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## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-03223-2

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COUNSEL: Work-Product

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

The Board reconsider her request she be eligible to retire upon reaching age 62, rather than being separated.

### RESUME OF THE CASE

The applicant is a currently serving Air Force colonel (O-6).

On 13 Jul 12, the applicant signed AFRS IMT 1430, *Statement of Understanding, Applicant for Extended Active Duty – USAF Health Professions*, and initialed Section X, *Retirement Ineligibility for all Healthcare Providers (MSC, DC and NC Only)*, indicating she understood under current laws it was not possible for her to complete sufficient active service to qualify for an active duty retirement.

On 27 Aug 12, the applicant entered active duty in the grade of lieutenant colonel (O-5).

On 26 Dec 19, OUSD P&R directed the services to immediately stop processing all pending retirements under 10 U.S.C. § 1251 for officers with less than 20 years of service. The Fiscal Year 2021 National Defense Authorization Act (FY21 NDAA) amended 10 U.S.C. § 1251 to codify officers at age 62 must have 20 years of creditable service to receive a retirement. The Secretary of the Military Department could extend a mandatory separation date (MSD) to allow officers to serve through age 68 or longer.

On 11 May 22, the Secretary of the Air Force Personnel Council (SAFPC) approved an age waiver and extended the applicant's MSD to 28 Feb 26.

On 25 Aug 23 and 18 Jan 24, the Board considered and denied the applicant's request she be granted a retirement upon reaching age 62 with less than 20 years of service. The Board agreed with the rationale and recommendation of AF/A1LO. The Board acknowledged the applicant was informed by AFPC and AFRS she would be eligible for retirement with less than 20 years of service prior to her entry on active duty. However, on 13 Jul 12, prior to her commissioning, she signed AFRS IMT 1430 indicating she understood she would not be able to complete sufficient service to qualify for retirement. The Board also acknowledged it was without authority to grant the applicant a service retirement at age 62 with less than 20 years of service contrary to 10 U.S.C. § 1251. The Board further found the applicant was not similarly situated to the applicant in BC 2020-02644. In that case, the applicant's retirement on 1 Apr 17 with less than 20 years of service

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under 10 U.S.C. § 1251 was prior to OUSD P&R's guidance to the Military Departments to stop processing retirements for officers with less than 20 years of service.

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit G.

On 27 May 24, counsel, on behalf of the applicant, requested reconsideration of her request she be granted a military retirement at age 62. In support of her reconsideration request, the applicant submitted the following new evidence: (1) Affidavit from the Health Professions Recruiter; (2) Army BCMR (ARBCMR) cases pertaining to death benefits and points to qualify for Reserve retirement; (3) Applicant's Health Condition; and (4) Personnel Services Delivery (PSD) Guide, Service Retirements, Volume 1, dated 15 Nov 18. Counsel again cites AFBCMR BC-2020-02644 as precedent to grant relief.

AFPC confirmed her entitlement to a 2.5 percent year of service retirement and medical benefits with less than 20 years of service. She would not have entered the Air Force without the promise of retirement benefits received from the AFPC Chief of Retirements and Separations Branch.

The Board in her prior case acknowledged the applicant was informed by AFPC and AFRS she would be eligible for retirement with less than 20 years of service; however, denied her request indicating it was without authority to grant the applicant a service retirement upon age 62. Per 10 U.S.C. § 1552, the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. Prior to 1 Jan 21, 10 U.S.C. § 1251 stated a regular commissioned officer shall be retired on the first day of the month in which the officer reaches age 62.

The legal doctrine of promissory estoppel involves a promise which the promiser should reasonably expect to induce an action or forbearance on the part of the promisee or a third person. The promise is binding if an injustice can be avoided only by enforcement of the promise. The BCMRs have applied the doctrine of promissory estoppel repeatedly.

Counsel provides a signed affidavit from the AFRS Recruiter dated 8 Mar 24. It states she was the applicant's Health Professions Recruiter. The applicant's situation was unique and her qualifications were highly sought by the Air Force. She received an Air Force Commendation Medal for recruiting the applicant because her specialty was on their "General's Most Wanted List." She was able to recruit the applicant with the offer of a prorated retirement and associated benefits even though she would not reach 20 years of service. She executed the AFRS IMT 1430 but they both understood and received confirmation from the Pentagon and AFPC, the applicant would be eligible for retirement.

Personnel Services Delivery (PSD) Guide, Service Retirements, Volume 1, dated 15 Nov 18, paragraph 1(a) states, Officers who reach the mandatory age for retirement outlined in AFI 36-3203, *Service Retirements*, are retired under 10 U.S.C. § 1251 due to age rather than length of service. Officers retired for age are not required to have the minimum total active federal military service (TAFMS) or total active federal commission service (TAFCS) required for retirement under the provisions of law. If retired under this provision of law, the officer retires the first day of the month after reaching age 62 unless approved for MSD extension to remain on active duty.

