

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-02236

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### **APPLICANT'S REQUEST**

Correct his official military record to reflect Reserve Retired status.

### **APPLICANT'S CONTENTIONS**

He applied and was approved for retirement in Spring 2013. He was asked to revoke his retirement order due to circumstances that arose from his federal technician employment and his enlistment in the National Guard. Shortly after his retirement order was revoked, he was forcibly retired from his federal technician job; therefore, he was separated and not retired.

He was told at that time his retirement had gone through, and he received his retirement certificate in the mail. He never applied for retirement because he didn't need it. He recently decided to check on his retirement to get an identification card and to start benefits. He was shocked to learn he was separated and not retired.

He believes he earned the benefits and is entitled because he served honorably for 20 years. He would like his status changed to be able to use these benefits. He understands he is at fault for not following up and just assuming everything was taken care of when he received his retirement certificate. He asks to change his status so he can gain those benefits that are part of his honorable service.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

The applicant is a former member Air National Guard staff sergeant (E-5).

On 19 Jun 13, according to Reserve Order XXXX, the applicant was relieved from current assignment, assigned to the Retired Reserve Section and placed on the USAF Reserve Retired List, effective 11 Aug 13.

On 8 Aug 13, according to Reserve Order XXXX, Reserve Order No. XXXX, dated 19 Jun 13, relating to retirement, is revoked.

On 13 Aug 13, according to Special Order XXXX, dated 26 Aug 13, the applicant was honorably discharged from the [State] Air National Guard, transferred to the USAFR, and assigned to HQ ARPC, Denver, Colorado, effective 14 Aug 13.

On 13 Aug 13, the applicant was furnished an honorable discharge, with Authority and Reason: AFI 36-3209, Paragraph 3.13.14: Not selected for Reenlistment – Expiration Term of Service/retirement eligible/did not apply [SPD: JBD], and credited with 20 years total service for retired pay.

On 7 Jan 22, after his discharge, ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him that he has completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C § 12731) and is entitled to retired pay upon application prior to age 60.

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

### **APPLICABLE AUTHORITY/GUIDANCE**

Air Force Instruction (AFI) 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, dated 14 Apr 05. Paragraph 1.2.1. *Former Members*. All members who are eligible for transfer to the Retired Reserve and choose discharge must be formally counseled concerning this policy and its effects on their benefits.

### **AIR FORCE EVALUATION**

ARPC/DPTT 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. There was not an attempt from the applicant to re-apply for a Reserve retirement upon being discharged.

A review of the applicant's Military Personnel Record shows he submitted a retirement application for 11 Aug 13 and received orders [XXXX] on 21 Jun 13 (sic). The applicant requested to withdraw his retirement on 3 Aug 13, via telephone call with the Total Force Service Center. The applicant's withdrawal request was approved, and the previous retirement order was revoked [via Reserve Order XXXX, dated 8 Aug 13]. As the applicant's withdrawal request was made after receiving his retirement orders, the retirement certificates were sent to him before they could be rescinded.

The applicant did not resubmit an application for transfer to the Reserve Retired List, and was discharged, on 13 Aug 13, becoming a Former Member.

In accordance with AFI 36-3203, *Service Retirements*, paragraph 9.3, (Atch 4) "*Former Members*. A former member is an individual who qualified for retirement but elected not to transfer to the retired reserve and was subsequently discharged for physical disqualification, misconduct, upon expiration of the member's contract, or resigned the officer's commission. These members have no military status but are authorized certain entitlements and benefits in accordance with AFI 36-3026V1\_IP, *Identification Cards for Members of the Uniformed Services, Their Eligible Family Members, and Other Eligible Personnel.*"

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 3 Oct 22 for comment (Exhibit D) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 ARPC/DPTT against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. The Board finds that if the applicant had known the proper procedures for the retirement application process, he would have adhered to them since he served sufficient time to be eligible for a Reserve retirement. To deny relief in this circumstance would be to place form over substance, to the detriment of the applicant. Therefore, the Board recommends correcting the record as indicated below.

## **RECOMMENDATION**

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that he was not discharged from the Air National Guard on 13 August 2013, but on that date, he was assigned to the Retired Reserve Section, and his name was placed on the Retired Reserve List, and he was eligible for retired pay at age 60, under the provisions of Title 10, United States Code, Section 12731, or, if applicable, under reduced retired pay age authorized by the National Defense Authorization Act for 2008.

## **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-2022-02236 in Executive Session on 11 Apr 23:

- , Panel Chair
- , Panel Member
- , Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 17 Aug 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 20 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Oct 22.

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.

**X**

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Board Operations Manager, AFBCMR