



Work-Product

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01494

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT’S REQUEST

His Active Guard Reserve (AGR) retirement points be corrected to reflect the additional service he performed under the Indispensability Program from 3 Jun 05 to 1 Jul 07.

APPLICANT’S CONTENTIONS

His Type Duty (TD) code for his active duty service from 3 Jun 05 to 1 Jul 07 should be changed for re-computation of his retired pay. He retired as an AGR on 1 Feb 05. However, on 3 Jun 05, he reenlisted in the ANG under the Indispensability Program. He served in the ANG from 3 Jun 05 to 1 Jul 07, including active duty time from 13 Mar 06 to 18 Aug 06 (5 months and 6 days).

When he retired a second time on 1 Jul 07, he was informed his active duty time in the ANG was ineligible for re-computation of his retired pay and he would have to wait until age 60 to have his active duty retirement converted to a Reserve retirement. He was unable to obtain relief from the National Guard Bureau (NGB) and contacted the Air Reserve Personnel Center (ARPC). After months of communication, he was told his active duty time was not creditable for re-computation because the time was coded as “TD 4,” which is a code for annual training (AT). He had always been under the impression that his enlistment time in the ANG would be added to his previous retirement time. His NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, dated 1 Jul 07, shows his total service for pay as 28 years, 2 months, and 15 days. His TD code should be changed to correct this error and injustice.

The applicant’s complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force chief master sergeant (E-9).

On 1 Feb 05, according to Special Order (SO) Work-Product dated 15 Dec 04, the applicant was transferred to the Retired Reserve and placed on the Air Force Retired List. He was credited with 25 years and 18 days of active service for retirement and 25 years, 1 month, and 14 days of service for basic pay.

On 3 Jun 05, according to Work-Product dated 4 Jun 05, the applicant enlisted in the State ANG for a period of 3 years, effective 3 Jun 05.

On 13 Mar 06, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant entered active duty and was released on 18 Aug 06, with a narrative reason for

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separation of "Completion of Required Active Duty." He was credited with 5 months and 6 days of active duty service for the period.

According to his NGB Form 22, the applicant was discharged on 1 Jul 07 and credited with 2 years, 8 months, and 29 days of net service for the period and 28 years, 2 months, and 15 days of total service for pay.

On 1 Jul 07, according to **Work-Product**, dated 29 Jun 07, the applicant was discharged from the ANG and transferred to the Reserve Retired List, effective 2 Jul 07.

On 2 Feb 21, the applicant requested to convert his active duty retired pay to Reserve retired pay under 10 U.S.C. § 12741, effective 25 Jul 21. Based on his date of birth, the applicant is eligible and is in receipt of retired pay.

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

AIR FORCE EVALUATION

ARPC/DPTSP recommends denial. The applicant did not provide evidence to justify changing the TD code for the requested period. Upon review of the applicant's record in the Air National Guard Reserve Order Writing System (AROWS), the applicant did not have orders that reflected active duty service for other than AT; nor were there any extended active duty (EAD) orders in the applicant's automated records management system (ARMS) record. If the applicant wishes to change the TD code, it would be necessary for him to provide certified orders for the period, which reflect the duty was not performed during AT. Furthermore, since the TD code could not be changed to a qualifying code, the applicant does not qualify for a re-computation of retired pay.

According to the applicant's point credit accounting and reporting system (PCARS) record, the applicant performed a total of 183 active duty days for points from 3 Jun 05 to 1 Jul 07. The points were recorded as TD code 4, which indicate the days were performed as active duty for AT. Per AFI 36-3203, *Service Retirements*, paragraph 8.9, "If a retired member later serves on active duty (other than for training), the member is entitled to have the retired pay re-computed, to include the recall period upon release from duty." The TD code 4 is active duty for AT and is excluded from re-computation.

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 12 Jul 22 for comment (Exhibit D), and the applicant replied on 12 Jul 22. In his response, the applicant contended he served in an active duty status from 13 Mar 06 to 18 Aug 06 (156 days) per his DD Form 214. He was brought back in the ANG to help the wing perform duties with the definition of TD code 2 (active duty special tour). Additionally, he should have been placed in TD 1 (active duty other tour) or TD 2 when he deployed to another state to bring their wing back to full mission readiness. He was never in a training status and his code should never have been TD 4. That code is used for AT and the law prohibits performance of more than 30 days in an AT status per year.

