



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-01813

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His effective date of for Combat-Related Special Compensation (CRSC) be changed to 1 January 2008.

APPLICANT'S CONTENTIONS

On 2 June 2004, he was medically discharged from the Air Force after being medically evacuated from Iraq. In 2012, the Department of Defense (DoD) sent him a letter requesting a review of his discharge. In 2022 his medical separation was upgraded to a medical retirement. He had previously applied for CRSC in 2017 but was denied as he was not yet receiving his retirement pay. Had he been medically retired in 2004, he would have become eligible to receive CRSC payments effective 1 January 2008. Because of the six-year rule, the CRSC office can only authorize payments back to 2011 based on his 2017 application and advised him to apply to the AFBCMR. He did not apply for CRSC earlier because he was not eligible for payments until his discharge was upgraded. By back dating his disability retirement, the six-year rule would not have been in effect.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a medically retired Air National Guard (ANG) senior airman (E-4).

Dated 14 May 2004, Special Order *Work-Product* indicates the applicant was relieved from assignment with the *Work-Product* ANG and given a disability discharge, effective 2 June 2004.

On 2 June 2004, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving 10 months and 21 days of active duty for this period. He was discharged, with a narrative reason for separation of "Disability, Permanent Legacy DES (Disability Evaluation System)."

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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On 18 June 2017, the Physical Disability Board of Review (PDBR) directed his discharge with disability severance pay be changed to reflect he was medically retired with a disability rating of 30 percent.

Dated 12 August 2020, Special Order Work-Product indicates the applicant was permanently disability retired with a compensable percentage for physical disability at 30 percent, effective 3 June 2004.

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

APPLICABLE AUTHORITY/GUIDANCE

31 U.S.C., Section 3702 *Authority to settle claims*

(a) Except as provided in this chapter or another law, all claims of or against the United States Government shall be settled as follows:

(1) The Secretary of Defense shall settle (A) claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits; and (B) claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at Government expense.

(b)

(1) A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues except (A) as provided in this chapter or another law; or (B) a claim of a State, the District of Columbia, or a territory or possession of the United States.

(e)

(1) The Secretary of Defense may waive the time limitations set forth in subsection (b) or (c) in the case of a claim referred to in subsection (a)(1)(A).

AIR FORCE EVALUATION

AFPC/DPFDC recommends denying the application finding no evidence of an error or injustice. To grant the applicant's request would be contrary to the criteria established by Title 10 U.S.C., Section 1413a, and Office of the Under Secretary of Defense Guidance. The applicant submitted a claim for CRSC compensation on 8 November 2017. This claim was disapproved as he was not in receipt of retirement pay. He reapplied for CRSC in 6 July 2022 and this claim was approved at 80 percent, effective 1 December 2011. The 1 December 2011 date reflects retroactive pay from the date he initially applied in November 2017. The PDBR changed/corrected his military status to medically retired effective 3 June 2004 per Special Order Number Work-Product, dated 12 August

2020. The timing of his initial application for CRSC and its subsequent denial does not support his contention his CRSC effective date should be backdated to 1 January 2008. Had he applied in 2008 or any year from 2008-present, his CRSC effective date would have been based on the date his claim was received.

According to the attachments, the applicant was sent a letter from AFPC/DPFDC, dated 26 December 2017, denying his request for CRSC because he did not meet the criteria due to not receiving military retirement pay. On 28 June 2022, another letter was sent to the applicant approving his CRSC application with a combined rating of 80 percent, effective 1 December 2011. In this letter it states, CRSC is subject to the six-year statute of limitations, 31 U.S.C., Section 3702(b). In order to receive the full retroactive CRSC entitlement, you must file your CRSC claim within six years of any Department of Veterans Affairs (DVA) rating decision that could potentially make you eligible for CRSC or the date you become entitled for retired pay, whichever is more recent. If you file your claim more than six years after initial eligibility, you will be restricted to six years of any retroactive entitlement.

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 14 September 2022 for comment (Exhibit D), and the applicant replied on 27 September 2022. In his response, the applicant contends he was approached by DoD to apply for a review of his discharge through the DVA in 2013. In 2008, he would not have applied for CRSC as he was not eligible. The DoD initiated this action with a desire to right what they considered a wrong. When it became apparent, he was eligible for CRSC, he applied. The head of the CRSC office told him how to apply and recommended he send the pertinent information to get this adjustment with no need to add additional information, stating the Secretary of the Air Force had all the pertinent information and it should go through quickly, but this was not the case. He should have been medically retired in 2004, had that happened, he would have applied for CRSC and would have received pay effective 1 January 2008.

To support his claim the applicant submitted documents regarding his PDBR case, dated 21 June 2017, stating corrections to his records were being made due to the decision to medically retire him and a letter from the DVA, dated 6 September 2013, informing him about the PDBR program to which he may be eligible to apply.

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 Board concurs with the rationale and recommendation of AFPC/DPFDC and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, CRSC is subject to the six-year statute of limitations per 31 U.S.C., Section 3702(b). The applicant must file a CRSC claim within six years of any DVA rating decision that could potentially make him eligible for CRSC or the date he became entitled to receive retired pay. Even though the applicant's medical retirement was backdated to the date of his discharge, he was not eligible for a disability retirement at the time of his discharge until the regulations were changed that allowed his records to be reevaluated for a medical retirement; therefore he was not eligible to apply for CRSC until he was granted a medical retirement in 2017; hence his CRSC payments were backdated six years to 2011. 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-01813 in Executive Session on 25 Jan 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, dated 7 Jul 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPFDC, w/atchs, dated 14 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 14 Sep 22.
- Exhibit E: Applicant's Response, w/atchs, dated 27 Sep 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.

1/2/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by:

Work-Product