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UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2023-01292

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. He receive an Officers Performance Report (OPR) for 2022 from his *Work-Product* Air National Guard (*Wor...*ANG) unit. (**Administratively corrected by *Wor...*ANG**).
2. He receive an appropriate "end of tour" decoration from his *Wor...*ANG unit.
3. He receive Pay and Points in order to receive credit for a "good year" for 2023.
4. His transfer date from the *Wor...*ANG to the Air Force Reserve (AFR) be backdated to reflect 1 May 22. (**Outside the Board's Authority**).

APPLICANT'S CONTENTIONS

In a seven-page brief from his counsel, accompanied by 70 pages of supplement material, the applicant contends he has served the United States Army and Air Force with honor and distinction throughout his career and there has never been an issue or concern with his service, honor, character, integrity, or commitment. His difficulties began because of a deterioration of resources, personnel and equipment, which prevented him from routinely meeting mission requirements over a three-year period. His efforts to raise concerns through his chain of command resulted in an untenable situation as not only were his good faith concerns ignored, but resulted in him being subjected to reprisal and retaliation for notifying his leadership the Dental Clinic lacked the resources and equipment necessary to meet readiness standards. He noted specifically that incomplete and potentially inaccurate readiness information risked the health of servicemembers, resulted in a lack of operation readiness, and impacted the Department of Defense (DoD) forensic dental mission.

Over this same three-year period of time, he observed his leadership retaliate and levy false allegations at others within the organization, making it abundantly clear to him that he would either have to compromise his character, integrity, and professional ethics or seek a transfer. When he attempted to transfer to the AFR, his transfer paperwork was improperly delayed, either intentionally or as a result of inexcusable negligence, with his leadership refusing to take any action on his transfer request.

In Dec 21, he notified his leadership that he was pursuing a transfer to the Reserve. He submitted his transfer package to his group commander on 11 Mar 22. His group commander indicated he approved the package on 24 Mar 22 and the package was then forwarded to the wing commander for his approval. On 1 Apr 22, the wing executive officer confirmed the transfer request package had been received and was being processed. As far as he can determine, no further action was taken, and the package seemed to have disappeared. 202 days after submitting the transfer

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package, and only after initiating an Inspector General (IG) complaint and a congressional inquiry, a new package was created, expedited through senior [Wo...]ANG leadership, and ultimately approved.

Although the delay of his transfer request is not a considered a traditional adverse action, the negative impact is the equivalent of punishment, and he had no administrative recourse or way to respond to the delay of the transfer request. If not for the IG system and protections afforded him through congressional inquiry, he feared career ending retaliation in the form of an administrative adverse action. Members of the voluntary force have the right and ability to transfer between the Guard and Reserve. While the due process requirements afforded during the transfer process are limited, he should have been afforded the protection of a fair, impartial, and timely transfer process. This delay resulted in the loss of a "good year" for 2022 as well as being considered for an end of tour decoration.

It is clear that his leadership abused their discretion in failing to address his concerns as well as delaying his transfer request as a form of retaliation. As such, he should be made whole by ensuring he receives credit for a good year, and an effective date of transfer to the Reserve of 1 May 22 as well as consideration for an end of tour decoration.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an AFR lieutenant colonel (O-5).

On 30 Jun 19, according to his DD Form 214, *Certificate of Release or Discharge from Active Duty*, he resigned from the Regular Air Force and was credited with 10 years and 16 days of active service.

On 1 Jul 19, according to AF Form 133, *Oath of Office*, and NGB Form 337, *Oath of Office*, he accepted an appointment as a Reserve of the Air Force in the Air National Guard of the State of [Work-Product] along with temporary federal recognition, in the grade of O-5.

According to documentation provided by the applicant:

On 7 Jan 22, according to AF Form 1288, *Application for Ready Reserve Assignment*, he applied for an assignment with the [Work...]Medical Group (MDG), AFR. According to the applicant's statement accompanying AF Form 1288, his reasons for desiring the transfer include both increased income as the Reserve component lists his AFSC as a critically needed specialty that includes a substantial three-year bonus. He also lists his experience with the [Wor...]ANG in his decision to seek a transfer.

