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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02266

Attorney-Client

COUNSEL: *Attorney-Client*

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His active guard and reserve (AGR) order be extended so he can retire with 20 years of total active federal military service (TAFMS) with an effective date of 31 Dec 22 as well as appropriate back pay.
2. His AGR order be extended to 31 Jan 22 and he be retired effective of 1 Feb 22 under the AGR program in accordance with 10 U.S.C. §9314. (Amended request via rebuttal dated 9 Jan 23).

APPLICANT'S CONTENTIONS

He was wronged by the Guam Air National Guard (ANG) in the curtailing of his AGR orders, as well as the failure to process his administrative discharge proceedings in a timely manner, resulting in an erroneous separation from the ANG at the end of his current enlistment with over 19 years of TAFMS. By failing to process his administrative discharge, the unit took away his right for a Secretary of the Air Force review and violated federal law. Per Title 10 U.S.C. § 12731, he was in sanctuary and could not be discharged, denied reenlistment, or transferred from an active status without his consent. Per ANGI 36-101, *Air National Guard Active Guard and Reserve (AGR) Program*, paragraph 8.2.2(b), enlisted entering the sanctuary zone for regular retirement should be retained until reaching retirement eligibility. However, the Adjacent General (TAG) may involuntarily separate an enlisted airman for cause (reference AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*) from the AGR program while in the sanctuary zone. His administrative discharge for cause was never completed; his AGR orders were erroneously curtailed and the unit left his enlistment expire on his expiration term of service (ETS) denying him a 20-year regular retirement in violation of federal law.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air National Guard technical sergeant (E-6).

Dated 15 Sep 20, the applicant provided a memorandum indicating his commander recommended his AGR tour be involuntarily curtailed in accordance with AFI 36-3209, paragraph 3.21.3.4 for misconduct, other serious offenses.

Dated 23 Dec 20, the applicant provided a memorandum from his TAG approving his demotion to technical sergeant and the curtailment of his AGR tour, effective 31 Jan 21.

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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 24 Feb 21, Order Number Attorney-Client, provided by the applicant, indicates his AGR order was curtailed, effective 28 Feb 21.

On 28 Feb 21, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was released from active duty, in the rank of technical sergeant after serving 19 years, 5 months, and 6 days of net active service and 14 years, 7 months, and 13 days of prior active service¹ [sic]. He was discharged, with a narrative reason for separation “Completion of Required Active Service.” The form indicates his Reserve Obligation Termination Date of 31 Oct 21.

On 12 Mar 21, AF Form 131, *Application for Transfer to the Retired Reserve*, indicates the applicant requested he be transferred to the Retired Reserve effective 30 Apr 21. The form was signed by the applicant but no other signatures for recommended approval had been obtained.

Effective 5 Jan 09² [sic], NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the Air National Guard after serving 20 years, 9 months, and 26 days of total service for pay. He was discharged, with a narrative reason for separation “Expiration of Enlistment.”

Dated 21 Apr 23, the Personnel Data Summary indicates the applicant has 19 years, 4 months, and 15 days of TAFMS, which was confirmed by the Air Reserve Personnel Center (ARPC).

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisories at Exhibits C and F.

APPLICABLE AUTHORITY

ANGI 36-101, *Air National Guard Active Guard and Reserve (AGR) Program*, dated 3 Jun 10. Paragraph 8.1.1 states the TAG is the final authority for determining whether individuals will be separated from the AGR program except for officers within the sanctuary zone whose separation must be approved by the Secretary of the Air Force. AGR personnel must complete the specified period of their orders unless released due to any of the following provisions; an approved request for voluntary tour curtailment; an involuntary tour curtailment; involuntary release; involuntary discharge; mandatory separation; retirement – Active Duty; or retirement – Reserve.

Paragraph 8.2.2, *Sanctuary*, states enlisted entering the sanctuary zone for regular retirement should be retained until reaching retirement eligibility. However, TAG may involuntarily separate an enlisted airman for cause (reference AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*) from the AGR program while in the sanctuary zone.

Paragraph 8.3.1, *Separation at Expiration of Tour*, states airmen will be separated from AGR status at the expiration of their current tour if they do not request a subsequent tour, or they were not selected for continuation in the AGR program. The airman may request reconsideration of the non-renewal of an AGR tour, through command channels, to TAG. TAG will make the final determination. Reconsiderations must be submitted to the TAG no later than 30 days after notification. TAG is final reconsideration authority.

¹ The Net Active Service this Period and Total Prior Active Service, Blocks 12c and 12d are incorrect on the applicant’s DD Form 214. This will be administratively corrected once the Board makes a decision on the applicant’s case.

² The effective date is incorrect and needs to be administratively corrected to reflect 31 Oct 21, as indicated on his DD Form 214, Block 6, *Reserve Obligation Termination Date*.

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Paragraph 8.5, *Involuntary Tour Curtailment*, states commanders considering involuntary curtailment must use all quality force tools available i.e. referral Officer or Enlisted Performance Reports, Letters of Reprimand, Article 15 etc., prior to initiating an involuntary curtailment. Depending on the nature of the involuntary curtailment, commanders may consider discharge in lieu of involuntary curtailment.

Paragraph 8.9, *Regular Retirement*, states personnel who accrue at least 20 years of TAFMS may retire under the provisions of 10 U.S.C. § 9311 or §9314 with a regular retirement.

AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, dated 14 Apr 05 with incorporating changes, 20 Sep 11.

