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

**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01268

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**COUNSEL:** NONE

**HEARING REQUESTED:** NO

**APPLICANT'S REQUEST**

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, be corrected in Block 18, *Remarks* to reflect, "Member on active duty in accordance with 10 USC 12301 (d) for the period of 20 Aug 03 – 31 Dec 14, SO Work-Product, Work-Product

**APPLICANT'S CONTENTIONS**

On 31 Dec 14, the applicant separated from active duty and transferred to the Air Force Reserve (USAFR). The applicant contends the missing statement was omitted from his DD Form 214, and is preventing the proper calculation of his reserve retirement date. He recently discovered the Air Reserve Personnel Center (ARPC) will not accept his DD Form 214 for a Reduced Retirement Pay Age (RRPA) without having the statement listed.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

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

On 20 Aug 03, according to AF Form 766, *Extended Active Duty Order*, Special Order Work-Product dated 1 Jul 03, the applicant was ordered to attend Commissioned Officer Training at Maxwell AFB, AL.

On 31 Dec 14, according to DD Form 214, the applicant separated from the Regular Air Force after eleven (11) years, four (4) months, and eleven (11) days.

On 1 Jan 15, according to Special Order Work-Product, dated 2 Mar 15, the applicant was assigned to the Air Force Reserve.

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

**APPLICABLE AUTHORITY/GUIDANCE**

**Title 10, United States Code, Section 12301 (a): Reserve Component general:**

(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons

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affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty for the duration of the war or emergency and for six months thereafter. However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

(d) At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.

#### **Title 10, United States Code, Section 12731 (f)(2): Age and Service Requirements**

(A) In the case of a person who as a **member of the Ready Reserve** serves on active duty or performs active service described in subparagraph (B) after January 28, 2008, the eligibility age for purposes of subsection (a)(1) shall be reduced, subject to subparagraph (C), below 60 years of age by three months for each aggregate of 90 days on which such person serves on such active duty or performs such active service in any fiscal year after January 28, 2008, or in any two consecutive fiscal years after September 30, 2014. A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.

(B)(i) Service on active duty described in this subparagraph is service on active duty pursuant to a call or order to active duty under section 12301(d) or 12304b of this title, or under a provision of law referred to in section 101(a)(13)(B) of this title. Such service does not include service on active duty pursuant to a call or order to active duty under section 12301 of this title.

#### **AIR FORCE EVALUATION**

AFPC/DP2SSR recommends denying the application. There is no evidence of error or injustice on the part of the Air Force. The applicant requests that his DD Form 214, be corrected to reflect "Member on active duty in accordance with 10 USC 12301 (d) for the period of 20 Aug 03 – 31 Dec 14, SO **Work-Product Work-Product**" in the remark section. The applicant contends the omission of the statement prevents the proper calculation of his reserve retirement date. However, 10 USC 12301(a) is specific to members in the USAFR and Air National Guard (ANG) who are recalled to active duty by the Secretary of the Air Force (SecAF) during a time of national crisis with the approval of the Secretary of Defense. Furthermore, the remarks identified by the applicant is specific for HQ ARPC to place on the DD Form 214 of ANG and USAFR personnel who go onto active duty for training, deployment, or other circumstances but still belong under their component. The applicant was a Regular Air Force (RegAF) officer who served on active duty and separated from the active duty component. Any points calculations towards a Reserve retirement should be automatic based on the period of active service as a RegAF officer that is indicated on his DD Form 214.

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 16 Jun 22 for comment (Exhibit D), and the applicant replied on 22 Jun 22. In his response, the applicant contended the advisory

incorrectly asserts that US 10 USC 12301(a) is specific to USAFR and ANG personnel being recalled to active duty by the SECAF. Furthermore, the advisory does not consider the applicant's military orders that reflects him as a member of the USAFR in Box 2 and orders him to active duty service in Box 10. The addition of the statement to his records will allow him to claim a RRPA.

The applicant's complete response is at Exhibit E.

## **ADDITIONAL AIR FORCE EVALUATION**

ARPC/DPTT recommends denying the applicant's request to add a statement to his DD Form 214 that would allow him to claim a RRPA. According to 10 U.S.C. 1273 (f)(2)(A), in order to qualify for RRPA, the applicant must be rendered as a member of the Ready Reserve who served on active duty or performs active service for sufficient length under 10 U.S.C. 12301 (d) after 28 Jan 08. As such, active duty or active service rendered by a person who is not a member of the Ready Reserve does not qualify for RRPA.

A member serves in one of two components of an Armed Forces, either the Reserve component or the Regular component. These two components are operated and regulated under two different sets of statutory authority. Each has different authorities for accessions, promotions, retirement, end strength, etc. Title 10 Subtitle A Part II authorizes and regulates various actions for the Regular component (accessions, promotions, retirements, etc. - this is the authority under which applicant was promoted as a member of the Regular component under 10 U.S.C. § 624). Title 10 Subtitle E authorizes and regulates those actions for the Reserve component (the authorities under which the applicant served after leaving the Regular component, was promoted to Lieutenant Colonel, is counted against end strength, etc. as a member of the Reserve component).