On 23 Mar 22, according to the applicant's *Detailed Timeline*, lines 48-50, reflect the following: the applicant sent written notification he would not be attending the Apr 22 drill; the [Work-P...]Medical Group Commander (MDG/CC) indicated he had signed the transfer paperwork and forwarded it to the wing commander (WG/CC), but he expected the applicant to attend drill; the applicant indicated that Mar 22 was his last [Work-Pr...]at [Work-Product] Finally, line 53 reflects the applicant informed his leadership of his planned absence and acknowledge future absences would be considered unexcused absences.

On 7 Apr 22, according to email traffic, <applicant> *transfer package*, the wing executive officer in response to the applicant's 6 Apr 22 inquiry, informs him that his package was routed up to the Wing on 1 Apr 22 and there were a number of corrections required.

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On 28 May 22, according to the applicant's IG complaint, *Request#:* **Work-Product** *retaliation_ webform*, he complained of adverse actions taken against another member of the unit.

In an undated letter to the Governor of the State of **Work-Product** he complains that the **Work-Product** MDG leadership has failed to provide resources to consistently meet mission requirements along with requesting assistance with his transfer request.

On 7 Sep 22, in the letter, **Work-Product** *MDG compliant*, to his congressional representative, he requests assistance with his transfer request along with investigation the **Work-Product** MDG/CC for abuse of authority.

On 29 Sep 22, according to memorandum *Justification for Release from the* **Work-Product** *Air National Guard*, the applicant's request for a conditional release from the MIANG to the 910 ARS is approved by the **Work-Product** MDG/CC, **Work-Product** WG/CV, and the **Work-Product** National Guard Director of Staff-Air.

On 23 Oct 22, according to HQ ARPC Special Order **Work-Product**, dated 6 Dec 22, he was honorably discharged from the **Work-Product** ANG and effective 24 Oct 22, he was assigned to the USAFR.

On 14 Apr 23, in the State Staff Judge Advocates – Air's email response to the applicant's counsel *Memorandum for the Adjutant General*, dated 22 Mar 23, provided by the applicant, through counsel, he was informed that: the **Work-Product** ANG is committed to ensuring he receives his close-out OPR; however, due to issues with transitioning from myPers to my FSS, there is a backlog of OPRs across the ANG and USAF, and if the absence of his OPR is precluding his application or consideration for a specific position, promotion, or assignment, to please advise so they can prioritize it; the **Work-Product** ANG is unwilling and unable to grant his request for points or pay for service not performed and that if the applicant has reason to believe he performed duty not properly credited, or was expressly forbidden or physically precluded from performing his scheduled (or even rescheduled for his convenience) military duties to please let them know, and if the absence of a good year has adversely impacted his eligibility for financial incentive or bonus he was to receive in connection with his transfer from the **Work-Product** ANG to the USAFR, please advise; the **Work-Product** ANG is without authority to adjust his transfer date into the USAFR; and, finally, the **Work-Product** ANG awards and decorations program is in compliance with USAF and **Work-Product** ANG guidance and it is within the discretion of the commander to whom such authority is delegated and members have no right of entitlement to an "end-of-tour" decoration.

On 7 Jun 23, according to the letter from the Director, Whistleblower Reprisal Investigations, Office of Inspector General, Department of Defense, provided by the applicant, he was informed the available evidence does not support his reprisal complaint and they are closing his case.

On 7 Aug 23, according to the Military Personnel Database System (MilPDS), his Point Credit Summary (PCARS) for his R/R years 2020 and 2021 shows he was credited with the following Active Duty (AD), Inactive Duty for Training (IDT), membership (MBR), and retirement points:

R/R Year	AD	IDT	MBR	Retirement	Satisfactory Service (Year)
6 May 20 – 5 May 21	0	40	15	55	010000
6 May 21 – 5 May 22	4	36	15	55	010000
*6 May 22 – 5 May 23	0	16	15	31	000000

*** Unsatisfactory Year**

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

APPLICABLE AUTHORITY/GUIDANCE

32 U.S. Code § 502 - *Required drills and field exercises*, (a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall (1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and (2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

Department of Defense Instruction (DoDI) 1215.07, *Service Credit for Non-Regular Retirement*, Section 3, Procedures:

3.1.a. *Qualifying Years of Satisfactory Service.* Pursuant to Chapter 1223 of Title 10, U.S.C., a qualifying year of creditable service toward a non-regular retirement is a full year, as described in Paragraphs 3.1.b. and 3.1.c., during which a member of an Active Component (AC) or Reserve Component (RC) is credited with at least 50 retirement points. Accumulating 20 such years, except as otherwise provided by law, is one requirement necessary to qualify for nonregular retired pay.

