started college and he requests the decision be overturned. He is a covered person for the Post-9/11 GI Bill as defined by 38 U.S.C. § 3311. He met the requirements for TEB according to the Transferability Memorandum provided by the Department of Veterans Affairs (DVA). He served at least 90 aggregate days of qualifying service and served the required four additional years from the date of election.

He flew at least 12 years out of his first 18 years of service, which qualified him for ACIP through 25 years of service. He was on operational flying status for 24 continuous years when he transferred to the Air Force Reserve. He requests approximately \$4,620 in flight pay. He was entitled to the flight pay from Jun 09 through May 10 but never received the pay. He was informed his flight time performed in the ANG did not qualify in the Air Force Reserve. He was on operational flying status for 24 continuous years of service when he transferred to the Air Force Reserve. Upon receiving his first paycheck following his transfer, he contacted the Defense Finance and Accounting Service (DFAS) regarding the missing flight pay and was told he was not

eligible for flight pay. Per 37 U.S.C. § 301a, he was wrongly denied flight pay for his aviation service.

In Oct 17, he sought assistance from his Congressman regarding the TEB, obtaining a DD Form 214, *Certificate of Release or Discharge from Active Duty*, for his active duty service, eligibility for Veterans' Group Life Insurance (VGLI) and recovery of his medical records needed to apply for VA disability benefits. The staffer advised the TEB had to be done prior to retiring and that a formal search for his medical records had been filed.

He is also entitled to award of the SWASM, the KDSM and four additional Humanitarian Service Medals. He earned the KDSM while on active duty at Yokota AB, Japan. He submitted orders and logs of flight time while in the ANG but was never awarded the KDSM. He earned the SWASM while deployed to Operation Provide Comfort. The additional Humanitarian Service Medals were earned while participating in relief efforts following the Northridge, CA earthquake and for deployment during Operation Noble Eagle and the Hurricane Katrina Relief Effort. These awards were requested from the State ANG but never awarded to him.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a lieutenant colonel (O-5) on the Air Force Reserve Retired List, awaiting retired pay at age 60 (he will reach age 60 in Nov 22).

He provides an aviation service audit worksheet dated 1 Aug 07, which shows his aviation service and cumulative months of operational flying from 6 Aug 85 to 1 Aug 07.

Aeronautical Order dated 25 Apr 07 shows he was placed in duties requiring frequent and regular flight duties effective 4 Jan 07, with termination date 5 Aug 10.

Per Special Order dated 1 Mar 10, the applicant was honorably discharged from the ANG on 16 Jun 09 and transferred to the Reserve effective 17 Jun 09.

On 28 Jun 12, ARPC/DPTTS informed the applicant his MSD would expire 1 Jun 13 in accordance with 10 U.S.C. § 14507(a), which required him to leave active status after completing 28 years of commissioned service. The applicant was advised he would be automatically transferred to the Retired Reserve on his MSD. The memorandum further stated the transfer of Post-9/11 GI Bill benefits to dependents would have to be accomplished prior to retirement.

Per Special Order dated 8 Jun 13, the applicant was placed on the Retired Reserve list in the rank of lieutenant colonel, effective 1 Jun 13.

On 1 Jun 21, the applicant filed an Inspector General (IG) complaint regarding his ACIP, medical records and TEB. He stated he had been fighting the issues for 12 years, since transferring to the Air Force Reserve. He did not feel he was getting close to receiving the pay and benefits he earned. He had not received VA disability because his medical records were lost. After 32 years of service, he was ignored and shuffled off. On 9 Jun 21, DAF/IGQ advised the applicant his complaint was not within the purview of the IG office. Retirees and airmen who separated from the Air Force should contact the AFPC Total Force Service Center for assistance. Should AFPC be unable to provide the correction, the applicant could submit an AFBCMR application.

The applicant did not provide any medical records and his automated records management system (ARMS) record does not include any AF Form 348, *Line of Duty Determination*, AF Form 469, *Duty Limiting Condition Report*; or AF Form 356, *Findings and Recommended Disposition of*

USAF Physical Evaluation Board, to show the applicant incurred or aggravated an injury or illness during a period of service.

On 2 Nov 22, the AFBCMR informed the applicant his request for award of the medals was not ripe for adjudication by the Board as there was no evidence, he exhausted the avenue of administrative relief prior to applying to the AFBCMR. The applicant was provided with the procedures under 10 U.S.C. § 1130.

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

APPLICABLE AUTHORITY/GUIDANCE

DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.4, the applicant bears the burden of providing evidence of an error or injustice.

DODI 1341.13, *Post-9/11 GI Bill*, 3.3b(1) Any service member on or after 1 Aug 09, who is entitled to the Post-9/11 GI Bill at the time of the approval of their request to transfer that entitlement under this section, may request to transfer that entitlement provided they have at least 6 year of total credible service on the date of election.

AIR FORCE EVALUATION

ARPC/DPAT recommends denial for transfer of his Post-9/11 GI Bill benefit. There is no evidence supporting a TEB request was submitted. A review of the applicant's Benefits for Education Administrative Services Tool (BEAST) records show no evidence that a TEB request was attempted. Additionally, a review of his ARMS record shows no evidence he signed a statement of understanding (SOU) to serve the four year service commitment for TEB.