In support of his request, the applicant provides Chief of Air Force Reserve memorandum, Regular Air Force (RegAF) or Reserve Retirees to Air Force Reserve (AFR) Indispensability Policy, dated 13 Jun 17. The memorandum states the AFR uses the program sparingly since the law dictates

that members brought in under this program require a determination of indispensability and AFR uses the program to address critical manning challenges. He also provides his DD Form 214, relevant excerpts of the law, and the Indispensability Program guidance to support his response.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

ARPC/DPTSP recommends denial. There is no evidence of an error or injustice based on the ANGI policy applicable at the time.

The applicant contends he was brought out of active duty retirement into the ANG under the Indispensability policy. However, there is insufficient evidence the applicant was brought back in under the Indispensability Program. In fact, the applicant signed an excess waiver on 22 Sep 05. Furthermore, the Indispensability Program has no bearing on the pay or TD code. Moreover, the applicant provided Special Order **Work-Product** with two amendments, that placed him on active duty under 32 U.S.C. § 503A, with TD listed as "Deployed Annual Training (State)." The total active duty days for the order was 183 days (13 Mar 06 to 18 Aug 06). The code in PCARS for this period is TD 4.

The TD code is based on the pay code in a member's pay history. The PCARS is then updated automatically based on the pay code. If the applicant's master military pay account (MMPA) equals 4, then PCARS will update as TD 4 for AT. Additionally, 32 U.S.C. § 503A, does not define type duty for the training period. The remarks on the applicant's initial order states he was authorized by his unit commander to exceed 15 days active duty. ANGI 36-2001, *Management of Training and Operational Support Within the Air National Guard*, dated 15 Jan 97, states "AT will not normally exceed a total of 15 days per fiscal year per individual member. However, in order to ease scheduling problems, expedite local planning and assist in accomplishment of unit and individual training requirements, additional AT workdays per individual in excess of 15 days may be authorized. Orders published at the request of the appropriate official are sufficient documentation of approval."

The applicant contends his orders were never for training. However, ANGI 36-2001 defines AT as "The primary purpose of AT is to provide individual and/or unit readiness training, but AT may support active component missions and requirements and operational support, thereby adding substance to the total force. Further, AT may be performed under 10 U.S.C. or 32 U.S.C. status. Based on the provided documents, orders and inability to change the pay records, ARPC/DPTSP's recommendation for denial has not changed.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 11 Jul 24 for comment (Exhibit G). In a response received on 15 Jul 24, the applicant provides ANG/DPPOM memorandum, Approval for Applicant's Accession of Retiree into the ANG, dated 11 May 05. The memorandum informed the State ANG the applicant's enlistment into the ANG based on a favorable finding of indispensability was approved and they could proceed to enlist the applicant into the ANG.

The applicant's complete response is at Exhibit H.

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 ARPC/DPTS and finds a preponderance of the evidence does not substantiate the applicant’s contentions. In this respect, the Board finds the applicant has provided insufficient evidence to sustain his TD code of “TD 4” to denote AT for his period of service from 3 Jun 05 to 1 Jul 07 was incorrect. Moreover, the applicant signed an excess waiver on 22 Sep 05, which further substantiates the applicant’s orders were not under the Indispensability Program. Since the Board finds no error in his TD code and no evidence his active duty tour was under the Indispensability Program, the Board finds insufficient evidence to warrant re-computation of his retired pay. Therefore, the Board recommends against correcting the applicant’s records. 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 Department Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.
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 DAFI 36-2603, paragraph 2.1, considered Docket Number BC-2022-01494 in Executive Session on 23 Mar 23 and 26 Sep 24:

-  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 19 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTS, w/atchs, dated 21 Jun 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Jul 22.
- Exhibit E: Applicant’s Response, w/atchs, dated 12 Jul 22.
- Exhibit F: Advisory Opinion, ARPC/DPTS, w/atchs, dated 9 Nov 23.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Jul 24.
- Exhibit H: Applicant’s response, w/atchs, undated.

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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.

12/13/2024

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Board Operations Manager, AFBCMR

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