



CUI//SP-MIL/SP-PRVCY

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

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00561

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. The Air Force Remissions Board's denial of his request for remission of his debt be reversed.
2. His debt in the amount of \$90,447.00 for overpayment of base pay be remitted or waived.
3. His pay date be corrected.

APPLICANT'S CONTENTIONS

After fulfilling his active duty service obligation and service in the Naval Reserves he was discharged on 30 May 97. He entered the State Air National Guard (ANG) on 17 May 03. An initial pay date error was made in 2003 by his wing and the National Guard Bureau (NGB). On 21 Jun 18, he began a statutory tour and on 27 Jun 19 he received a notification of indebtedness in the amount of \$9,576.00. The finance office advised the debt was the result of an error in his pay date. His leave and earnings statements (LES) showed his pay date as 21 May 83. He was told the pay date error was made in 2018 when he transitioned from drill status to active duty and the debt represented an overpayment for the period of Jun 18 to Jun 19.

The error was not made in 2018 but in May 03. After discussion with the Defense Finance and Accounting Service (DFAS), his worst fear was confirmed. There would be a second debt notification that would cover the period of May 03 through Jun 18. He requested his finance office suspend the debt until the entire debt was calculated and dealt with accordingly,

On 19 Sep 19, he submitted a DD Form 2789, *Waiver/Remission of Indebtedness Application*. On 18 Sep 21, the Debt Remissions Board denied his request stating he played a role in the accrual of the debt and he was aware of the policy and procedures regarding the entitlements he received. The Remissions Board found it was his responsibility to ensure his service information was updated.

The incorrect pay date of 21 May 83 remained in his records until Aug 21 when it was corrected to 21 May 93. In accordance with DAFI 36-3034, *Remission of Indebtedness*, to warrant remission of a debt, the member must demonstrate that collection of the debt would be unjust, inequitable or

**AFBCMR Docket Number BC-2023-00561
CUI//SP-MIL/SP-PRVCY**

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would create an undue hardship. It is clear an error was made by his wing and NGB in 2003. The error was further compounded by AFPC which either confirmed the erroneous pay date or did not consider it. Further, in 2004 the AFBCMR corrected his military records and advised, "After correction, the records would be reviewed to determine if he was entitled to any monetary benefits as a result of the correction. This determination is made by the DFAS and involves the assembly and careful checking of finance records." If an airman's pay date is established by the Air Force and presumably confirmed by AFPC, the airman should be satisfied the pay date is accurate. To his detriment, he relied on his wing, NGB, AFPC and DFAS to conduct their calculation and review his pay record, to include his pay date.

For the Remissions Board and SAF/MRB to state he was aware of the debt is tantamount to accusing him of perpetrating a fraud upon the government and is an insult to his 30 years of service. Moreover, their belief is not corroborated by any facts or other evidence. He asked DFAS if he could have known of the error and was told there was no way for him to have known. AFPC was responsible for calculating service dates and there was no fault attributed to him. DFAS further stated if not for his persistence, the debt would not have posted to his pay record. He also takes issues with the statement he was aware and experienced with policy and procedure regarding entitlements. He is not sure what experience the Remissions Board and SAF/MRB is referring to him having, he like most airmen rarely checked his LES as long as the deposit was reflected in his bank account. The Remissions Board and SAF/MRB acknowledged AFPC calculates service dates but noted his pay date was incorrectly listed as 1983 when he was not commissioned until 1988, concluding he should have known he was overpaid. However, he was not aware how his pay date was calculated. Additionally, the Board should be aware at the time of his accession there was also a calculation of constructive service credit (CSC) awarded. He is not trying to obfuscate the matter but demonstrates its complexity.

He would also like to address the hardship of the debt. He is in the process of retirement. The Remissions Board decision directed that \$400.00 be deducted from his pay per month. Yet, DFAS is deducting \$1,100 per month. He has also paid state and federal withholding taxes of income, which is now essentially a loan in repayment. He was also penalized the taxes already paid because there is no way to recoup those monies.

The facts and evidence show the debt was created solely through errors and/or omissions by his wing, NGB, AFPC and DFAS. To assign blame for the debt and its consequences on him based on a belief that is not corroborated is unjust and inequitable.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired ANG colonel (O-6), retirement effective 1 Jul 23.

The applicant performed his initial period of active duty service in the Navy Reserve from 29 Jan 88 to 11 Jun 93.

CUI//SP-MIL/SP-PRVCY

Per Special Order dated 17 May 03, he was appointed in the ANG Judge Advocate General (JAG) Corps in the rank of captain (O-3).

Per ANG/DPFOO Memorandum, Approval for Appointment of Prior Service Officer, dated 2 Dec 02, the applicant was awarded CSC as follows: total years of service date (TYSD): date of appointment backdated 11 years, 4 months and 1 day; date of rank (DOR): date of appointment backdated 4 years, 4 months and 1 day; and total federal commission service date (TFCSD: date of appointment backdated 9 years, 4 months and 1 day.