On 23 Apr 21, he called to inquire on how to transfer the benefits to his daughter and was informed via MyPers on 30 Apr 21 that there was no documentation in his records to indicate TEB was requested. A review of MyPers documentation show no related Post-9/11 GI Bill TEB related tickets before 23 Apr 21. His MSD was 1 Jun 13, and he was transferred to the Retired Reserve; therefore, he is no longer eligible to apply for TEB of Post-9/11 Bill per DODI 1341.13.

The complete advisory opinion is at Exhibit C.

NGB/A1Y recommends denial for transfer of his Post-9/11 GI Bill benefit. There is not enough evidence a request was approved while in the ANG. In accordance with AFI 36-2306, *Voluntary Education Program*, TEB applies to military personnel and became effective on 1 Aug 09. The applicant separated from the ANG before the program was available on 1 Aug 09. Therefore, the ANG cannot approve his TEB.

The complete advisory opinion is at Exhibit D.

NGB/SGPS recommends denial for correction of his records to reflect the medical conditions he suffered from while in the ANG and Air Force Reserve. The documentation provided is not sufficient to support the applicant's claim. No medical records were provided and it is the applicant's burden to provide proof of an error or injustice. Without military medical records, they are unable to review the case to recommend if the conditions were incurred or service aggravated while in a qualified duty status or incurred/aggravated in a non-duty status. Required documentation include all military and civilian medical records related to all illness, injury and potentially disqualifying medical conditions. Medical documentation should include pertinent labs, diagnostic reports, specialty consults, and/or encounter notes related to the conditions.

Further, proof of service at the time of the injury/illness/disease incurred or was service aggravated is required.

The complete advisory opinion is at Exhibit E.

AFRC/A1KK recommends denial for ACIP. The applicant was ineligible to receive incentive pay while assigned to the Air Reserve Component (ARC) from 17 Jun 09 to 1 Jun 13. AFI 11-402, *Aviation and Parachutist Service*, dated 25 Sep 07, paragraph 3.7.2.6.1, states "Do not publish revalidation aeronautical orders (AO) or requalify a rated officer or career enlisted aviator (CEA) who separates from military service and is later hired to a non-rated/non-CEA position in the ARC. These members are not entitled to ACIP/CEFIP. Additionally, AFI 11-402, paragraph 3.2.1.2, states a current flight physical is required to receive the allowance.

The applicant did meet his gates and would have been eligible for continuous ACIP through his 25th year had he not transferred into the ARC or if he was reassigned to the ARC in a rated capacity. The applicant was in a non-rated individual mobilized augmentee position effective 17 Jun 09 with aviation service code (ASC) "00," which administratively disqualified him from aviation service with no authorization for ACIP.

Because the applicant's flying record was incorrectly transferred to the ARC from the ANG, his ARMS record should be administratively corrected to show ASC "00" effective 17 Jun 09, the date of his assignment to the ARC. Then an AO should be published assigning him in ASC "3R" to denote his retirement date of 2 Jun 13.

The complete advisory is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 6 Oct 22 for comment (Exhibit G) but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
2. The applicant did not exhaust all available non-judicial relief before applying to the Board for request of the awards and medals.
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 recommendations of ARPC/DPAT, NGB/A1Y, NGB/SGPS and AFRC/A1KK and finds a preponderance of the evidence does not substantiate the applicant's contentions. In accordance with DAFI 36-2603, the applicant bears the burden of providing evidence of an error or injustice; however, insufficient evidence has been provided to warrant granting any of the requested relief. The applicant contends, he was approved for TEB prior to his placement on the Retired Reserve; however, no evidence has been provided to show the applicant requested TEB, signed the SOU, completed the required service obligation or was approved for TEB prior to his retirement. With respect to the request for ACIP in the amount of at least \$4,620, it appears based on the regulations in effect at the time, the applicant was not eligible for ACIP upon his transfer to a non-rated position in the AFR following his discharge from the ANG. With respect to the request for correction of his records to reflect his medical conditions suffered while in service, no evidence has been provided to show the applicant incurred or aggravated any injuries or medical conditions during the performance of his ANG or AFR duties. The Board, which serves on behalf of the Secretary of the Air Force in the correction of military records, is not an investigative body nor is it a records repository. The applicant's

request for award of the SWASM, KDSM and the Humanitarian Service Medals are not ripe for adjudication by the Board at this time as he not provided evidence he exhausted the available non-judicial relief before applying to the Board per the SAF/MRBC letter dated 2 Nov 22. The Board also 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.

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 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-2022-00823 in Executive Session on 6 Dec 22:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 27 Feb 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, ARPC/DPAT, w/atchs, dated 21 Apr 22.
Exhibit D: Advisory Opinion, NGB/A1Y, dated 13 Jun 22.
Exhibit E: Advisory Opinion, NGB/SGPS, dated 22 Jun 22.
Exhibit F: Advisory Opinion, AFRC/A1KK, w/atchs, dated 3 Oct 22.
Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 6 Oct 22.
Exhibit H: Notification of Failure to Exhaust, SAF/MRBC, w/atchs, dated 2 Nov 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.