3.4.b. *Inactive Duty Service.* Credit inactive duty service as follows: (1) One retirement point for each attendance at an inactive duty training (IDT) period or period of equivalent instruction. The Secretary concerned or the Commandant of the Coast Guard must prescribe the IDT periods or periods of equivalent instruction for that year, and they must conform to the requirements prescribed by law, including attendance by a member of the National Guard at required IDT periods in accordance with Section 502 of Title 32, U.S.C.

Air Force Manual (AFMAN) 36-2806, *Awards and Memorialization Program*, paragraph 3.24.7. No member is automatically entitled to a decoration upon a permanent change of station, permanent change of assignment, retirement, separation, completion of a temporary duty, or reaching or achieving other career points at which a decoration may be expected or customarily awarded.

AIR FORCE EVALUATION

NGB/A1PP recommends partially granting his request for a close-out Officer Performance Report. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice regarding his close-out OPR. His latest OPR on record is dated 30 Jun 21, in accordance with AFI 36-2406, *Officer and Enlisted Evaluation Systems*, Table 3.2, Rule 1: "if the ratee has not had an evaluation, or one year has passed since the close-out date of last performance OPR or training from school or 20 weeks or more, and the period of supervision was 120 calendar days or more." As such, the member should have received an OPR.

The applicant was credited with a "good year" for 2022 as he received 55 points towards his retirement (R/R year of 6 May 21 – 5 May 22). However, for his succeeding R/R year, 6 May 22 – 5 May 23, he did not receive credit for a "good year" as, by his own admission, he had several unexcused absences from unit training activities (UTAs) prior to his transfer to the AFR. In accordance with DoDI 1215.07, "The Secretary concerned, or the Commandant of the Coast Guard must prescribe the IDT periods or periods of equivalent instruction for that year, and they must

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conform to the requirements prescribed by law, including attendance by a member of the National Guard at required IDT periods in accordance with Section 502 of Title 32, U.S.C.” Therefore, since he did not participate in drills, UTAs, from Mar 22 until his departure to the AFR, he would not be entitled to points.

Finally, the end-of-tour award is not an entitlement and is at the discretion of the commander. AFMAN 36 -2806, paragraph 3.24 states, “Supervisors and commanders, at all levels, ensure only deserving personnel are submitted for personal military decorations.” Further, paragraph 3.12.10 states, “The reassignment (permanent change of assignment and permanent change of station), retirement, separation, or death of a commander or supervisor is not the basis for recommending a subordinate for a decoration.” Since there is no record of the applicant’s supervisor or commander submitting him for an award at the time of his departure to the AFR, therefore, no award should be awarded to the applicant at this point.

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 17 Jul 23 for comment (Exhibit D), and the applicant replied on 8 Aug 23. In his response, the applicant contended after his transfer package was submitted and a plan in place for the associated **Work-Product** ANG unit dentists to cover his absence, he made the decision not to return as in doing so would involve providing substandard care and would have been a violation of his Attestation Statement. As it stands, the two dentists are willing to provide a statement of support on his behalf, but were discouraged, and possibly threatened from doing so by their leadership.

In addition, he amends his request for a good year to mean 2023, not 2022, stating that he has 31 points for his 6 May 22 – 5 May 23 R/R year, which leaves a 19-point deficiency. The May 22 – Dec 22 timeframe offered a total of 32 potential points towards offsetting this deficiency. If affording 90 days for a typical transfer request to be processed, which seems to be a conservative yet reasonable timeframe, he would have been able to gain 20 points and achieve the minimum required for a “good year.” He has spent upwards of 100 hours over the past 12 - 18 months and has been consistent in his messaging and documentation. It is undeniable his leadership was an obstacle to meeting readiness standards and he submits the 202 days it took to get his transfer package approved was a direct result of his unfavorable disclosures to the chain-of-command. He respectfully submits that while he did not serve the Air Force by attending scheduled drill weekends, he earned every one of those 19 points by holding the line when nobody else would. He has put his reputation, career, personal time, and personal treasure on the line by upholding his oath of office and the Air Force value of service before self.

The applicant’s complete response is at Exhibit E.

