

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02963

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Correct his official military record to reflect Reserve Retired status.

APPLICANT'S CONTENTIONS

The Total Force Service Center directed him to the Air Force Board for Correction of Military Records to change his records so he can submit an application for retirement. His request to transfer to the Retired Reserve was disapproved as his requested retirement date was after his expiration of term of service and he was discharged. He was discharged by a Physical Evaluation Board, though he does not recall the date as it was years after he stopped attending drill. He still does not know the date he was discharged. If he were to guess, 11 Apr 20 was the last date on his old Common Access Card. When he visits myPers, it states his records are unavailable for viewing.

He served honorably for over 20 years and would like to retire. He followed directions as best as he could figure out from the websites and asks to have his records changed and a notice sent to him and the Air Force Reserve so he can finish the requirements to retire.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former member Air Force Reserve master sergeant (E-7).

On 10 Jul 18, according to ARPC/DPTT, the applicant requested transfer to the Retired Reserve List, but the application was cancelled.

On 14 Jul 18, according to ARPC/DPTT, the applicant was discharged from the Air Force Reserve.

On 7 Jan 22, after his discharge, ARPC/DPTT sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him that he has 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.

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 (AFI) 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

ARPC/DPTT recommends granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice because the applicant did apply to be transferred to the Retired Reserve prior to being discharged. A review of the applicant's Military Personnel Record shows the applicant received the Notification of Eligibility for Reserve Retired Pay at Age 60 letter. He first requested a transfer to the Retired Reserve List (RRL) on 10 Jul 18. The application was cancelled and never routed through his chain of command. He then submitted a second request for transfer to the RRL on 23 Nov 21, with an effective date of the same day. This request was disapproved due to the retirement effective date being after the applicant's expiration of term of service (ETS) on 14 Jul 18. On 18 Oct 18, the Military Personnel Data System (MilPDS) was updated to reflect a separation on the applicant's ETS; however, there is no documentation the applicant was ever notified of the discharge being processed, there is no discharge order in the applicant's record, and there was insufficient documentation filed to record the applicant's discharge actions.

Additionally, the applicant contended he was discharged by a Physical Evaluation Board (PEB), and upon review, the applicant does have an Assignment Availability Code (AAC) 37 [MEB/PEB] on his profile. In accordance with AFI 36-3203, *Service Retirements*, Table 2.1., *Conditions Prohibiting Initial Submission or Suspending Processing of Previously Submitted Retirement Applications*, Rule 5: "If member is pending evaluation by a Medical Evaluation Board (MEB) or Physical Evaluation Board (PEB), then member is ineligible to apply for voluntary retirement until the MEB/PEB process is completed and a determination of service fitness is made. Members who are found fit for continued service may then apply for retirement (see notes 5 and 6)." If the applicant had applied for transfer to the RRL, it would not be processed due to the AAC 37 reflected on his record.

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

FINDINGS AND CONCLUSION

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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 ARPC/DPTT and finds a preponderance of the evidence substantiates the applicant's contentions. The applicant attempted to transfer to the Retired Reserve List, but his application was cancelled. There is no evidence the applicant was notified of his subsequent discharge or counseled on the effects of discharge vice retirement on his future benefits. 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 he was not discharged from the Air Force Reserve on 14 Jul 18, 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-2022-02963 in Executive Session on 4 May 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, dated 7 Nov 22.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 23 Nov 22.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Nov 22.

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