On 27 Oct 03, the applicant petitioned the AFBCMR for change of his appointment date (BC-2003-03714). He stated his unit and the NGB miscalculated his TYSD and he was not counseled properly as to his options. His CSC should have been computed as 12 years, 4 months and 1 day and he should have appointed as a major. While ANG/DPPI recommended denial indicating they had administratively corrected the dates for CSC, the Board on 16 Jun 04, granted the applicant's request to show he was appointed in the State ANG on 19 May 03 in the rank of major, rather than on 17 May 03 in the rank of captain (O-3).

The military personnel data system shows his TYSD is 15 Jan 94 and his TFCSD is 15 Jan 94. His statement of service indicates his date of appointment in the ANG in the rank of major is 17 May 03, and not 19 May 03 as directed by the Board in BC-2003-03714.

On 19 Sep 21, the Debt Remissions Board denied the applicant's request for remission of his debt in the amount of \$9,576.00. The board concluded there was insufficient evidence that the collection of the debt would be unjust, inequitable or create an undue hardship. The board believed the applicant played a role in the accrual of the debt and was aware and experienced with policy and procedures regarding the entitlements he received. It was his responsibility to ensure his service information was updated. It stated a collection rate of \$400.00 per month would be established until the debt was paid in full. The applicant was advised he could appeal the decision.

The DFAS Supervisor of Military Pay Policy and Procedures provided a letter dated 25 Oct 21 in support of his remission appeal. The applicant's pay date was established as 21 May 83 when he was gained and his pay account established. This date was established by the unit and should have been confirmed by AFPC. When he started his AGR tour on 21 Jun 18, he created his pay record using the same 21 May 83 pay date that appeared in his records for 15 years. Had the case management system (CMS) case not been opened at the applicant's request, the debt would not have posted. He wholeheartedly supports the applicant's appeal and the debts be forgiven.

On 13 May 22, SAF/MRB denied the applicant's appeal. SAF/MRB agreed with the applicant AFPC calculates service dates and members are not always aware how pay dates are calculated. However, his LES indicated his pay date was incorrectly listed as 1983 when he had no military service until he was commissioned in the Navy in Jan 88. Therefore, he should have known he was being overpaid.

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

AFBCMR Docket Number BC-2023-00561

CUI//SP-MIL/SP-PRVCY

AIR FORCE EVALUATION

NGB/A1PO recommends partial grant for correction of his service dates. The applicant applied to the AFBCMR to change his date of appointment from 17 May 03 to 19 May 03 to enable him to be appointed at a higher rank of major (O-4) due to the newly published change, which lessened the number of years from 14 years to 11 years required for award of the rank of major. On 2 Dec 03, NGB/A1PO recalculated the dates. The corrected TYSD was 11 years, 4 months, 1 day, his DOR was 4 years, 4 months and 1 and TFCSD was 9 years, 4 months and 1 day. These dates were backdated from date of appointment on 19 May 03. The applicant's AFBCMR request was approved on 14 Jul 04.

There is evidence to support errors occurred at no fault of the applicant. Through a lack of administrative oversight, it appears the corrected service dates were never updated in the system based on the recalculations and direction of the AFBCMR.

	<u>Current Dates</u>	<u>Proposed Dates</u>
TYSD	15 Jan 94	18 Jan 92
DOR	19 May 03	18 Jan 99
TFCSD	15 Jan 94	18 Jan 94

If the applicant's service dates are corrected as recommended, the Board should consider the action may include a recalculation of his debt.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 12 Jun 23 for comment (Exhibit G), and the applicant replied on 21 Jun 23. The applicant concurs with NGB/A1PO's assessment. Several errors occurred at no fault of his own. He also notifies the Board he is retiring on 1 Jul 23. The applicant's complete response is at Exhibit G.

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/A1PO and finds a preponderance of the evidence substantiates the applicant's contentions in part. Specifically, the applicant has provided sufficient evidence to substantiate the corrections to his service dates as directed by the Board in his AFBCMR BC-2003-03714 case were not made due to administrative errors beyond his control. However, for the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice, and the Board therefore finds no basis to

recommend granting that portion of the applicant's request. 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 his records be updated to show his total years' service date (TYSD) is 18 Jan 92, date of rank (DOR) is 18 Jan 99 and his total federal commission service date (TFCSD) is 18 Jan 94.

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 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-2023-00561 in Executive Session on 11 Jul 23:

<i>Work-Product</i>	Panel Chair
<i>Work-Product</i>	Panel Member
<i>Work-Product</i>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 15 Feb 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Record of Proceedings, BC-2003-03714, dated 14 Jul 04.
- Exhibit D: Air Force Remission Board, dated 13 May 22.
- Exhibit E: Advisory opinion, NGB/A1PO, dated 18 May 03.
- Exhibit F: Notification of advisory, SAF/MRBC to applicant, dated 12 Jun 23.
- Exhibit G: Applicant's response, dated 21 Jun 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.

9/6/2024

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AFBCMR Docket Number BC-2023-00561

CUI//SP-MIL/SP-PRVCY