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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-00671

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His Air Force Active Duty voluntary separation be corrected to an Active Duty retirement.

APPLICANT'S CONTENTIONS

The Air Force is voiding the agreement made when he separated from the Air Force in Oct 93 as a result of force reduction. He only chose to voluntarily separate and receive a Special Separation Benefit (SSB) due to his financial condition at the time. He was given the SSB as payment based on his 17 years of active service. He could have been involuntarily separated and only receive travel payment to his home of record, however he chose to voluntarily separate and receive SSB due to his financial condition at the time. In Nov 20, he applied for disability benefits through the Department of Veterans Affairs (DVA) and since was awarded a 60 percent disability rating, he now must pay back his SSB before he is able to collect any disability pay. He believes the recoupment of the SSB to receive disability pay nullifies the agreement and therefore he would like his discharge to be changed to a retirement.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force technical sergeant (E-6) who entered the Active Duty on 28 Jun 76.

On 2 Sep 93, according to AF Form 100, *Request and Authorization For Separation*, the applicant was to be released from Active Duty and transferred to the Reserves, effective 1 Oct 93, with 17 years, 3 months, and 4 days of creditable active federal service. Item 21A, *Eligible for: (Per 10 USC 1174*, indicates he was eligible for Separation Pay -SSB.

On 1 Oct 93, according to the DD Form 214 Member-1, *Certificate of Release or Discharge From Active Duty*, provided by the applicant, he was discharged from the Air Force. Item 18, *Remarks*, indicates he received Separation Pay in the amount of \$56,693.52.

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Controlled by: SAF/MRB
CUI Categories: Work-Product
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

On 5 Oct 96, according to Reserve Order **Work-Product** the applicant was discharged from the Air Force Reserves.

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

AIR FORCE EVALUATION

AFPC/DPMSSR recommends denying the applicant's request. Based on review of the applicant's request and the master personnel record, there is no evidence of an injustice with the discharge processing. The Air Force introduced several programs to meet established Department of Defense (DoD) guidelines in order to meet end strength quotas. The SSB program allowed service members to request early separation and receive a separation pay benefit as a result. The applicant received separation pay under SSB after his voluntary separation. The law governing the SSB Program 10 U.S.C., Section 1174A, requires recoupment from any earned disability compensation an amount equal to the total of separation pay less the amount of federal income tax withheld. The law does not stipulate a repayment schedule and does not include a provision for the Service Secretary, or anyone, to waive the recoupment requirement for the SSB separation pay. The applicant chose the separation option, and the Air Force is unable to change his option to a retirement approximately 30 years later.

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 3 Oct 23 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not 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 AFPC/DPMSSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board notes the applicant received separation pay under the SSB program due to his voluntary separation; however, the law governing the SSB program, 10 U.S.C., Section 1174A, requires recoupment from any earned disability compensation an amount equal to the total of separation pay less the amount of federal income tax withheld and does not allow for a waiver of the recoupment requirement. Therefore, the Board recommends against correcting the applicant's records. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of*

Military Records (AFBCMR). The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

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 application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2023-00671 in Executive Session on 6 Mar 24:

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Panel Chair

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Panel Member

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Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 25 Feb 23.

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

Exhibit C: Advisory Opinion, AFPC/DPMSSR, dated 10 Aug 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 3 Oct 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.

10/1/2024

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Board Operations Manager, AFBCMR
Signed by: USAF