

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02391

XXXXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Correct his official military record to reflect Reserve Retired status.

APPLICANT'S CONTENTIONS

He is requesting assistance to process his military retirement so he can receive a retired identification card and collect retirement benefits when he reaches age 60. He attempted to request his retirement through myPers but could not apply. He served on active duty from 1993-1997, and in the [State] Air National Guard from 1997-2022. He was involuntarily separated for a physical condition on 1 May 22.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former member Air National Guard chief master sergeant (E-9).

On 10 Mar 22, according to the applicant's Military Personnel Data System Service History, he was credited with 28 years satisfactory service following Retention/Retirement year 11 Mar 20 to 10 Mar 22.

According to [Unit] FSS/FSMP letter, dated 25 Jan 22, the applicant was notified of his medical disqualification for worldwide duty and recommended discharge from the Air National Guard.

On 22 Mar 22, according to *Statement of Selection (Non-Duty DES)*, dated 25 Jan 22, the applicant signed acknowledging identification of a condition that interferes with military service and waived his option to enter into the Disability Evaluation System (DES) solely for a fitness determination.

On 25 Apr 22, ARPC/DPTT sent the applicant the standard Notification of Eligibility for Retired Pay (20-year letter) informing him that he had 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.

On 1 May 22, according to Special Order XXXXX, dated 29 Jun 22, that applicant was honorably discharged from the [State] Air National Guard and as a member of the Reserve of the Air Force.

On 1 May 22, the applicant was furnished an honorable discharge, with Authority and Reason: AFI 36-3209, Paragraph 3.14., Physical Disqualification, SPD: JFT [Ineligible for worldwide deployment – medical disqualification], and credited with 29 years, 1 month, and 21 days total service for retired pay.

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 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

NGB/A1PP 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. On 22 Mar 22, the applicant initialed his *Statement of Selection* electing not to enter the non-duty DES. Additionally, he initialed his understanding that, if eligible to retire (20 years satisfactory service), he is afforded the opportunity to apply for retirement in lieu of discharge. The applicant should have applied for retirement prior to 1 May 22. The [State] Air National Guard submitted a discharge application to the Air Reserve Personnel Center on 13 May 22, and the discharge was processed on 29 Jun 22, during which time the applicant did not apply for retirement.

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 Nov 22, for comment (Exhibit D) but has received no response.

The Board sent a corrected copy of the advisory notification letter, with advisory opinion, to the applicant on 8 Mar 23 for comment (Exhibit E) but has received no response.

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. While the Board notes the recommendation of NGB/A1PP against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. The Board determined 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 prior to his discharge. 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.
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 he was not discharged from the Air National Guard on 1 May 22, 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 10 U.S.C. § 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 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-2022-02391 in Executive Session on 4 May 22:

, Chair, AFBCMR
, 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 8 Sep 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, NGB/A1PP, w/atchs, dated 5 Oct 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Nov 22.
Exhibit E: Notification of Corrected Advisory, SAF/MRBC to Applicant, dated 8 Mar 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.

X

Board Operations Manager, AFBCMR