At the time she joined the Air Force, she could not have predicted her husband's cancer. She has also been diagnosed with an autoimmune disorder. If the Air Force fails to live up to its promises, she will be rewarded for 13.6 years of faithful service with the specter of financial ruin. Compounding the issue is that she did not opt in to the Blended Retirement System (BRS) as she believed she was eligible for a prorated regular retirement.

The military personnel data system (MilPDS) reflects the applicant is currently on a temporary medical profile through 16 Feb 25, she turned age 62 in 2024 and her MSD is 28 Feb 26.

The applicant's complete submission is at Exhibit H.

### **APPLICABLE AUTHORITY/GUIDANCE**

On 26 Dec 19, the Office of the Under Secretary of Defense for Personnel and Readiness (OUSDP&R) directed all services to immediately stop processing pending retirement actions under 10 U.S.C. § 1251 for officers with less than 20 years of service.

Per 10 U.S.C. § 1251(c)(1)(A), If the officer has at least six but fewer than 20 years of creditable service, the officer shall be separated with separation pay.

AFI 36-3203, *Service Retirements*, Unless granted a waiver under some provision of law, to be eligible for a non-disability active duty retirement, officers must complete 20 years of TAFMSD and 10 years of TFCS.

10 U.S.C. § 1251, permits the Secretary of the Military Department to defer regular medical officers, dental officers and nurses from retirement until age 68.

Blended Retirement System (BRS) Guidance. The BRS is a combination of a defined benefit plan, similar to predecessor plans that pay monthly retired pay, plus defined contributions and service matching. The member is automatically enrolled in the Thrift Savings Plan (TSP) and receives automatic and matching contributions from the government. The automatic contribution is one percent of the base pay, and the government matches contributions up to five percent. Once an airman completes 20 years of service, the member receives monthly retired pay plus the balance of their thrift savings plan (TSP).

### **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 remains unconvinced the evidence presented demonstrates an error or injustice. The Board does not dispute that prior to the OUSDP&R memorandum dated 26 Dec 19 and the FY21 NDAA, the Air Force allowed certain officers to retire with a regular retirement and entitlement to retired pay upon reaching age 62 with less than 20 years of creditable active duty service. The Board also recognizes the applicant was told and she believed she would be entitled to retired pay upon reaching age 62. While the Board empathizes with the applicant, OUSDP&R in Dec 19 directed the Military Departments to stop processing regular retirements for officers with less than 20 years of service and the FY21 NDAA codified entitlement to a regular retirement required 20 years of creditable service. The Board also notes the applicant signed AFRS IMT 1430 on 13 Jul 12, prior to her commission, she understood she would not be able to complete sufficient service to qualify for retirement. Further, the applicant can serve beyond age 62 with an MSD extension and the Board notes the applicant is currently on an MSD extension until 28 Feb 26. Moreover, as pointed out by AF/AILO in her prior case, the applicant would be entitled to separation pay should she separate prior to completing her 20 years of service. The Board agrees with counsel, the applicant could not have known her and her husband would face health challenges during her service and notes the applicant is currently on a temporary medical profile. However, in this respect, the applicant is not unique or dissimilar to any service member whose military career may be changed due to personal or military related

circumstances or changes in law. Counsel also cites AFBCMR and ARBCMR cases as precedent to grant relief; however, the applicant is not similarly situated. As pointed out in the previous case, the applicant in BC-2020-02644 retired on 1 Apr 17 with less than 20 years of service, prior to the 26 Dec 19 OUSD P&R memorandum directing the services to halt the practice of allowing military members to retire with less than 20 years of service due to their age. The cited ARBCMR cases pertain to the award of pay and points for Reserve service. The applicant in this case is in the Regular Air Force and does not perform duties for the award of pay and points. While the applicant believes she was singled out and made a promise the Air Force failed to keep, the Board notes 10 U.S.C. § 1251 clearly states officers at age 62 must have 20 years of creditable service to receive a retirement and may serve beyond age 62, like the applicant is currently doing, with an MSD waiver. Therefore, the Board recommends against correcting the applicant's records.

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 Board recommends informing the applicant the evidence did not demonstrate material error or injustice, 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-2022-03223-2 in Executive Session on 19 Nov 24:

- Work-Product Panel Chair
- Work-Product Panel Member
- Work-Product Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit G: Record of Proceedings, w/ Exhibits A-H, dated 23 Jan 24.
- Exhibit H: Application, DD Form 149, w/atchs, dated 27 May 24.
- Exhibit I: Documentary evidence, including relevant excerpts from official records.

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.

1/14/2025

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Board Operations Manager, AFBCMR

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