

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-01308

XXXXXXXXXXXXXXXXXX

**COUNSEL:** XXXXXXXXXXXX

**HEARING REQUESTED:** NO

### **APPLICANT'S REQUEST**

Her official military personnel record be amended to reflect her retirement under the Temporary Early Retirement Authority (TERA), effective 14 May 17, or upon completion of the Board's review.

### **APPLICANT'S CONTENTIONS**

Counsel, on behalf of the applicant, contended she served honorably in the Air Force from 1975 to 2000 in both the active and reserve components. In total, she served 15 satisfactory years towards a retirement and accrued a total of 4,448 points. She did not affiliate with the military, active or reserve, after 2000. She completed approximately 10 years on active duty while completing various technical schools before she transferred from the active to Reserve component.

The reason she no longer affiliated with the military was she had to take a physical for the Guard and Reserve units. During these physicals, she was told she had varicose veins, where she had not been told before. In order to affiliate, she would need a waiver. A waiver was filed, but she was not told the final determination. The entire situation was odd as she always kept in good physical shape and her civilian doctors had never said anything about varicose veins. In 2014, the applicant had minor surgery to remove the spider veins in an effort to continue her service. However, she was told by Air Force recruiters she could not affiliate with the Reserve and would be unable to complete her remaining years to receive a 20-year retirement.

The applicant was treated unfairly regarding being denied continued service. She was never told she could have retired early under the TERA retirement program. She did not anticipate the difficulty in completing service or early retirement and would have rather continued serving than step away to focus on her family, job, school, and other personal matters. The applicant now requests she be granted a TERA retirement she is eligible for but was never informed about.

In May 22, the applicant submitted a request for a Reserve retirement with the Air Force Headquarters, Air Reserve Personnel Center (HQ ARPC). She was notified via email her submission for retirement was denied. The reason was she did not have 20 eligible years; however, the applicant is eligible for a TERA retirement with 15 satisfactory years and 4,448 points. She no longer affiliated with the military after 2000 and is within the timeframe one is eligible for a TERA retirement.

The applicant served honorably in the military for over 20 years. Unfortunately, she was not able to accumulate enough satisfactory years to receive the traditional 20-year retirement. However, based on the timeframe when she was no longer affiliated, the TERA retirement program was offered by the government. Based on the requirements for TERA and the applicant's status, she is eligible for a TERA retirement.

The Department of Defense Financial Management Regulation Volume 12, 180201, states, “subject to the availability of appropriations for purposes set forth in section 4403, the Secretary of each Military Department shall provide for the payment of retired pay amounts, beginning in FY 1993, to active service military members who retire up to 5 years before the completion of a 20-year period of service.”

It is clear the applicant has 15 years retirement eligible/satisfactory years completed. The TERA retirement was available for service members between the years of 1993 and 2001, thus, she falls right in the middle of those eligible years. She was never made aware of her ability to submit for a TERA retirement. In addition, she continued to serve in the Reserve component for years after her last satisfactory year, which demonstrates her commitment to serving.

The applicant’s complete submission is at Exhibit A.

## **STATEMENT OF FACTS**

The applicant is an honorably discharged Air Force Reserve (AFR) technical sergeant (E-6).

On 4 Dec 99, according to DD Form 4, *Enlistment/Reenlistment Document – Armed Forces of the United States*, the applicant entered the AFR.

On 15 Jun 01, according to Reserve Order XXXX, dated 23 May 01, the applicant was assigned to the AFR Non-Obligated Non-Participating Ready Reserve Personnel Section (NNRPS).

On 3 Dec 03, according to Reserve Order XXXX, dated 9 Dec 03, the applicant was relieved from assignment with Headquarters, ARPC (NNRPS) and honorably discharged from the AFR.

On 10 May 22, according to ARPC Form 83, *Application for Retired Pay*, provided by the applicant, she submitted a request for retired pay.

On 14 Jun 22, according to a myPers email, provided by the applicant, she was notified she was not eligible for retirement pay as she does not have 20 years satisfactory service and there was no documentation indicating a medical retirement.

According to a *Point Credit Accounting Report Summary (PCARS)*, dated 14 Dec 23, the applicant has 16 years, 11 months, and 23 days satisfactory service.

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

## **APPLICABLE AUTHORITY/GUIDANCE**

In accordance with Public Law (PL) 102-484, *National Defense Authorization Act for Fiscal Year 1993 (NDAA FY93)*, Section 4403. *Temporary Early Retirement Authority*.

