

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-03199

XXXXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

Correct his official military record to change his Personnel Accounting Symbol Code to reflect Reserve Retired status.

### APPLICANT'S CONTENTIONS

He was eligible for retirement but was listed as separated due to his not knowing how to apply for retirement. He requests retirement approval and his application processed for pay.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former member Air National Guard staff sergeant (E-5).

On 30 Dec 05, according to Special Order XXXX, dated 4 Dec 05, the applicant was honorably discharged from the [State] Air National Guard and as a Reserve of the Air Force.

On 30 Dec 05, the applicant was furnished an honorable discharge, with Authority and Reason: AFI 36-3209, T3-1, R7 Resignation for Own Convenience, and SPD: KND [Miscellaneous Reasons], and credited with 20 years, 15 days total service for pay.

On 7 Nov 06, 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.

On 7 Feb 23, according to Reserve Order Number XXXX, dated 20 Jan 23, the applicant was authorized retired pay and placed on the USAF Retired List.

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**

ARPC/DPTT 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 because the applicant did not apply to be transferred to the Retired Reserve prior to being discharged.

His military personnel record has been reviewed by the Headquarters, Air Reserve Personnel Center Retirement Eligibility Section and shows he received the Notification of Eligibility for Reserve Retired Pay at Age 60 letter. He was discharged from the Air Force Reserve (sic) on 30 Dec 05.

In accordance with AFI 36-3203, *Service Retirements*, paragraph 8.6., reserve component members use the AF IMT 131, *Application for Transfer to the Retired Reserve*, to apply to transfer to the Retired Reserve. The applicant applied for retired pay at age 60, which has been completed and documentation forwarded to the Defense Finance and Accounting Service Cleveland.

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 9 Mar 23 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. While the Board notes the recommendation of ARPC/DPTT against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant's contentions. The Board finds that 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. 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.

## **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 National Guard on 30 December 2005, 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 Title 10, United States Code, Section 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2022-03199 in Executive Session on 31 Aug 23:

, Panel Chair  
, 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 Dec 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 24 Feb 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Mar 23.

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

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Associate Director, AFBCMR