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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02770

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His Fiscal Year 2021 (FY21) Aviation Bonus (AvB) Agreement for the period of 2 Jun 21 through 1 Dec 24 be approved.

APPLICANT'S CONTENTIONS

He complied with the requirements and submitted his signed AvB Agreement to his AvB coordinator on 5 May 21. However, his Agreement was not properly staffed and did not reach the Air National Guard Readiness Center Commander (ANGRC/CC) for final endorsement until 11 Jul 22.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air National Guard major (O-4) serving in Air Force Specialty Code 12X, Combat Systems Officer (CSO).

On 31 May 17, according to a modification to Order Number *Work-Product* dated 17 Jan 23, the applicant was initially placed on Active Guard Reserve (AGR)/Statutory Tour orders from 2 Jun 17 through 31 Dec 24; however, on 17 Jan 23 the orders were modified and curtailed the end date to reflect 28 Feb 23.

On 19 Mar 21, according to the FY 21 ANG AvB Implementation Program Policy, an AvB bonus for officers on AGR/Statutory Tour was authorized. Specifically, for the applicant's AFSC 12X, he was eligible to select a Tier 2, Option 1 bonus in the amount of \$25,000 for two years to four years or an Option 2 bonus in the amount of \$15,000 for one year up to one year and 11 months. It further states that a member who is no longer on an AGR/Statutory Tour order will be subject to a reduced annual rate of \$15,000 and will remain at that reduced rate for the remaining length of the agreement.

On 5 May 21, according to FY21 AvB Agreement (Statement of Understanding) provided by the applicant, he signed and requested a Tier 2, Option 1 AvB contract for \$25,000 a year for two to four years. The effective start and end date of the agreement is from 2 Jun 21 to 1 Dec 24.

On 27 Jun 22, according to a letter provided by the applicant from the NGB Aviation Bonus Coordinator, the applicant submitted an AvB program agreement to NGB/HR in accordance with the FY21 Implementation Policy; however, due to an administrative oversight, and through no fault of the applicant, the agreement was not submitted to the ANGRC/CC for indorsement by the 31 Dec 21 due date.

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On 1 Mar 23, according to Order Number **Work-Product**, dated 15 Mar 23, the applicant was placed on Active Duty for Operational Support (ADOS) orders from 1 Mar 23 through 30 Sep 23.

On 1 Oct 23, according to a modification to Order Number **Work-Product**, dated 27 Aug 24, the applicant was placed on an ADOS order from 1 Oct 23 through 30 Sep 25.

On 15 Aug 23, the AFBCMR approved the applicant's request and authorized that his record be corrected to show his Fiscal Year 2021 Tier 2 Aviation Bonus (AvB) Agreement for the period of 2 Jun 21 through 1 Dec 24, at the rate of \$25,000 per year, was approved. The decision to approve at that time was solely due to the delay in processing the application.

On 21 Feb 24, the Defense Finance and Accounting Service (DFAS) Office of General Counsel provided the DFAS Air Force Policies and Procedures Operating Location-Indianapolis a legal opinion on whether the payments for the period of 2 Jun 21 through 1 Dec 24 should be authorized. As such, DFAS OGC stated that statute and DoD Instruction require an AvB agreement to specify the amount of the bonus and the type or conditions of the service, and that upon acceptance of the agreement, the total amount of the bonus to be paid under the agreement be fixed. They further explain that when the applicant signed the FY21 AvB agreement in May 21, he was on AGR orders for a Statutory Tour under 10 U.S.C. § 12301(d) and 12310 for the period 2 Jun 17, through 31 Dec 24. However, by order dated 17 Jan 23, the end date of the orders were amended to 28 Feb 23. The applicant was subsequently issued orders on 15 Mar 23 and 28 Sep 23 for Active Duty for Operation Support (ADOS) under 10 U.S.C. § 12301(d), for the period of 1 Mar 23 through 30 Sep 23 and the period of 1 Oct 23 through 30 Sep 24, respectively. In this regard, because the applicant's AGR /Statutory Tour orders were amended and the end date was adjusted to 28 Feb 23, it was DFAS's assessment that the applicant can only be paid one \$25,000 annual installment based upon the agreement. The installment was for his service from 2 Jun 21 through 2 Jun 22, because as of the next anniversary date, 2 Jun 23, the applicant had not completed another year of service on an AGR/Statutory Tour, therefore under 37 U.S.C. § 373(a), DoDI 7730.67, para. 3.5.d(2), and the terms of the agreement, he cannot be paid a \$25,000 annual installment for the period 2 Jun 22 through 2 Jun 23 (i.e. the agreement did not specify monthly prorated payments to take him to the end of the curtailed AGR orders on 28 Feb 23). Furthermore, the "reduced rate" provision of the FY21 Policy (para. 5.2.2.4.) does not provide a legal basis for payment of a lesser installment amount for periods of time after the applicant's AGR/Statutory Tour ended on 28 Feb 23 (i.e. the amount of the bonus to be paid under the agreement shall be fixed). As the agreement is required by law to specify the amount of the bonus and the type or conditions of service, DFAS OGC found no legal basis for paying the applicant an AvB for a different amount for a different type of service than that included in the agreement signed by the member and accepted by the Air Force.

On 22 Jul 24, the Air Force Board for Correction of Military Records issued a Corrected Directive authorizing the record to show that the applicant's FY21 Tier 2 AvB Agreement for the period of 2 Jun 21 through 1 Dec 24 be approved and upon completion of the required obligated service he be paid the following:

- a) 1st payment in the amount of \$25,000 for service with the Active Component during the period 2 June 2021 to 1 June 2022.
- b) 2nd payment in the amount of \$15,000 for service with the Reserve Component during the period 2 Jun 2022 to 1 June 2023.

c) 3rd payment in the amount of \$15,000 for service with the Reserve Component during the period 2 Jun 2023 to 1 June 2024.

d) 4th payment in the amount of \$7,500 for service with the Reserve Component during the period 2 Jun 2024 to 1 December 2024.

