

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01764

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His separation from the Regular Air Force in the rank of captain (O-3) be voided and he be allowed to retire from the Regular Air Force in the rank of master sergeant (E-7).

APPLICANT'S CONTENTIONS

He asks for retirement at the pay grade E-7 in accordance with Air Force Instruction (AFI) 36-3203, *Service Retirements*, paragraph 4.6.1., AFI 36-3208, *Administrative Separation of Airmen*, paragraph 3.15., and AFI 36-3207, *Separating Commissioned Officers*, paragraphs 2.4. and 2.4.17. He is entitled to retirement because he has more than 20 years of honorable service. He started this process in accordance with the Air Force Personnel Center (AFPC) guidance in the summer of 2021. Even with the multitude of hurdles, he believes he met the requirements of AFI 36-3207, paragraph 2.4.17., and was eligible for retirement. Upon hearing his hardship waiver was denied, he inquired about this paragraph specifically and was told he had no other option for additional waiver authority or exemption within the military. The miscellaneous paragraph was only meant for commander's use as an administrative tool. He is applying based on a conversation with one of his representatives who stated this might be an avenue to pursue.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force Reserve captain.

On 19 May 16, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably discharged in the rank of master sergeant, with Narrative Reason for Separation: Commissioned or Warrant in Same Branch of Service. He was credited with 14 years, 7 months, 4 days active service.

On 20 May 16, according to Special Order XXXXX, dated 19 May 16, the applicant was appointed as a Regular officer of the Air Force in the rank of second lieutenant (O-1).

On 21 Dec 21, according to myPERS email, HOT Separation to Retire as Enlisted – DOS 20 Dec 21 [Incident: XXXXXXXX], provided by the applicant, his request to retire as enlisted was disapproved.

On 22 Dec 21, the applicant submitted a *Voluntary Separation Application* with a requested separation date of 31 Jan 22. On 12 Feb 22, the application was approved with date of separation of 15 Mar 22.

On 15 Mar 22, according to DD Form 214, the applicant was honorably discharged in the rank of captain, with Narrative Reason for Separation: Completion of Required Active Service. He was

credited with 5 years, 9 days, and 26 days of net active service this period; and 14 years, 7 months, and 4 days of prior active service, for a total of 20 years and 5 months of active service.

On 16 Mar 22, according to Special Order Number XXXXX, the applicant was appointed in the Reserve of the Air Force and assigned to Headquarters, Air Reserve Personnel Center in the Individual Ready Reserve.

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

APPLICABLE AUTHORITY/GUIDANCE

AFI 36-3203, *Service Retirements*,

4.6. *Officers Desiring Active Duty Retirement in Enlisted Status.* Only when documented hardship situations exist, when the Secretary of the Air Force or designee establishes a mandatory date of separation, or when the Secretary of the Air Force or designee approves retirement or transfer to the retired reserve in lieu of involuntary separation, court-martial, or a court-martial sentence, can officers with 20 years TAFMS [total active federal military service] request to retire before completing 10 years of TAFCS [total active federal commissioned service]. The officer must first request the delegated authority's approval of resignation or release from active duty in accordance with AFI 36-3206. The appropriate authority must authorize enlistment in the ARC for the purpose of retirement.

4.6.1. For commissioned officers to be eligible for retirement under 10 U.S.C. §9311, the officer must have 20 years of active service and a minimum of 10 years of active commissioned service to retire as an officer (10 years commissioned service is not a requirement for officers retiring under 10 U.S.C. §12731). Without meeting both of these requirements, the officer is ineligible for retirement as an officer regardless of TAFMS. Title 10 U.S.C. § 9314, allows for enlisted members to retire, but specifically requires an eligible member to be an enlisted member. Because there are no actual provisions of law that would allow an officer to retire as an enlisted member, the following procedure has been developed. This strict procedure involves a number of AFPC/ARPC offices to process a retirement of an officer in enlisted status. To retire as an enlisted member, the officer must first apply for separation. After applying for separation, the officer must then apply to be enlisted and accessed back as an enlisted member.

AFI 36-3207, *Separating Commissioned Officers*,

2.4. *Honorable Separations.* This paragraph does not apply to officers who are pending discharge under AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers* or court-martial. See paragraph 2.5 for applicable limitations. See paragraph 2.12 for military service obligation guidance.

2.4.17. *Miscellaneous reasons.* Officers may apply based on unique or unusual reasons when they do not qualify to apply under any of the reasons in paragraph 2.4. They may request a DOS that falls no earlier than 6 months from the date of application. When these officers show that their separation is in the best interests of the Air Force, the requested date of separation is normally approved.

AFI 36-3208, *Administrative Separation of Airmen*,

3.15. *Miscellaneous Reasons.* Airmen who do not qualify for separation for another reason may ask for separation under this provision. As a rule, approve applications when the airman's early

separation will serve the best interest of the Air Force. Usually, the requested date of separation should be no less than 2 or more than 12 months from the date of the application.

AIR FORCE EVALUATION

AFPC/DP2SSR recommends denying the application. Based on a review of the master personnel records and the applicant's request, there is no error or injustice with the discharge process. The applicant was ineligible to retire from the Air Force as a commissioned officer. AFI 36-3203 and 10 U.S.C. §9311 define retirement eligibility for officers. AFI 36-3203, paragraph 3.1.1. states, "AD [active duty] Retirement Eligibility. Unless granted a waiver under some provision of law, to be eligible for a non-disability AD retirement, officers and enlisted members of the active or ARC (ANG or AFR) must complete 20 years of TAFMS. Likewise, an officer must have 10 years of TAFCS to receive an AD retirement as an officer (10 U.S.C. § 9311, *Twenty years or more: regular or reserve commissioned officers*) unless granted a waiver under some provision of law." The applicant entered active duty in enlisted status on 16 Oct 01; however, he did not become a commissioned officer until 20 May 16. As such, the first day he would be eligible to retire as an officer is 1 Jun 26, the first day of the month after completing at least 10 years of active commissioned service.

