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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01497

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

Correct his official military record to reflect 15 years, 4 months satisfactory service at the time of separation from the Air National Guard.

### APPLICANT'S CONTENTIONS

His NGB Form 22, *Report of Separation and Record of Service*, shows the actual time he had in service of 15 years, 4 month, 17 days. This includes the 4 years, 9 months he had in active duty. He was medically separated due to a brain tumor that came from the Gulf War.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an honorably discharged Air National Guard staff sergeant (E-5).

On 10 Sep 01, according to ANG/SGPS memorandum, Report of Medical Examination, the applicant was certified medically disqualified for worldwide duty.

On 13 Nov 01, according to ANG/DPFO memorandum, Disability Evaluation System, the applicant was informed of his options regarding physical disqualification for a non-duty related impairment or condition and failed to respond within 14 days of receipt of notification.

On 30 Nov 01, according to IN ANG Form 1, *Request/Authorization for Discharge/Separation* (Special Order No. **Work-Product**), dated 28 Nov 01, the applicant was discharged from the Air National Guard and as a Reserve of the Air Force.

On 30 Nov 01, the applicant was furnished an honorable discharge, with Authority and Reason: AFI 36-3209, para 3.14., Physical Disqualification, and credited with 15 years, 4 months, 17 days total service for pay.

On 7 Apr 02, according to AF Form 131, *Application for Transfer to the Retired Reserve*, the applicant requested, and was approved for, transfer to the Retired Reserve, effective 2 Dec 01, with Remarks: Member has required 15 years' service for early retirement since he was medically disqualified for worldwide deployment. Action accomplished after the fact due to the nature of his medical condition and inability to respond to the Letter of Notification.

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On 30 Nov 01, according to IN ANG Form 1, *Request/Authorization for Discharge/Separation* (Special Order No. **Work-Product**), dated 12 Apr 02, the applicant separated from the Air National Guard and transferred to HQ ARPC, Denver, Colorado, effective 1 Dec 01, and placed on the USAF Retired Reserve List, effective 2 Dec 01. Member has applied for transfer to the USAF Retired Reserve List.

According to NGB Form 22a, *Correction to NGB Form 22*, dated 23 Apr 02, the applicant was transferred to HQ ARPC, Denver, Colorado.

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

### **APPLICABLE AUTHORITY/GUIDANCE**

10 U.S. Code § 12731 - Age and service requirements

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—

(2) has performed at least 20 years of service computed under section 12732 of this title

10 U.S. Code § 12731b. Special rule for members with physical disabilities not incurred in line of duty

(a) In the case of a member of the Selected Reserve of a reserve component who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for purposes of section 12731 of this title, determine to treat the member as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member has completed at least 15, and less than 20, years of service computed under section 12732 of this title.

### **AIR FORCE EVALUATION**

ARPC/DPTS 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.

After careful review of the applicant's record by the Headquarters, Air Reserve Personnel Center (HQ ARPC) Separations Division and Points Management Division, it was determined the applicant does not qualify for correction of his satisfactory service. According to the applicant's Point Credit Accounting and Reporting System (PCARS) summary, his satisfactory service is 14 years, 9 months, 4 days. The timeframe between 18 Apr 01 – 30 Nov 01 is an unsatisfactory prorated year totaling 7 months and 14 days. The applicant required 38 points for a satisfactory year but only earned 25 points.

At the time the applicant's NGB Form 22 was accomplished, item 10d. Total Service for Pay reflected his period of service, which is not the same as satisfactory service.

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 21 Dec 22 for comment (Exhibit D) 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 ARPC/DPTS and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's Total Service for Pay reflected on his NGB Form 22 is not the same as the satisfactory service required for a reserve retirement, as reflected on his PCARS summary. 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)*. 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. 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-2022-01497 in Executive Session on 7 Mar 23:

Work-Product, Panel Chair  
Work-Product, Panel Member  
Work-Product, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 9 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTS, w/atch, dated 29 Jun 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Dec 22.

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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.

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, AFBCMR

Signed by: USAF

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