

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02730

XXXXXXXXXXXXXX

COUNSEL: XXXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Fiscal Year 2021 (FY21) Aviation Bonus (AvB) Agreement for the period of 24 Aug 21 to 23 Aug 25 be approved.

APPLICANT'S CONTENTIONS

The correction should be made as he completed the FY21 AvB Agreement and it was signed by the AvB Base Coordinator and his wing commander, within the prescribed window. Due to multiple personnel changes within the operations group staff, repeated Case Management System (CMS) messages went unanswered and the requested supporting documentation, to include his Active Guard Reserve and activation orders, were not provided to corroborate his request for the FY21 AvB two-year option. Additionally, NGB/A1PF stated "He would have been eligible for the bonus based on those previous orders." As he was not privy to the additional requests for supporting documents, he had no ability to rectify the situation. He only became aware of the issue with his AvB, as his anniversary date came without payment.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard major (O-4).

On 1 Sep 21, according to Order Number XXXXXX provided by the applicant, he was issued Full Time National Guard Duty – Other Than Training orders in accordance with 32 U.S.C. §502 (f) (1) (b) for the period of 24 Aug 21 through 2 Sep 21 for the purpose: Aerospace Control Alert (ACA).

On 12 Oct 21, according to FY21 AvB Agreement (Statement of Understanding) provided by the applicant, he signed and requested a Tier 1, Option 1, AvB contract for \$35,000 a year for one to two years. The effective start and end date of the agreement is from 24 Aug 21 through 23 Aug 25.

On 14 Dec 21, according to Order Number XXXXXX provided by the applicant, he was issued Full Time National Guard Duty – Active Guard Reserve – Occasional Tour orders in accordance with 32 U.S.C. §502 (f) (1) and 32 U.S.C. §328 for the period of 3 Sep 21 through 25 Dec 21.

On 26 Dec 21, according to CMS printout provided by the applicant, the base AvB Coordinator was informed by NGB/A1PF that the applicant "cannot apply for Tier 1 or 2 without Occasional Tour orders that cover the full term of the agreement."

On 26 Apr 22, according to Order Number XXXXXX provided by the applicant, he was issued Active Duty – Partial Mobilization orders in accordance with 10 U.S.C. §12302 for the period 26 Dec 21 through 28 Apr 22 in support of Contingency Operation INHERENT RESOLVE.

On 27 Apr 22, according to Order Number XXXXXX provided by the applicant, he was issued Active Guard Reserve – Initial Tour orders in accordance with 32 U.S.C. §502 (f) (1) and 32 U.S.C. §328 for the period of 29 Apr 22 through 31 May 24.

On 7 Oct 22, according to a CMS thread between the applicant's AvB Coordinator and NGB/A1PF, provided by the applicant, the AvB Coordinator was informed "we cannot approve an FY21 bonus based on this information. Seems he was not eligible for the bonus he requested due to the length of orders and the Tier he requested."

On 21 Dec 22, a pull from the Military Personnel Database System provided the applicant's Point Credit Summary report, which confirms he has been on continuous active-duty status for his Retention and Retirement years 18 May 21 through present.

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

APPLICABLE AUTHORITY/GUIDANCE

Air National Guard (ANG) Fiscal Year (FY) 2021 Aviation Bonus (AvB) Implementation Policy:

2.1.6. For Tiers 1, 2, or 3 AvB, members must have AGR or Statutory Tour Orders. Members on temporary AGR order ("Occasional Tour") are eligible to sign up for Tiers 1 or 2 AvB only if they possess orders that cover the entire duration of their agreement and at least a full calendar year.

2.1.7. For Tier 3 AvB, members must serve at least one (1) year of full-time orders without a break-in-service in support of ACA/Alert Support, RPA, RC-26, Counterdrug (CD), Formal Training Unit (FTU), F-35 conversion missions or National Guard Bureau (NGB)/Major Command (MAJCOM)/Numbered Air Force (NAF) staff positions.

5.2. Agreement Payment Options. Members may choose their agreement option within their eligibility criteria.

5.2.1. Tier 1 - RPA (11U/12U/18X), Pilot (11X) – AGR/Statutory Tour only

5.2.1.1. Option 1 - \$35,000 for 2 years to 4 years

5.2.3. Tier 3 – All rated officers – DSG

5.2.3.1. \$15,000 for 1 to 2 years

5.2.3.2.2. Members may transition to other types of orders, such as deployment, training, school, and other assignments, and be able to remain on their AvB as long as a preponderance of their time is in support of the qualifying Tier 3 mission.

AIR FORCE EVALUATION

NGB/A1PF recommends partially granting the application. The applicant digitally signed and submitted an FY21 AvB Tier 1, Option 1, Agreement for the period 29 Apr 22 through 23 Aug 25 at the annual rate of \$35,000. NGB/A1PF received the package via CMS and determined the package was incomplete and requested further information and documentation in order to complete the application process, which the applicant's AvB Coordinator never provided. After reviewing the applicant's Aerospace Alert Control orders (Order Number XXXXX), it was determined under the ANG FY21 AvB Implementation Policy the applicant qualified under Tier 3, not Tier 1, Option 1 for the FY 21 AvB Agreement.

Beginning 29 Apr 22, the applicant has been on Active Guard Reserve orders, which are through 30 May 24. In accordance with the NGB FY21 AvB Implementation Policy, if a Tier 3 member is hired into an AGR or Statutory Tour, the member may elect to terminate their Tier 3 agreement without penalty nor receive any prorated payment for the time served and sign a new Tier 1 agreement not earlier than the start day of the AGR or Stat Tour order.

Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice, and the applicant should be granted permission to enter into and FY21 AvB Agreement for the period of one (1) year from 24 Aug 21 through 23 Aug 22 at the amount of \$15,000 per annum. At the completion of the Tier 3 agreement, the applicant should be allowed to enter a Tier 1 agreement, providing all eligibility requirements are met.

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 12 Dec 22, for comment (Exhibit D), 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. The Board concurs with the rationale and recommendation of NGB/A1PF and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided Aerospace Control Orders, which is sufficient to justify granting the applicant's request to enter an FY21 AvB Tier 3 agreement at the rate of \$15,000 per annum. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to recommend granting that portion of the applicant's request. Specifically, the applicant has failed to provide Air Guard Reserve or Statutory Tour orders that cover the entire duration of his requested agreement to qualify under a Tier 1 agreement. Notwithstanding, at the end of the Tier 3 agreement, the applicant should be allowed to enter a Tier 1 agreement, providing all the eligibility requirements are met. Therefore, 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:

- a. An FY21 Tier 3 AvB agreement for the period of one (1) year from 24 Aug 21 through 23 Aug 22 at the rate of \$15,000 per year, was approved.
- b. At the completion of the Tier 3 AvB agreement, he be allowed to enter into a Tier 1 AvB agreement with a start date of 24 Aug 22, provided he meets all eligibility requirements to receive the bonus.

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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-02730 in Executive Session on 2 Feb 23:

, 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 13 Oct 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, NGB/A1PF, dated 2 Dec 22.
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 12 Dec 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

Board Operations Manager, AFBCMR