REVISED AIR FORCE EVALUATION

NGB/A1PP advisory remains unchanged except the proposed directive language provides the reporting period for the applicant’s closeout OPR, stating the reporting period should be from 1 Jul 21 – May 22.

The complete amended advisory opinion is at Exhibit F.

APPLICANT’S REVIEW OF REVISED AIR FORCE EVALUATION

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The Board sent a copy of the revised advisory opinion to the applicant on 7 Sep 23 for comment (Exhibit G), and the applicant replied on 2 Oct 23. In his response, he notes that although the advisory's Pertinent Facts Section is essentially accurate and without any notable errors; however, it has failed to capture several critical aspects of his claim:

- a. His claim of failure to meet standards was not an observational deficiency, but rather an expectation by his leadership to provide substandard care.
- b. His leadership took both a passive and active role in removing resources.
- c. He had an impeccable history of UTA attendance during his nearly three years assigned to the unit and his decision not to return as of Apr 22 could have been met with either a denial or his transfer request or pursuit of a violation of unauthorized absence. Instead, his leadership withheld a lawfully submitted transfer package to compel substandard care as a punitive tool.

Additionally, on 18 Jan 24, the applicant replied again providing additional information which the applicant, through counsel, states demonstrated the **Work-Product** ANG did not act in good faith or properly exercised command discretion and this additional information bolsters his claim that his transfer package was intentionally withheld/delayed as a form of intentional retaliation. As such, he should be made whole by ensuring he receives credit for a good year, an effective transfer date of 1 May 22, an appropriate OPR close-out, and consideration for an end of tour decoration. These corrections are necessary to undo the damage that has been done to him and his career.

The applicant's complete response is at Exhibit H.

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 in part. The Board concurs with the rationale and recommendation of NGB/A1PP and finds a preponderance of the evidence does not substantiate the applicant's contentions. While the Board agrees the applicant should have received a close-out OPR, the **Work-Product** Air National Guard has since administratively corrected the applicant's record by providing the missing OPR for the reporting period of 1 Jul 21 through 30 Jun 22 and for which the applicant acknowledged and signed. For the remainder of the applicant's request, the evidence presented did not demonstrate an error or injustice. The Board finds the applicant not only failed to provide sufficient evidence of retaliation but also informed his commander he would not be attending future unit training activities, while acknowledging these future absences would be unexcused. As such, the Board determines his failure to participate in UTAs were at the sole discretion of the applicant. Additionally, the Board affirms the DoD Office of Inspector General findings the available evidence does not support the applicant's allegations of reprisal by the **Work-Product** ANG. Nevertheless, the Board reviewed the complete evidence of record to reach its own independent determination of whether reprisal occurred. Based on our review, the applicant has failed to provide substantial evidence to establish he was reprised against for making a protected communication. Therefore, in the absence of persuasive evidence to the contrary, we do not find the applicant has been the victim of reprisal. Finally, the Board finds the authority to discharge the applicant from the **Work-Product** ANG rests with the State's Adjutant General and is therefore outside the Board's Authority. IAW AFI 36-3209, *Separation and Retirement Procedures for Air National*

Guard and Air Force Reserve Members, the authority to separate assigned members, to include requests to transfer to another Reserve component (Conditional Release), from state status rests with the State Adjutant General. In the applicant's case, his discharge order from the [Work-Product] ANG would need to be amended in order for the Board to change the date he was assessed in the AFR. Since the Board does not have the authority to amend the discharge order, then the Board cannot direct an earlier date of accession. Therefore, the Board recommends against correcting the applicant's record.

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-2023-01292 in Executive Session on 9 Jan 24 and 8 Apr 24:

- [Work-Product] Panel Chair
- [Work-Product] Panel Member
- [Work-Product] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 17 Apr 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/A1PP, dated 7 Jul 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 17 Jul 23.
- Exhibit E: Applicant's Response, w/atchs, received 8 Aug 23.
- Exhibit F: Revised Advisory Opinion, NGB/A1PP, dated 7 Sep 23.
- Exhibit G: Notification of Advisory Opinion, dated 7 Sep 23.
- Exhibit H: Applicant's Responses, dated 2 Oct 23 and 18 Jan 24.

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.

4/28/2024

X [Work-Product]

[Work-Product]

Board Operations Manager, AFBCMR

Signed by: [Work-Product]