On 21 Oct 24, the DFAS OGC provided a memorandum for the AFBCMR Executive Director and explained that the Corrected Directive's listing of other payment amounts for different periods of time did not change their assessment. The Corrected Directive does not make any specified changes to the FY21 AvB agreement itself that would result in the applicant's entitlement to further payments under applicable law, regulations, and policies. Rather, it merely directs payments of specific amounts of money, which is not a record correction and not within the Board's statutory authority. Thus, there is no amount due in addition to what DFAS previously determined was payable to the applicant based on the correction granted under the Original Directive (which caused the FY21 AvB agreement to be timely approved by NGB), or the payment and service terms contained in the FY21 AvB agreement.

According to the FY 23 ANG AvB Implementation Program Policy, service members in AFSC 12X who were on any fulltime qualifying orders were eligible to select a Tier 3 bonus in the amount of \$30,000 for one year.

On 20 Jan 25, 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 28 May 17 through 27 May 24.

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

AIR FORCE EVALUATION

NGB/A1P, recommends granting the application. Based on documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. The applicant is eligible for an AvB for the period on 2 Jun 21 through 1 Dec 24 at the annual rate of \$25,000 per year. The applicant digitally signed the FY 21 Tier 2 agreement on 5 May 21, however the AvB coordinator failed to forward the request to NGB/A1PF until after the FY21 AvB Policy effective end date and the Air National Guard Readiness Center commander was unable to review and sign until 6 Oct 22. Due to coordinator oversight and administrative error, the applicant's package was not submitted in a timely manner.

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 6 Jan 23 for comment (Exhibit D), but has received no response.

ADDITIONAL AIR FORCE EVALUATION

NGB/A1P, recommends granting the application, but further explains the error and injustice that occurred and adjusts their recommendation on how to correct the record. They reiterate that the applicant signed a FY21 AvB agreement on 5 May 21 for a period of three years and six months

at an annual rate of \$25,000; however the ANG Readiness Center commander did not sign until 11 Jul 22 and the agreement was submitted to NGB/A1PF via the Case Management System after the FY21 AvB Policy effective date. Furthermore the applicant later changed their duty status on 1 Mar 23, which would have terminated his FY21 agreement, but would have allowed him to enter a FY23 Tier 3 agreement on 6 Jun 23. As such, due to coordinator oversight and administrative error, the applicant was not submitted in a timely manner, nor was the applicant able to enter an FY23 agreement.

Based on the documentation provided by the applicant an analysis of the facts, there is evidence of an error or injustice. To correct the record, NGB/A1P recommends a Tier 2 agreement be initiated for the period of 2 Jun 21 through 28 Feb 23 in the amount of \$25,000 annually (prorated by month and he be granted a FY23 agreement for 6 Jun 23 through 5 Jun 24 at the annual rate of \$30,000.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 22 May 25 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/A1P and finds a preponderance of the evidence substantiates the applicant's contentions in part. The Board notes that along with an administrative delay in processing the applicant's FY21 AvB application, there were also issues with the ANG FY21 AvB policy that did not align with DoD Instruction. In this regard, the AvB agreement must specify the amount of the bonus and the type or conditions of the service, and upon acceptance of the agreement, the total amount of the bonus to be paid under the agreement must be fixed. When the applicant changed duty status from AGR orders to ADOS orders on 28 Feb 23, his FY21 AvB bonus would have been terminated as the conditions of his service changed. Therefore, since DoD policy precludes the Board from correcting the record to show approval of an FY21 AvB agreement from 2 Jun 21 through 1 Dec 24 the Board finds no basis to recommend granting the applicant's request as provided. However, the Board opines that had NGB policy been in line with statute and the DoD Instruction, the applicant would have been afforded the opportunity to request a new FY23 AvB bonus, which authorized bonuses for both AGR and ADOS tours. As such, the Board finds that the applicant has provided sufficient evidence that the administrative delay of his FY21 AvB was of no fault of the applicant, and because of the delay and the policy disconnect, he was not afforded the opportunity to enter into a FY23 AvB agreement. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show:

a) His Fiscal Year 2021 Tier 2 Aviation Bonus (AvB) Agreement for the period of 2 June 2021 through 1 December 2024, at the rate of \$25,000 per year, be rescinded and removed from his record.

b) On 5 May 2021, the applicant entered into a new Fiscal Year 2021 Aviation Bonus Agreement for the period of 2 June 2021 through 28 February 2023 with an agreement length of 20 months and a competent authority approved the agreement at the annual rate (prorated by month) of \$25,000.

c) On 6 June 2023, the applicant entered into a Fiscal Year 2023 Aviation Bonus Agreement for the period of 6 June 2023 through 5 June 2023 with an agreement length of 1 year and a competent authority approved the agreement at the annual rate of \$30,000.

d) He receives all associated payments not already received based on the amended Aviation Bonus (AvB) agreement.

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-2022-02770 in Executive Session on 7 Feb 23 and 30 May 25:

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Panel Chair

1 Member

Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 20 Oct 22.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory opinion, NGB/A1P, dated 15 Dec 22.

Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 6 Jan 23.

Exhibit E: Advisory opinion, NGB/A1P, dated 21 Mar 25.

Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 22 May 25.

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.

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