Prior to 1 May 05, officers serving on active duty were commissioned into the Reserve component. A common practice at the time was to "dual-scroll" officers who served on active duty. The practice would commonly leave active duty officers who were on the Active Duty List (ADL) in the Reserve component until they transferred into the Regular component after a specific period of time. However, Section 501 of the 2005 NDAA policy required a transition to an all-regular active duty list, and implementing DoD policy required that all reserve commissioned officers on the ADL be transitioned to regular officer status no later than 1 May 06. On 20 Aug 03, several years before Section 501 of the 2005 NDAA policy was enacted, the applicant transferred from the Reserve component to the Regular component. There is no error or injustice on the part of the Air Force because the applicant service under 10 U.S.C. 12301 (d) was not rendered as a member of the Ready Reserve and does not qualify for RRPA.

Furthermore, the applicant's records show that he transitioned from the Reserve component to the Regular component on 20 Aug 03. The applicant's AF Form 1299, *Officer's Certification of Statement of Service*, dated 19 Aug 07; AF Form 1613, *Statement of Service*, dated 13 Jan 04; and DD Form 214, dated 31 Dec 14, all indicate that Applicant's service in the Regular component commenced on 20 Aug 03, several years before any active service could be considered eligible for RRPA in 2008. In addition, the applicant's status as a member of the Regular component is demonstrated by Special Order **Work-Product** dated 5 Mar 04, which promoted him to the grade of Captain under the authority of 10 U.S.C. § 624 and applies exclusively to members of the Regular component. Furthermore, had the applicant not transitioned to the Regular component on 20 Aug 03, his transition would have been required by DoD's implementation of Section 501 of the 2005 NDAA, which required that all officers on the ADL be transitioned to the Regular component prior to 1 May 2006. Either way, by the time active service by members of the Ready Reserve became eligible for RRPA in 2008, the applicant was clearly not a member of the Ready Reserve.

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 3 Jan 23 for comment (Exhibit G), and the applicant replied on 31 Jan 23. ARPC/DPTT asserts that prior to 1 May 05, officers serving on "active duty" were commissioned into the Reserve component. While not all officer serving on active duty were commissioned into the Reserve component, this was the case for members of the Judge Advocate General's Corps. This statement by the OPR supports a finding that he was commissioned into the Reserve component. The OPR's statement is consistent with his AF Form 768, which indicates that he was "ordered to active duty in accordance with 12301(d)" and a member of the Air Force Reserve on extended active duty (EAD) orders.

ARPC further asserts that individuals in his situation would remain in the Reserve Component until a "triggering event" such as promotion to the rank of major. However, instead of relying on a "triggering event," ARPC points to section 501 of the 2005 NDAA and asserts that this law "required" a transition for Reserve component officers on extended active duty to an all active-duty list. Notably, the law does not mandate or require the transition to an all active-duty list. Instead, the law "authorizes" the Secretary concerned to transfer certain officers from an active-duty list to a reserve active-duty list. As such, ARPC's reliance on this law is misplaced. In other words, the law simply does not say what they are asserting it says.

Moreover, the AF Form 1613 is dated 13 Janu 04 and therefore predates the enactment of the 2005 NDAA. It was therefore produced at a time when the OPR concedes that he would have been a member of the Reserve component. Similarly, the OPR provides evidence of promotion to captain, but this too pre-dates the 2005 NDAA and occurred at a time when the OPR concedes that he would have been a member of the Reserve component. The OPR has therefore failed to produce any evidence that he was transferred to the Regular component or that a "triggering event" occur.

Lastly, the OPR states that he was not a member of the "Ready Reserve." This assertion is made without providing the definition of that term. Per section 10142 of 10 USC the "ready reserve" consists of units or Reserves, or both, *liable for active duty as provided in section 12301* (emphasis added) and 12302 of 10 USC. Notably, 12301(d) is the section that is listed on his orders. Therefore, to claim that he was not a member of the "Ready Reserve" purposely ignores the authority used to order me to active duty.

The applicant's complete response is at Exhibit H.

## **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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP2SSR and ARPC/DPTT and finds a preponderance of the evidence does not substantiate the applicant's contentions. The board found the applicant was part of the active duty component in service to the RegAF from 20 Aug 03 thru 31 Dec 14 and therefore there is no error or injustice with the preparation of his DD Form 214. While the applicant may argue the semantics of the law, the Board finds that his 11 plus years serving on active duty was not as a member assigned to the Reserve, but obviously a member who was assigned, promoted and served in the RegAF. As such,

while the applicant's points qualify towards a Reserve Retirement, the period of service does not qualify for RRPA. Furthermore, the Board does not find the applicant's situation unique compared to other similarly situated officers who served in the RegAF, transferred to the Reserve, yet did not receive credit towards an RRPA. Therefore, the Board recommends against correcting the applicant's records.

## **RECOMMENDATION**

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, 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 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-2022-01268 in Executive Session on 26 Nov 24:

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 12 Apr 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 14 Jun 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Jun 22.
- Exhibit E: Applicant Response, w/atchs, dated 27 Jun 22.
- Exhibit F: Additional Advisory, ARPC/DPTT, w/atchs, 29 Nov 22.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Jan 23.
- Exhibit H: Applicant's Response, dated 31 Jan 23

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.

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