Paragraph 3.3, Enlisted Sanctuary, states Reserve members in an active status who are selected to be involuntarily separated (other than for physical disability or for cause), or whose term of enlistment expires and who are denied reenlistment (other than for physical disability or for cause), and who on the date on which the member is to be discharged or transferred from an active status are entitled to be credited with at least 18, but less than 20 years of service computed under Title 10 U.S.C. § 12731, may not be discharged, denied reenlistment, or transferred from an active status without the member's consent.

Paragraph 3.3.1, *Probation of Member With Lengthy Service*, states a member with lengthy service is one who, at the time the discharge action is initiated, has completed 18, but less than 20, years of satisfactory Federal service creditable toward retired pay according to 10 U.S.C. § 12731 or active military service creditable toward retired pay under 10 U.S.C. § 8914. These members receive special consideration for retention on probation, to acquire minimum retired pay eligibility. If the member is approved for an involuntary discharge, for any reason except physical disqualification, the discharge is not executed until the case is reviewed by the SAF. The appropriate commander will send the original discharge case file to the Air Force Personnel Council, and include a memorandum approving the discharge with a recommendation on probation.

AIR FORCE EVALUATION

NGB/A1PP recommends partially granting the applicant's request to extend his AGR order to 30 Apr 21 in conjunction with the date the applicant initially agreed to a reserve retirement in lieu of administrative action as noted on AF Form 131. The applicant was notified on 15 Sep 20 of his administrative demotion, administrative discharge, and his recommendation for involuntary AGR tour curtailment. On 23 Dec 20, TAG provided a signed memorandum approving the demotion of the applicant and curtailment of his AGR orders with an effective date of 31 Jan 21. The curtailment order was delayed a month to allow NGB/A1 time to research the validity of the curtailment guidance given by the state to the applicant. On 18 Feb 21, the state was advised by NGB/A1 to proceed with the curtailment of the applicant's AGR order. The applicant then underwent an administrative discharge board, which was ultimately submitted to NGB/A1 with insufficient time to process the package to SAF/MRB to allow a final determination to be made. The applicant subsequently separated on his ETS of 31 Oct 21.

The state ANG was wrongfully advised to curtail the applicant while he was in sanctuary. This resulted in the applicant losing pay and points towards an active retirement. Instead, the applicant should have been retained on his AGR order while the administrative discharge package was routed to the Secretary of the Air Force for a final determination. Title 10 U.S.C. §12686 states, "Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, 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.”

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 13 Oct 22 for comment (Exhibit D), and the applicant replied on 20 Oct 22. In his response, the applicant’s counsel contends the advisory opinion recognizes that the applicant’s AGR order was erroneously curtailed due to misinformation provided to the unit. However, AF Form 131 the advisory opinion is basing their end date on, is misleading. The request for a Reserve Retirement was done as a precaution and would not have been necessary if the unit had not erroneously curtailed his AGR order. The request for retirement was never processed, no recommendations were made by anyone in the chain of command including TAG, and a board was convened by TAG. This retirement request is void. Because the unit did not follow through with his administrative discharge for cause, they had no right to deny him a 20-year regular retirement. He was in sanctuary and he would not have voluntarily applied for a reserve retirement in Mar 21 at 19.2 years of TAFMS if it were not for the erroneous AGR curtailment.

The applicant’s complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

After further review, NGB/A1PP amends their previous advisory and recommends partially granting the application correcting the record to show the applicant’s AGR order ended on 31 Oct 21, to match the applicant’s ETS.

The complete advisory opinion is at Exhibit C.

APPLICANT’S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 6 Jan 23 for comment (Exhibit G), and the applicant replied on 9 Jan 23. In his response, the applicant’s counsel contends the Board should credit the applicant with 11 months of active service in the AGR program to 31 Jan 22, rescind any annual training or drill status for the applicable timeframe, and approve his military retirement, effective 1 Feb 22. Due to these actions, the applicant should be awarded all back pay and allowances due.

The applicant’s complete response is at Exhibit H.

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. The Board concurs with the rationale and recommendation of NGB/A1PP and finds a preponderance of the evidence substantiates the applicant’s contentions in part. Specifically, the applicant’s counsel provided applicable authority excerpts and arguments that are sufficient to justify granting the applicant’s request to have his AGR order extended until 31 Oct 21, which is

the date of his expiration term of service. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice; therefore, the Board finds no basis to recommend granting the applicant's request to extend his AGR order until 31 Jan 22. The Board finds the applicant's TAG is the final authority for determining whether individuals will be separated from the AGR program and had the authority to separate the applicant. The applicant's record will be corrected to show he was removed from the AGR program on his expiration term of service. Accordingly, 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 APPLICANT be corrected to show that Order Number [Attorney-Client], dated 24 Feb 21, for the period of 15 Jun 16 through 28 Feb 21 be amended to read 15 Jun 16 through 31 Oct 21.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

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-2022-02266 in Executive Session on 18 May 23:

- [Work-Product], Panel Chair
- [Work-Product], Panel Member
- [Work-Product], Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 25 Aug 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, NGB/A1PP, w/ atchs, dated 29 Sep 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 13 Oct 22.
- Exhibit E: Applicant's response, w/ atchs, dated 20 Oct 22.
- Exhibit F: Advisory opinion, NGB/A1PP, dated 4 Jan 23.
- Exhibit G: Notification of advisory, SAF/MRBC to applicant, dated 6 Jan 23.
- Exhibit H: Applicant's response, dated 9 Jan 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.

7/27/2023

[Attorney-Client]

Board Operations Manager, AFBCMR
Signed by: [Attorney-Client]