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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

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DOCKET NUMBER: BC-2022-01786

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His record be corrected to reflect the following:

1. Active duty (AD) pay and benefits for the period 26 May 19 - 22 Dec 22 (576 days) of AD sanctuary eligibility with AD retirement pay.
2. Department of Veterans Affairs (DVA) benefits effective 22 Dec 20.
3. Reimbursement of TRICARE premiums effective 26 May 19 to present.

APPLICANT'S CONTENTIONS

Air Force Reserve Command (AFRC) policy requires reservists nearing two years of becoming eligible for retired pay, "sanctuary," sign a Statement of Understanding (SOU) Waiver of AD Sanctuary for any order, of any duration, that would bring the reservist within the sanctuary protection. Reservists are not informed the SOU Waiver is not legally binding for orders over 179 days.

He signed numerous SOU sanctuary waivers between 2017-2022; however, on 22 Jan 22 he learned they are not legally binding. Specifically, he signed an SOU waiver that allowed him to deploy for 223 days from 15 Oct 18 to 25 May 19. That order, over 179 days, placed him in the sanctuary zone. After bringing the matter to the attention of AFRC, he submitted a sanctuary waiver during his AD tour from 27 Dec 21 to 31 Jan 22; however, the request was denied, and he was directed to seek resolution through the AFBCMR. Further, had he invoked sanctuary and remained on active duty, he would not have to pay TRICARE premiums due to having healthcare afforded on active duty. He gave over 18 years of AD service to the Air Force and 29 years of total service to his country. Due to administrative errors and possible intentional deceit, AFRC denied him his benefits. Finally, he submitted an AFRC Inspector General (IG) complaint to address this issue.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve colonel (0-6) awaiting retired pay at age 60.

On 11 Sep 09, according to a Notification of Eligibility for Reserve Retired Pay at Age 60 memorandum, dated 17 Nov 21, the applicant accumulated 5040 points and completed the required

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years of service under the provision of Title 10 U.S.C, Section 12731, *Age and Service Requirements*, and will be entitled to Reserve retired pay upon application, normally at age 60.

On 12 Oct 18, according to the Waiver of AD Sanctuary SOUs, provided by the applicant, he voluntarily waived his right to sanctuary protection provided in accordance with Title 10 United States Code (U.S.C.), Section 12686, *“Reserves on active duty within two years of retirement eligibility: limitation on release from active duty,”* for periods of AD 12 Oct 18 to 15 Mar 19 and 16 Mar 19 to 31 Jul 19. He acknowledged understanding while performing the approved AD tour he could not claim sanctuary.

On 15 Oct 18, according to AF Form 938, *Request and Authorization for Active Duty Training/Active Duty Tour*, provided by the applicant, he was ordered to AD from 15 Oct 18 to 25 May 19 for a total of 223 days.

On 25 May 19, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was honorably discharged from AD with a narrative reason of “Completion of Required Active Service.” He was credited with 7 months and 11 days of active service and his DD Form 214 also indicates he had 17 years 10 months and 1 day of total prior active service.

On 20 Dec 21, according to the Waiver of AD Sanctuary SOUs, provided by the applicant, he voluntarily waived his right to sanctuary protection provided in accordance with Title 10 U.S.C., Section 12686, for a period of AD from 27 Dec 2021 to 31 Jan 2022. He acknowledged understanding while performing the approved AD tour he could not claim sanctuary.

On 31 Jan 22, according to the DD Form 214 the applicant was honorably discharged from AD with a narrative reason of “Completion of Required Active Service.” He was credited with 1 month and 4 days of active service and his DD Form 214 also indicates he had 19 years, 1 month and 27 days of total prior active service.

According to AF Form 102, *Inspector General Compliant Form (IG)*, the applicant filed an IG complaint alleging he and others were improperly denied sanctuary status, violating laws and instructions.

On 28 Apr 22, according to AFRC/IG Memorandum to AFRC/A1, the applicant’s issues raised to the IG complaint were determined to be outside the scope of the IG Complaints Resolution Program and was referred to AFRC/A1 for review and appropriate action. No further actions from the IG were required.

For more information, see the excerpt of the applicant’s record at Exhibit B.

AIR FORCE EVALUATION

AFRC/A1KK recommends denying the application. Based on the documentation provided by the applicant, analysis of the facts, and review of the member’s master personnel record, there is no evidence of an error or injustice. On 12 Oct 18, the member voluntarily signed two statements indicating he understood and waived his sanctuary protection for the AD tour beginning 15 Oct 18 thru 25 May 19. The statement of understanding is for a voluntary AD tour order and was prepared using the template included in AFI 36-2131, *Administration of Sanctuary in the Air Reserve Components*, attachment 3. The member initialed each statement and signed both for the dates of 12 Oct 18 thru 15 Mar 19 (154 days) and 16 Mar 19 thru 31 Jul 19 (137 days).

Title 10 U.S.C., Section 12686(a) provides, “...a member of a reserve component who is on active duty (other than for training) and is within two years of becoming eligible for retired pay or retainer

pay under a purely military retirement system (other than the retirement system under chapter 1223 of this title), may not be involuntarily released from that duty before he becomes eligible for that pay, unless the release is approved by the Secretary.”

