

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01245

XXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His military retirement pay be recomputed at age 65.

APPLICANT'S CONTENTIONS

He retired at 19 years and 1 month from the regular Air Force. He worked in healthcare for 30 years immediately after he retired. He was instructed he would qualify for full 20-year retired pay, effective age 65. After one year of retirement, he submitted the completed paperwork. He did not receive a retired pay increase on his 65th birthday as promised.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force major (O-4).

On 1 Apr 97, according to AF Form 1160, *Military Retirement Actions*, the applicant acknowledged, "Member is aware of early retirements requirements stating registration on the Public & Community Service (PACS) Personnel registry is required."

On 31 Jul 97, the applicant was furnished an honorable discharge, with Narrative Reason of Separation of Voluntary Retirement, Separation Code of RBE [Early Retirement], and credited with 19 years and 1 day active service.

On 1 Aug 97, according to Special Order Number XXXXXX, dated 25 Apr 97, the applicant was retired in the grade of major (O-4), with 19 years and 1 day active service for retirement.

On 6 Aug 97, according to DD Form 2676, *Validation of Public or Community Service Employment*, provided by the applicant, he was employed by a medical center with a PACS registry number, as provided by Public Law (PL) 102-484, Section 4464, Oct 92, beginning 23 Jun 97.

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 granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice.

In the National Defense Authorization Act for Fiscal Year 1993 (FY93 NDAA), PL 102-484, 23 Oct 92, Congress enacted the Temporary Early Retirement Authority (TERA), which permitted selected military members to retire early. Section 534 of that law gave the Secretary

of Defense authority to allow the Service Secretaries to permit early retirement for selected military members having more than 15 but less than 20 years of active service. **Work-Product** FY03 NDAA, Section 554, extended TERA to 1 Sep 02 at which time that TERA authority expired.

Section 4464 of the FY93 NDAA allowed eligible members retired under TERA to perform PACS following retirement and receive credit for this service to be used to recompute military retired pay, and where applicable, the Survivor Benefit Plan base amount when the retired member attains or would have attained 62 years of age. PACS job vacancies included education, conservation, environmental protection, law enforcement, and public health care positions.

Program management was established and announced to the services through the Assistant Secretary of Defense (ASD) Memorandum, *Active Duty Early Retirement Policy Guidance*, dated 12 Mar 93, and the ASD Memorandum, *Implementing Procedures for Temporary Early Retirement Authority (TERA) Programs*, dated 22 Apr 93. The Air Force also provided specific instructions to the field through a Military Personnel Flight Letter 93-024, *Voluntary Early Retirement Program*, dated 9 Apr 93. The Department of Defense (DoD) also provided specific information on obtaining PACS credit through the DoD Instruction 1340.19, *Certification of Public and Community Service Employment of Military Retirees*, dated 17 Nov 93.

The applicant retired effective 1 Aug 97 under the TERA authority, with 19 years, and 1 day of total active federal military service (TAFMS). The NDAA required members retiring under TERA to register in advance of the projected retirement date on the PACS registry maintained under Title 10, United States Code, Section 1143a (10 USC § 1143a). The law allows no provision to retroactively register for employment in PACS organizations.

Applicants were required to turn in proof of PACS to the Defense Manpower Data Collection (DMDC) team no later than one year after they would have attained 20 years TAFMS had they been continuously on active duty. This date is referred to as the individual's Enhanced Retirement Qualification Period. The applicant retired 1 Aug 97 with 19 years, and 1 day of active service. Based on the reporting instructions established by the DMDC, the applicant was required to submit record of the creditable service within a year of that point, which the applicant did. The DMDC showed the applicant applied for PACS and should have received credit for 11 months, and 19 days, but the applicant is stating he has not received credit as of today. As evidenced by the documentation provided from DMDC, the applicant should receive this credit under PACS.

Per DMDC, their records reflect the applicant has the following TERA Retiree credits: 349 total credits, 11 months, and 19 days. The DMDC showed the applicant applied for PACS and should have received credit for 11 months, and 19 days, but the applicant is stating he has not received credit as of today. As evidenced by the documentation provided from DMDC, the applicant should receive this credit under PACS.

There have been instances with the Defense Finance and Accounting Service (DFAS) where any inquiries into a service member's TERA benefits before their 62nd birthdate has resulted in TERA benefits "not" being reflected in the service member's records. In turn, this causes an administrator's validation to verify DFAS ever obtained the records. If the records were received by DFAS, then the instance is released at the time of the service member's 62nd birthdate.

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 13 Dec 23 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. Although the application was not timely filed within the three-year limitation period established by 10 U.S.C. § 1552 (b), the untimeliness is waived in the interest of justice.
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 AFPC/DPMSSR and finds a preponderance of the evidence substantiates the applicant's contentions. The applicant complied with the administrative reporting requirements for his PACS participation, as directed by 10 USC § 1143a. 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 military retirement pay was recomputed effective his 62nd birthday, to include an additional 11 months, and 19 days of active service, as provided by the Public and Community Service program and 10 USC § 1143a.

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-2023-01245 in Executive Session on 23 Apr 24:

, Panel Chair
, Panel Member
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 30 Mar 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPMSSR, dated 8 Dec 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 13 Dec 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