

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01185

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Correct his official military record to reflect Reserve Retired status.

APPLICANT'S CONTENTIONS

He applied for retirement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former member Air National Guard master sergeant (E-7).

On 6 Feb 04, according to the applicant's Military Personnel Data System Service History, he was credited with 20 years satisfactory service following Retention/Retirement year 7 Feb 03 to 6 Feb 04.

On 11 Jan 14, according to Special Order XXXXX, the applicant was relieved from assignment and honorably discharged from the [State] Air National Guard and as a member of the Reserve of the Air Force, effective 31 Dec 14.

On 14 Jan 14, according to Special Order **Work-Product**, Special Order XXXXX was amended to read the applicant was relieved from assignment and honorably discharged from the [State] Air National Guard and as a member of the Reserve of the Air Force, effective 31 Dec 13.

On 31 Dec 13, according to NGB Form 22, *Report of Separation and Record of Service*, the applicant was honorably discharged from the [State] Air National Guard, with Authority and Reason: AFI 36-3209, paragraph 3.13.1., Non-selection by Selective Retention Board – Fail to apply for Retirement; SPD: GSH [Selective Retention Board Action/Eligible-Failed to apply for Retirement], and credited with 29 years total service for retired pay.

On 8 Apr 22, after his discharge, ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him he has completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C. § 12731) and is entitled to retired pay upon application prior to age 60.

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

APPLICABLE AUTHORITY/GUIDANCE

Air Force Instruction (AFI) 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, dated 14 Apr 05. Paragraph 1.2.1. *Former Members*.

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 by the applicant and analysis of the facts, there is no evidence of an error or injustice because the applicant did not apply to be transferred to the Retired Reserve prior to being discharged. Per AFI 36-3203, *Service Retirements*, paragraph 8.6., "Reserve component members use AF IMT 131 to apply for transfer to the Retired Reserve."

The applicant was discharged from the [State] Air National Guard, effective 31 Dec 14 ¹[sic] due to non-retention and a discharge order was provided. A review of the applicant's Military Personnel Record shows he received the Notification of Eligibility for Reserve Retired Pay at Age 60.

The applicant is eligible for a former member identification card and is still eligible to apply for Reserve Retired pay at his confirmed Reduced Retired Pay Age date of 10 Mar 23, or on his 60th birthday.

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 28 Nov 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. While the Board notes the recommendation of ARPC/DPTT against correcting the record, the Board finds a preponderance of the evidence supports the applicant's request. 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. Therefore, the Board recommends correcting the record as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that he was not discharged from the Air National Guard on 31 Dec 13, but on that date, he was assigned to the Retired Reserve Section, and his name was placed on the Retired Reserve List, and he was eligible for retired pay at age 60, under the provisions of 10 U.S.C. § 12731, or if applicable, under reduced retired pay age authorized by the National Defense Authorization Act for 2008.

¹ On 14 Jan 14, according to Special Order XXXXXXXX, Special Order XXXXX was amended to read the applicant was relieved from assignment and honorably discharged from the [State] Air National Guard and as a member of the Reserve of the Air Force, effective 31 Dec 13.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-01185 in Executive Session on 16 Mar 23:

, 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 22 Aug 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 23 Nov 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 28 Nov 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

X

Board Operations Manager, AFBCMR