

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02315

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her retired pay be adjusted at age 62 for qualifying public service under the Temporary Early Retirement Authority (TERA) program.

APPLICANT'S CONTENTIONS

She has served her country and her community for over 40 years.

In support of her request, she provided personal letters addressed to the Defense Finance and Accounting Service (DFAS) and Air Force Personnel Center (AFPC), her retirement order, a list of key dates, and an earnings statement from the county where she is employed.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force technical sergeant (E-6).

On 13 March 1994, the applicant indorsed a Relocation Processing for Separation/Retirement memorandum acknowledging that all personnel participating in the Voluntary Early Retirement Program must, by law, register in the PACS registry. The memorandum also included registration instructions.

On 30 June 1995, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, she was released from active duty for the purpose of retirement. Item 18, *Remarks*, reflects "*Member is retiring as provided by Section 4403 of the FY93 National Defense Authorization Act (PL 102-484) and may qualify for a recomputation of retired pay at age 62 pursuant to Section 4464 of the same law.*" She was credited with 16 years, 7 months, and 2 days of active service.

On 1 July 1995, according to Special Order XX-XXXX, dated 15 July 1994, the applicant retired.

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

AIR FORCE EVALUATION

AFPC/DP2SSR (Retirement Policy) recommends denying the application. Congress enacted the TERA program pursuant to the Fiscal Year 1993 National Defense Authorization Act for Fiscal Year (FY93 NDAA), which permitted selected military members to retire with 15, but less than 20 years of active military service. Section 4464 of FY93 NDAA allowed eligible members retired under TERA to perform public and community service (PACS) following retirement and receive credit for this service to be used to recompute military retired pay, and where applicable, the Survivor Benefit Plan base amount when the retired member attains or would have attained 62 years of age. PACS job vacancies included education, conservation, environmental protection, law enforcement, and public health care positions.

Program management was established and announced to the Services through the Assistant Secretary of Defense (ASD) Memorandum, *Active Duty Early Retirement Policy Guidance*, dated 12 March 1993, and the ASD Memorandum, *Implementing Procedures for Temporary Early Retirement Authority (TERA) Programs*, dated 22 April 1993. The Air Force also provided specific instructions to the field through a Military Personnel Flight Letter 93-024, *Voluntary Early Retirement Program*, dated 9 April 1993. The Department of Defense (DoD) also provided specific information on obtaining PACS credit through DoD Instruction 1340.19, *Certification of Public and Community Service Employment of Military Retirees*, dated 17 November 1993.

The NDAA required members retiring under TERA to register in advance of the projected retirement date on the PACS Registry maintained under Title 10 United States Code, Section 1143a. Members were required to turn in proof of PACS to the Defense Manpower Data Collection (DMDC) team no later than one year after they would have attained 20 years Total Active Federal Military Service (TAFMS) had they been continuously on active duty. This date is referred to as the individual's Enhanced Retirement Qualification Period (ERQP). The applicant retired 1 July 1995 with 16 years, 7 months, and 2 days of active service; therefore, any creditable service must have been completed prior to 29 November 1998 (the end of her ERQP). Based on reporting instructions established by the DMDC, the applicant was required to submit record of the creditable service within a year of that point (29 November 1999).

The "Relocation Processing for Separation/Retirement" document found in the applicant's record reflects, "All personnel participating in the voluntary Early Retirement program must, by law, register in the Public and Community Service (PACS) resume registry through the Transition Assistance Program (TAP) office." DMDC does not have any record of the applicant's registration. Had she properly registered within the allotted period and provided the required documentation, she would have been eligible to receive credit for time served under the PACS program. DMDC would have automatically notified DFAS of the required adjustment to retired pay. The law allows no provision to retroactively register for employment in PACS organizations.

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 7 November 2022 for comment (Exhibit D), and the applicant replied on 9 November 2022. In her response, the applicant contended she was not aware of the option for increased pay based on public service. It was not until she researched retirement from the county government that she looked more closely at her DD Form 214 for resources or opportunities. That is when she found the paragraph stating she could qualify for recalculation of retired pay at age 62 with her public service. However, her DD Form 214 does not contain information on how or when to apply. Had she known, she would have submitted all paperwork in a timely manner. Considering her history with the Air Force and her current position, the standard was and still is "no late submissions, no late suspenses." She served her country with total dedication to the mission, and for the past 25 years, she served her community with that same dedication. She believes she justly deserves to have her retired pay reflect the years after retirement, serving her country in a different manner.

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/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's response to the advisory opinion is duly noted; however, although she alleges she was not aware of program requirements, evidence indicates that she signed a retirement processing memorandum acknowledging she had to register for PACS. Based on the presumption of regularity in the conduct of governmental affairs, and without substantial evidence to the contrary, the Board must assume the applicant was properly briefed on the requirements of the program and as noted above, she did not provide proof of PACS to DMDC within the established timeframe. Therefore, 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-2022-02315 in Executive Session on 17 August 2023:

, 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 31 August 2022.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DP2SSR, w/atch, dated 20 October 2022.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 November 2022.
Exhibit E: Applicant's Response, dated 9 November 2022.

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