(a) *PURPOSE* - The purpose of this section is to provide the Secretary of Defense a temporary additional force management tool with which to effect the drawdown of military forces through 1995.

(b) *RETIREMENT FOR 15 TO 20 YEARS OF SERVICE* -

(3) During the active force drawdown period, the Secretary of the Air Force may--

(A) apply the provisions of section 8911 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting ‘at least 15 years’ for ‘at least 20 years’ in subsection (a) of that section; and

(B) apply the provisions of section 8914 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting 'at least 15' for 'at least 20'.

In accordance with PL 107-314, *NDAA FY03*, Section 554. *Extension of Temporary Early Retirement Authority*.

- Effective January 1, 2002, section 4403(i) of the *National Defense Authorization Act for Fiscal Year 1993* (10 U.S.C. 1293 note) is amended by striking "December 31, 2001" and inserting "September 1, 2002."

## **AIR FORCE EVALUATION**

ARPC/DPTS recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, the applicant does not qualify for retired pay under the TERA program due to this program only being effective for the Regular Air Force members.

An audit of the applicant's Master Personnel Record revealed she was discharged from the [AFR] NNRPS, effective 3 Dec 03. At the time of discharge, she had completed 16 years, 11 months, and 23 days of satisfactory service. She was not eligible for retirement under the TERA program as she was a member of the Air Reserve Component. This program was only for Regular Air Force members who had at least 15 but less than 20 years of active duty service. The applicant only completed 10 years, 5 months, and 20 days of active duty.

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 30 May 23 for comment (Exhibit D), and the applicant replied on 26 Jun 23. In her response, the applicant contended she found several records in support of extenuating circumstances leading to her petition to the Board, to include a copy of her physical. In her concerns, she mentioned that had waivers been filed, in or about 2010, for a disqualifying physical for varicose veins, this petition to the Board would not have happened, and she would have continued to complete 20 years. These minor varicose veins were not addressed by the Air Force in her past medical history or during several physicals, and she did have them surgically removed.

She asks if there was due consideration given to the critical nature of her career field. Of additional concern for her more recently was consideration of her cancer diagnosis and treatment to clear status with reference to her many years of radar background with the Air Force. Her efforts speak volumes of her integrity and stamina to continue her service, staying affiliated even with partial years. This commitment also reflects overseas positions, questionable for women in any branch of service, in Saudi Arabia and throughout Europe.

She has been cancer free for three years, and had she been given fair treatment and justice on the way, she would have completed 20 good years. In her actual Military Entrance Processing Station physical it references her varicose veins, along with her Navy Reserve time and honorable discharge. Her comments and records note various missteps in handling her career along the way with the Air Force. The record mentions a waiver for varicose veins, but she was not given a clear understanding if a waiver was submitted.

After receiving the advisory, which she shared with her counsel, her counsel stated, "After reviewing the records, I don't think they will change the case. If you were supposed to receive a waiver, the Board will likely not recommend for a military disability retirement. I also do not

think if the waiver is accepted it would change much in the matter of a retirement from the service.” These are missteps by her or the Air Force, or by her counsel, as she would have been better served if the specific details of the TERA program had been understood earlier.

She feels these records indicate missteps made towards her along the years of her being part of the active duty Air Force, AFR, and Air National Guard. If she held the Personnel or Recruitment career fields, as well as her critical shortage career, she might have caught these details when they were crucial and possibly helpful to her and the Air Force. She has been done an injustice in many ways and deserves having it set right.

The applicant’s complete response is at Exhibit E.

## **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, to include the applicant’s rebuttal, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of ARPC/DPTS and finds a preponderance of the evidence does not substantiate the applicant’s contentions. As a member of the Reserve component during the period of eligibility, the applicant did not meet the eligibility requirements for a TERA retirement in accordance with PL 102-484, NDAA FY93. Therefore, the Board recommends against correcting the applicant’s records.

## **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-2023-01308 in Executive Session on 9 Jan 24:

, Panel Chair  
, Panel Member  
, Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 21 Mar 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTS, w/atchs, dated 15 May 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Counsel, dated 30 May 23.
- Exhibit E: Applicant’s Response, w/atchs, dated 26 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.

X

---

Board Operations Manager, AFBCMR