There is no provision in public law to allow prior enlisted officers to retire before completing both of the mandated requirements of 20 years of active military service and 10 years of active commissioned service. The Air Force established policy to allow certain officers, under very specific circumstances, the ability to resign their commissions and retire in enlisted status. To meet this policy, the officer must have a documented hardship; the Secretary of the Air Force must establish a mandatory date of separation that prevents the officer from completing the required commissioned service; or the Secretary must approve retirement in lieu of administrative separation or court-martial action.

The applicant requested retirement in enlisted status on 4 Nov 21 stating his request was "bound by personal reasons as his family cannot move for any upcoming assignments." On 22 Nov 21, the applicant's case was returned, and he was advised in order to separate under this provision, he must provide evidence of extreme personal hardship that is more severe than what other servicemembers experience. On 8 Dec 21, the applicant indicated burdens placed on him due to a court order preventing his family from leaving their county of residence.

AFI 36-3203 paragraph 3.8.1.2. defines a hardship as "a fully-documented circumstance uncommon to other Airmen that imposes undue privation or suffering on the member, household, or immediate career." Paragraph 3.8.2.1. states, "The Air Force recognizes timing of civilian employment, business opportunities, plans for higher education or training, ownership of property, family separation, and other inconveniences as common situations and will not approve waiver requests for those reasons."

The applicant's request to retire in enlisted status was disapproved on 21 Dec 21 with the following justification: "We have reviewed the member's request and we do not believe it justifies a unique hardship that is different from other military members who have an assignment away from family. Our Separations and Retirements Policy offices have reviewed this case as well and agree with aforementioned comments of not meeting the intent."

The applicant applied for voluntary separation on 22 Dec 21. On 4 Jan 22, the case was returned to the applicant's unit to confirm the request was for voluntary separation vice retirement. The application was re-submitted stating the applicant denied "Enlist to Retire." Therefore, he was applying for completion of Active Duty Service Commitment. He was approved for voluntary separation on 11 Feb 22 with an effective separation date of 15 Mar 22.

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 27 Feb 23. In his response, the applicant contended he received the Board referral and advisory opinion, dated Jul 22, on 27 Feb 23. He clarified he is not requesting retirement eligibility as a commissioned officer, nor does he believe he is eligible. He is seeking justice and peace for his over 20 years of service to the nation. He attempted to find solutions, to include seeking local assignment, which gained concurrence from both the gaining and losing commanders but was denied by AFPC. He also looked into Air Force Reserve and Air National Guard assignments that would grant similar retirement benefits but resulted in no opportunities. Finally, he received counsel from leadership and AFPC.

Further, he recognizes the content of AFI 36-3203, which should include reference to paragraph 4.6. He was informed hardship was defined in AFI 36-3207, Chapter 2, paragraph 2.4.1., to include 2.4.1.2., which states, "Officers who can't present bona fide hardships may qualify to separate for a miscellaneous reason under paragraph 2.4.17. This paragraph states, "Officers may apply based on unique or unusual reasons when they do not qualify to apply under any of the reasons in paragraph 2.4. They may request a DOS that falls no earlier than 6 months from the date of application. When these officers show that their separation is in the best interests of the Air Force, the requested date of separation is normally approved." It was under this guidance from AFPC in early Summer 2021 that he submitted his original request for separation to retire in his previous enlisted grade.

The applicant's complete response is at Exhibit E.

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 applicant believes he met the requirements to separate for miscellaneous reasons under the provisions of AFI 36-3207, paragraph 2.4.17. However, there is no evidence he applied for a separation for miscellaneous reasons. Instead, on 15 Mar 22, he resigned as a captain in the Regular Air Force after completion of required service and was credited with 5 years, 9 months and 26 days active duty this period (TAFCS).

The applicant also requests his record be corrected to indicate he was retired as an enlisted member rather than indicate he was separated an officer. However, there is no provision in law to allow prior enlisted officers to retire before completing both the mandated requirement of 20 years of active military service and 10 years of active commissioned service. The Air Force established policy to allow certain officers the ability to resign their commissions and retire in an enlisted status. To meet this policy, the officer must have a documented hardship; the Secretary of the Air Force must establish a mandatory date of separation that prevents the officer from completing the required commissioned service; or the Secretary must approve retirement in lieu of administrative separation or court-martial action. The applicant did not meet the eligibility requirements to retire in an active duty enlisted status pursuant to AFI 36-3203. Specifically because he did not provide evidence of extreme personal hardship that is more severe than that experienced by other service members. Therefore, the Board concurs with the rationale and recommendation of AFPC/DP2SSR and finds a preponderance of the evidence does not

substantiate the applicant's contentions. Accordingly, the Board 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 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-2022-01764 in Executive Session on 20 Apr 23:

, 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 8 Jun 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DP2SSR, w/atch, dated 11 Jul 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Jul 22.
Exhibit E: Applicant's Response, w/atchs, 27 Feb 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.

X

Board Operations Manager, AFBCMR