

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02583

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Recomputation of retirement pay and restitution of decreased pension for calendar years 2015-2022.

APPLICANT'S CONTENTIONS

This relief was provided for under the Temporary Early Retirement Authority (TERA) by Sections 4403 and 4464 of the Fiscal Year [1993] National Defense Authorization Act. He retired from the Air Force on 1 Nov 94 under TERA. He began his employment with a school district in Jan 95. In 1996, he received a packet from the Manpower Data Center at Fort Ord on the TERA program. In 1997, he submitted the DD Form 2676, *Validation of Public or Community Service Employment*, to Fort Ord, and it was returned marked "Undeliverable." His attempts to locate the TERA administrators were unsuccessful. In Jul 19, he sent a petition to his congressman. In Aug 19, he received an email from his congressman stating he directed an inquiry with the Department of the Air Force (DAF). He received a letter from his congressman, dated 21 Jul 21, stating the DAF contacted the congressman's office and stated the applicant should file a correction to military records.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force captain (O-3).

On 7 Jul 94, according to AF Form 1160, *Military Retirement Actions*, Section IV, *Remarks*, the applicant acknowledged, "I understand that I must register on the Public and Community registry at the FSC and that my retirement cannot be consummated until my registration had been confirmed."

On 31 Oct 94, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was furnished an honorable discharge, with Narrative Reason for Separation: Temporary Early Retirement Authority, and credited with 16 years, 1 month, and 13 days active service. Block 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."

On 31 Oct 94, according to Special Orders No. XXXX, dated 13 Sep 94, the applicant was relieved from active duty, organization, and station of assignment, and retired effective 1 Nov 94.

On 20 Jan 95 – 13 Jun 97, according to DD Form 2676, dated 8 Sep 97, provided by the applicant, he was employed at a high school in Pennsylvania.

In Jul 19, according to documentation provided by the applicant, he submitted a *Petition for Redress of Grievance for Recomputation of Retired Pay at Age 62* to his congressman listing a chronology of events that detailed his attempts to comply with TERA requirements.

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

AIR FORCE EVALUATION

AFPC/DPMSR (Military Retirements) 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. In the National Defense Authorization Act for Fiscal Year 1993 (FY93 NDAA), Public Law (PL) 102-484, 23 Oct 92, Congress enacted the TERA, which permitted selected military members to retire early. Section 534 of that law gave the Secretary of Defense authority to allow the Service Secretaries to permit early retirement for selected military members having more than 15 but less than 20 years of active service. PL 107-314, (FY03 NDAA), Section 554, extended TERA to 1 Sep 02 at which time that TERA authority expired.

Section 4464 of the 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 Mar 93, and the ASD Memorandum, *Implementing Procedures for Temporary Early Retirement Authority (TERA) Programs*, dated 22 Apr 93. The Air Force also provided specific instructions to the field through a Military Personnel Flight Letter 93-024, *Voluntary Early Retirement Program*, dated 9 Apr 93. 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 Nov 93.

The applicant retired effective 1 Nov 94 under the TERA authority, with 16 years, 1 month, and 13 days of total active federal military service (TAFMS). The NDAA required members retiring under TERA to register in advance of the projected retirement date on the Public and Community Service Registry maintained under Title 10, United States Code, Section 1143a (10 U.S.C. § 1143a). The law allows no provision to retroactively register for employment in public or community service organizations. Applicants were required to turn in proof of public or community service to the Defense Manpower Data Collection (DMDC) team no later than one year after they would have attained 20 years 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 Nov 94 with 16 years, 1 month, and 13 days of active service; therefore, any creditable service must have been completed prior to 18 Sep 98 (the end of his ERQP). Based on the reporting instructions established by the DMDC, the applicant was required to submit record of the creditable service within a year of that point (or 18 Sep 99).

The DMDC does not have any record that the applicant applied for PACS. Had the applicant properly registered within the allotted time period and provided the required documentation, he would have been eligible to receive credit for the time served under the PACS program.

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 May 23 for comment (Exhibit D), and the applicant replied on 29 May 23. In his response, the applicant contended the advisory recommendation appears to be based on the fact, “...the DMDC does not have any record that the applicant applied for PACS” within the time period that expired on 18 Sep 99. It is clearly shown by the copy of the DD Form 2676 and the petition he sent to his congressman that he attempted to enroll under TERA with the DMDC in Sep 97. The details of that attempt can be found in the petition sent to his congressman. Based on this information, he calls upon the Air Force Board for Correction of Military Records to approve his application for correction of his military record.

The applicant’s complete response is at Exhibit E.

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, to include the applicant’s rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DPMSSR and finds a preponderance of the evidence does not substantiate the applicant’s contentions. The applicant acknowledged by signature on his AF Form 1160 the requirement to register on the Public and Community registry prior to his retirement. There is no record he complied with this requirement, and the law does not allow for retroactive registration. Additionally, while the applicant provided a copy of the completed DD Form 2676, there is no evidence of his unsuccessful submission of this document or any other attempts at communication with the DMDC. 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. 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-2022-02583 in Executive Session on 16 Nov 23 and 1 Dec 23:

, 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 10 Sep 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSR, dated 25 Apr 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 17 May 23.
- Exhibit E: Applicant's Response, w/atchs, dated 29 May 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