

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00142

XXXXXXXXXXXXXX

COUNSEL: XXXXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Reduced Retired Pay Age (RRPA) Application be updated to reflect qualifying for the period of 29 Jan 08 to 31 Oct 11 based on Title 10 USC 12301(d).

APPLICANT'S CONTENTIONS

He discovered, while attending an XXXXXXXX Course in which RRPA was discussed, that the period of time from the effective date of the 2008 National Defense Authorization Act (NDAA) to the conclusion of his extended active duty orders, 29 Jan 08 – 31 Oct 11, should qualify as creditable time for reduced retirement age. The OPJAGAF 2013-14 and HQ USAF/RES PowerPoint brief interpret the change in the 2008 NDAA to mean that any active duty service under 10 USC 12301(d) is creditable for reduced retirement age. His extended active duty (EAD) orders state that he was called to active duty under 10 USC 12301(d) for a period of 72 months (6 years). Although the NDAA was not retroactive, it should still allow him to credit any time AFTER the effective date of 29 Jan 08. As stated in DoDI 1215.07, a member ordered to active duty under section 12301(d) of any reference (c) shall receive credit for all days served regardless of the nature of the duties performed (e.g., whether performance in a training or operational support duties). Several others of the course attendees, who were in his exact same circumstance, informed him that they received credit for time on EAD orders.

This correction will ensure compliance with existing law and the inequity caused by Air Force Personnel Center (AFPC)/Air Reserve Personnel Center (ARPC) decision to deny his RRPA request.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve lieutenant colonel (O-5).

On 26 Oct 05, according to AF Form 133, *Oath of Office (Military Personnel)*, dated 26 Oct 05, the applicant was commissioned as a First Lieutenant in the Reserve of the Air Force.

On 1 Nov 05, according to Special Order XXXX, dated 19 Oct 05, the applicant was ordered to active duty, voluntary, in the grade of first lieutenant, in accordance with USC 12301(d), for a period of 72 months. Box 11, *On Day Prior to the Effective Date of Active Duty is Relieved from Reserve Assignment*, reflects HQ ARPC (ORS-RC).

On 27 Dec 05, his AF Form 1613, *Statement of Service*, reflects the following dates: Total Armed Forces Commissioned Service Date (TAFCSA), 1 Nov 05; Total Armed Forces Military Service Date (TAFMSD), 1 Nov 05; Extended Active Duty Date (EAD), 1 Nov 05.

On 1 May 06, according to Special Order XXXXXXXX, dated 1 May 06, he was promoted to the permanent grade of captain, United States Air Force, under the authority of 10 USC § 624.

On 1 Oct 12, according to Special Order XXXXXX, dated 1 Oct 12, he was promoted to the permanent grade of major, United States Air Force, under the authority of 10 USC § 624.

On 31 Dec 14, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, dated 31 Dec 14, he honorably resigned with the narrative reason of "Force Shaping-VSP" and was credited with 9 years and 2 months of active service to include 6 months and 8 days of foreign service.

On 1 Jan 15, according to Reserve Order XXXXXX, dated 12 Jan 15, he was appointed as a Reserve of the Air Force in the grade of major (O-4).

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

APPLICABLE AUTHORITY/GUIDANCE

H.R. 4200 – *Ronald Reagan National Defense Authorization Act for Fiscal Year 2005, Title V: Military Personnel Policy - Subtitle A: Officer Personnel Policy* - (Sec. 501) Repeals the prohibition against a person receiving an original appointment as a commissioned officer until the person has completed one year of service on active duty as a commissioned officer of a reserve component. Allows a person to qualify for such original appointment if he or she completes 20 years of active commissioned service before his or her 62nd (currently, 55th) birthday. Authorizes the Secretary to waive the requirement that a person receiving such an appointment be a citizen of the United States in the case of a person lawfully admitted to the United States for permanent residence when the Secretary determines that the national security so requires, but only for an original appointment in a grade below major or lieutenant commander. Requires the President alone (currently, with the advice and consent of the Senate) to make original appointments in the grades of second lieutenant through captain in the regular Army, Air Force, and Marine Corps, and ensign through lieutenant in the regular Navy. Repeals limitations on the total authorized end strength of regular commissioned officers serving on active duty. Authorizes the Secretary concerned to discharge certain officers, or transfer certain officers from an active-duty list to a reserve active-status list, in order to force shape (restructure) that armed force. Requires appointment in a regular component, and service as a second lieutenant or ensign, for students graduating from the Uniformed Services University of the Health Sciences. Repeals the requirement that a member serve for his or her last six years in a reserve component to be eligible for nonregular (reserve) retirement.