Title 10 U.S.C., Section 12686(b) continues, that the Secretary [Air Force] may require, as a condition of an active duty order “...that specifies a period of less than 180 days and who (but for this subsection) would be covered by subsection (a), the Secretary concerned may require, as a condition of such order to active duty, that the member waive the applicability of subsection (a) to the member for the period of active duty covered by that order. In carrying out this subsection, the Secretary concerned may require that a waiver under the preceding sentence be executed before the period of active duty begins.”

AFI 36-2131, paragraph 1.3 states, “A member desiring to invoke sanctuary protection under Title 10 U.S.C, Section 12686(a) must claim such protection while on AD (other than for training) and while in the sanctuary zone.” Paragraph 2.3 states “Sanctuary Policy: Current policy and law requires an ARC member who is in the sanctuary zone or would be based upon publication of an order to active duty under a MPA, RPA/ADOS, T32 ADOS or applicable T32 ST tour specifying a period of duty of less than 180 days must have a signed/approved waiver of sanctuary protection (attachment 3 or 4) prior to order being issued. This requirement exists for any voluntary tour of less than 180 days until the member is through the sanctuary zone.” Additionally, paragraph 2.3 provides an avenue for members who are placed on a voluntary order status, without executing a sanctuary waiver, and then declines to separate voluntarily from the AD tour may be accessed into the Air Force Reserve (AFR) Active Guard/Reserve Program. In this case, the applicant voluntarily separated from the AD tour and therefore, this provision would not apply.

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 31 Mar 23 for comment (Exhibit D), and the applicant replied on 19 Apr 23. In his response, the applicant contended AFRC/A1KK failed to address his complaint that AFRC required him to sign factually incorrect waivers under a deceptive practice for a 223-day order. While he signed two sanctuary waivers for his 223-day order in 2018, the facts surrounding those waivers are far different than what AFRC/A1KK implies. In short, he was required to sign two Sanctuary waivers to cover a 223 AD deployment and was not informed the sanctuary waivers were not legally binding and were factually incorrect and deceptive in nature. Due to the language in the sanctuary waivers, he was deceived into believing he was ineligible to apply for sanctuary, when he could have under the law. Had he known of his right to apply for sanctuary, he would have done so.

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 the victim of an error or injustice. While the Board notes the recommendation of AFRC/A1KK against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant’s contentions. The Board notes the applicant had an MPA order covering the period 15 Oct 18 through 25 May 19 totaling 223 days, which placed him within sanctuary protection under Title 10 U.S.C, Section

12686. While the applicant voluntarily signed two statements indicating understanding and voluntary waiver of sanctuary protection for the AD tour, the Board finds it reasonable that had the applicant understood his right to apply for sanctuary he would have done so and views this as a procedural oversight and not as evidence of the applicant's intent to decline Sanctuary. To deny relief in this circumstance would be to place form over substance to the detriment of the applicant. With regard to the applicant's request for reimbursement of TRICARE premiums, retirement pension, and DVA benefits, these requests are outside of the Boards purview; however, the Board believes that by correcting the applicant's request to grant him Sanctuary he will subsequently be able to apply for an active duty retirement and should be able to pursue correction to these records through the respective offices. Finally, while the Board notes the applicant's other requests for an audit on the sanctuary program and the correction to the current sanctuary SOU, these are requests for changes to policy and do not apply specifically to the applicant's military personnel record. Nevertheless, the Board will refer these requests and recommendations to the responsible office of primary responsibility for further review. Finally, it is unclear whether the applicant is requesting an active duty retirement on 22 Dec 20, as his record shows that he continued to serve in the Air Force Reserve after that date and as noted on his DD FM 214 for period of service 27 Dec 21 through 31 Jan 22, completing an additional month of active duty. Therefore, the Board recommends correcting the applicant's records as indicated below.

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 pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show:

- a) On 25 May 19, the applicant submitted a waiver to invoke active duty sanctuary protection under 10 U.S.C. § 12686(a) and a competent authority approved the request on that date.
- b) On 25 May 19 the applicant was not released from active duty but was continued on 26 May 19 for the purpose of sanctuary until he reached 20 years of Total Active Federal Military Service when he was honorably discharged and transferred back to the Air Force Reserve.
- c) He be issued a DD Form 214, *Certificate of Release or Discharge*, based on his continued active duty service under sanctuary beginning on 26 May 19 and ending on the date he reached 20 years of Total Active Federal Military Service.
- d) He be issued all appropriate backpay, benefits and points associated with his extended active duty service for the purpose of sanctuary.
- e) He be allowed to apply for active duty retirement based on his additional active duty service and his continued service in the Air Force Reserve up until 31 January 2022.

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-2022-01786 in Executive Session on 9 May 23:

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Panel Chair

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Panel Member

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Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 26 Jan 22 and 12 Jul 22.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory opinion, AFPC/A1KK, dated 30 Mar 23.

Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 31 Mar 23.

Exhibit E: Applicant's Response, dated 19 Apr 23.

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.

2/7/2025

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X

Board Operations Manager, AFBCMR
Signed by: Work-Product