



**CUI//SP-MIL/SP-PRVCY**  
**UNITED STATES AIR FORCE**  
**BOARD FOR CORRECTION OF MILITARY RECORDS**

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

*Work-Product*

**DOCKET NUMBER:** BC-2022-02357

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

His military retirement pay be exempt from taxes.

**APPLICANT'S CONTENTIONS**

His retirement pay should be exempt from taxes due to the injuries he sustained while deployed to *Work-Product* on active duty. He is currently rated at 100 percent disabled by the Department of Veterans Affairs (DVA) due to his injuries.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a retired Air National Guard (ANG) lieutenant colonel (O-5).

The applicant has several DD Form 214s, *Certificate of Release or Discharge from Active Duty*, which reflect his various periods of active duty due to a mobilization in support of various operations to include Operations NOBLE EAGE, ENDURING FREEDOM, and IRAQI FREEDOM from 2002 through 2012.

Dated 8 Apr 13, Special Order *Work-Product* indicates the applicant was retired, effective 1 May 13, with 21 years, 11 months, and 13 days of active service.

On 30 Apr 13, NGB Form 22, *National Guard Bureau Report of Separation and Record of Service*, reflects the applicant was honorably discharged from the ANG after serving 27 years, 11 months, and 17 days of total service for pay. He was discharged, with a narrative reason for separation of "Sufficient Service for Retirement."

Dated 11 May 13, Special Order *Work-Product* indicates the applicant was relieved from assignment with the *Work-Product* ANG and retired, effective 1 May 13.

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

**AFBCMR Docket Number BC-2022-02357**  
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Controlled by: SAF/MRB CUI Categories: SP-MIL/SP-PRVCY Limited Dissemination Control: N/A POC: <a href="mailto:SAF.MRBC.Workflow@us.af.mil">SAF.MRBC.Workflow@us.af.mil</a>
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## **AIR FORCE EVALUATION**

The Defense Finance and Accounting Service (DFAS) recommends denying the applicant's request for tax exempt retirement pay. Generally, retired pay is taxable. Items that would reduce or eliminate the taxable pay are 1) disability retired pay based on a combat-related disability; 2) disability retired pay for a member retired, in military service or under binding commitment to become such a member on 24 Sep 75; 3) DVA disability compensation; or 4) Survivor Benefit Program (SBP) premiums. Any payment resulting from the review and reconciliation of concurrent receipt or DVA disability compensation are subject to existing tax law. Concurrent receipt programs are Combat-Related Special Compensation (CRSC) and Concurrent Retirement and Disability Pay (CRDP). CRSC and DVA disability compensation are not taxable, consequently no taxes are withheld, and no taxable income is reported. CRDP and military retired pay are taxed in the same manner the military retiree's existing retired pay is taxed. Taxes are withheld as required from CRDP and retired pay at the same rates existing retired pay is withheld. Taxable income is reported in the year in which the payment is made. Corrected tax statements based on the retroactive period of award are not required and DFAS Retired and Annuitant Pay does not provide them. DFAS encourages the retirees to provide documents proving retroactive awards for DVA Compensation to their tax preparer for proper assessment of payment(s) eligible for tax exclusion.

The applicant became entitled to CRDP effective 1 Jan 20. He is currently entitled to monthly CRDP in the amount of \$3,952.51 and this is taxable. The taxability of military retired pay would be the result of being retired as a disability and the injury being a direct result of combat, etc. This is not a determination made by DFAS but by the member's Branch of Service. The applicant was retired as a regular retirement and not subject to tax exclusion.

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 17 Apr 23 for comment (Exhibit D) but has received no response.

## **FINDINGS AND CONCLUSION**

1. The application was not 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 DFAS and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the applicant was retired for achieving 20 or more years of active service; therefore, his regular retirement pay is taxable. The Board finds no evidence to support a tax-exemption for his pay as the disability payment he receives from the DVA has no bearing on the tax exemption status of his

active duty retired pay nor does the Board find any evidence the Air Force determined any of his disabilities as combat-related. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

**RECOMMENDATION**

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2022-02357 in Executive Session on 21 Jun 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, w/atchs, dated 2 Sep 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, DFAS, w/atchs, dated 17 Apr 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Apr 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.

1/3/2024

*Work-Product*

Board Operations Manager, AFBCMR  
Signed by: *Work-Product*