AIR FORCE EVALUATION

ARPC/DPTT recommends denying the request. His request appears to be intended to facilitate his request for RRPA credit, for which he is not eligible. Per 10 USC § 12731(f)(2)(A), for service under 10 USC § 12301(d) to qualify for RRPA, it must be rendered "as a member of the Ready Reserve." His service under 10 USC § 12301(d) was not rendered "as a member of the Ready Reserve" and therefore does not qualify for RRPA. Under the provisions of 10 USC § 12731(f)(2)(A), a person "*who as a member of the Ready Reserve* [emphasis added] serves on active duty or performs active service" of sufficient length under certain statutory authorities, including 10 USC § 12301(d), after 28 Jan 08 may reduce the age at which that person becomes eligible to receive non-regular retired pay. However, active duty or active service rendered by a person who is not a member of the Ready Reserve does not qualify for RRPA.

A member serves in one of two components of an armed force, either the Reserve component or the Regular component. These two components are operated and regulated under two different sets of statutory authority. Each has different authorities for accessions, promotions, retirement, end strength, etc. Title 10, Subtitle A, Part II, authorizes and regulates various actions for the Regular component (e.g., accessions, promotions, retirements, etc. – this is the authority under which the applicant was promoted as member of the Regular Component under 10 U.S.C. § 624). Title 10, Subtitle E, authorizes and regulates those actions for the Reserve component (the authorities under which he served after leaving the Regular component, was promoted to lieutenant colonel, is counted against end strength, etc., as a member of the Reserve component).

Further, prior to 1 May 05, officers serving on “active duty” were commissioned into the Reserve component. A common practice at the time was to “dual-scroll” officers who would be, for all intensive purposes, serving on “active duty”, by which the officer simultaneously received approval for appointment into the Regular and Reserve components, allowing the officer to transition from the Reserve component to the Regular component upon a triggering event. At the time, the Air Force would commonly leave “active duty” officers who were on the Active Duty List (ADL) in the Reserve component until they were transferred to the Regular component after a specified period of time, usually upon promotion to the grade of major. However, Section 501 of the 2005 NDAA, and the implementing DoD policy, required a transition to an all-Regular ADL. DoD guidance required that all Reserve commissioned officers on the ADL be transitioned to Regular officer status no later than 1 May 06.

Finally, a member’s status as a member of the Regular or Reserve component may be reflected in several of that member’s personnel records, to include the AF Form 1299, *Officer’s Certification of Statement of Service*, AF Form 1613, *Statement of Service*, DD Form 214, along with various personnel actions such as promotion orders.

The applicant’s records reflect that he commissioned as a member of the Reserve component but transitioned from the Reserve component to the Regular component on 1 Nov 05. His AF Form 1299, dated 5 Nov 05, his AF Form 1613, dated 12 Dec 05, and his DD Form 214, dated 31 Dec 14, all indicate that his service in the Regular component commenced on 1 Nov 05, several years before any active service could be considered eligible for RRPA in 2008. His status as a member of the Regular component is further demonstrated by Special Order *Work-Product* dated 1 Oct 12, promoting him to the grade of captain under the authority of 10 USC § 624, which applies exclusively to members of the regular component. His transition to the Regular component on 1 Nov 05 was required by the Department of Defense’s (DoD) implementation of Section 501 of the 2005 NDAA, which required all officers on the active duty list (ADL) be transitioned to the Regular component by 1 May 06. Either way, in 2008 when active service by members of the Ready Reserve became eligible for RRPA, he was no longer a member of the Ready Reserve.

Therefore, based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice.

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 7 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 not 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 does not substantiate the applicant's contentions. Per 10 USC § 12731(f)(2)(A), for service under 10 USC § 12301(d) to qualify for RRPA, it must be rendered "as a member of the Ready Reserve. The 2005 National Defense Authorization Act, Section 501 requires the President alone (currently, with the advice and consent of the Senate) to make original appointments in the grades of second lieutenant through captain in the regular Army, Air Force, and Marine Corps, and ensign through lieutenant in the regular Navy. As such, the Board surmises that when the applicant was accessed onto extended active duty, on 1 Nov 05, by default he was assessed into the Regular component. This is further evidenced by his promotion to captain, one year later, under the authority of 10 USC § 624. Hence, his service under 10 USC § 12301(d) was not rendered "as a member of the Ready Reserve" and therefore does not qualify for reduced retirement pay age. 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-2023-00142 in Executive Session on 11 Apr 23:

, Panel Chair
, Panel Member
, Panel Member

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

- Exhibit A: Application, DD Form 149, dated 29 Dec 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 28 Feb 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated & Mar 23.

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