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

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### **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-01320

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**COUNSEL:** NONE

**HEARING REQUESTED:** NO

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### **APPLICANT'S REQUEST**

His status as a former member be changed to reflect, he was assigned to the Retired Reserve Section, his name was placed on the Retired Reserve List (RRL), and he was eligible for retired pay under the provisions of Title 10, U.S.C., Section 12731.

### **APPLICANT'S CONTENTIONS**

He served honorably for over 21 years and received his Notification of Eligibility for Retired Pay (NERP) letter. He needs to be put in the correct status to receive his retirement pay at age 60. When his spouse tried to obtain a new military identification card, he was told his spouse could not get a new card until his current retirement status was corrected and her old card was confiscated.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

The applicant is a former Air Force Reserve master sergeant (E-7).

On 8 Dec 04, the applicant was advised he had over 20 years of satisfactory service, and he could elect transfer to the Inactive Status List Reserve Section (ISLRS) for the purpose of applying for a Reserve retirement under Title 10 U.S.C. Section 12731, in lieu of being discharged with severance pay, together with directions on how to apply for retirement. The applicant was offered two options by ARPC/DPPDS: (1) transfer to ISLRS and apply for retirement and receive pay when eligible; or (2) elect to be discharged with severance pay.

On 21 Dec 04, the applicant elected to be discharged with severance pay under Title 10 U.S.C. Chapter 61, Section 1203 with an understanding he was not entitled to retirement pay under Title 10 U.S.C. Chapter 1223.

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Controlled by: SAF/MRB  
CUI Categories: *Work-Product*  
Limited Dissemination Control: N/A  
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Dated 24 Jan 05, AF IMT 100, *Request and Authorization for Separation*, indicates the applicant was determined to be physically unfit for continued service and was directed to be discharged with severance pay.

On 14 Jul 05, ARPC/DPTT sent the applicant the standard NERP letter informing him he has completed the required years under the provisions of Title 10 U.S.C., Section 12731 and is entitled to retired pay upon application prior to age 60.

Dated 20 Dec 23, the applicant's Air Force Service History shows he has 20 years, 8 months, and 9 days of satisfactory service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C, F, and G.

#### **APPLICABLE AUTHORITY/GUIDANCE**

Per 38 U.S.C. Section 1161, *Payments of Disability Compensation in Disability Severance Cases*, the deduction of disability severance pay from disability compensation, to the extent required by section 1212(d) of Title 10 U.S.C. shall be made at a monthly rate not in excess of the rate of compensation to which the former member would be entitled based on the degree of such former member's disability as determined on the initial Department rating.

#### **AIR FORCE EVALUATION**

ARPC/DPTT recommends denying the application finding no evidence of an error or injustice. The applicant did not apply to be transferred to the Retired Reserve prior to being discharged and receiving severance pay under 10 U.S.C. Section 1203. Per AFI 36-3203, *Service Retirements*, paragraph 8.6, Reserve component members use AF IMT 131, *Application for Transfer to the Retired Reserve*, to apply for transfer to the Retired Reserve. There is also no evidence the applicant received the Notification of Eligibility letter and due to the processing of the applicant's discharge through AFPC, the discharge was not consummated in enough time to stop the automated process of the creation of the NERP letter and placing it into the applicant's military personnel record.

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 20 Oct 23 for comment (Exhibit D), and the applicant replied on 31 Dec 23. In his response, the applicant contends he paid back his DWSP in full to the Department of Veteran Affairs (DVA) when he began receiving his DVA disability pay. He has over 20 years of creditable service and received his NERP letter and needs his status updated to start receiving his retired pay.

The applicant's complete response is at Exhibit E.

## ADDITIONAL AIR FORCE EVALUATION

AFRC/JA recommends denying the application finding no evidence of an error or injustice. Having been notified on 8 Dec 04, he had over 20 years of satisfactory service and was eligible to transfer to the ISLR for the purpose of applying for a Reserve retirement under Title 10 U.S.C. Section 12731, the applicant affirmatively elected to be discharged with severance pay under Title 10 U.S.C. Chapter 61, Section 1203 instead. The recoupment action of his severance pay was a result of the applicant being approved for DVA disability benefits. This did not obviate his prior election for Disability with Severance Pay (DWSP) nor render him eligible to be transferred to the Retired Reserve. A review of AFI 36-3209, *Separation and Retirement Procedures Air National Guard and Air Force Reserve Members*, paragraph 5.9 outlines categories of personnel who are not eligible for transfer to the Retired Reserve, which includes personnel who elected discharge in lieu of transfer to the Retired Reserve (former members). Further review of AFI 36-3209 shows, per paragraph 5.21.3, former members must contact HQ ARPC/DPAR to request pay application forms. This leads one to conclude, although the applicant is not eligible to be transferred to the Retired Reserve, he is still eligible to apply to receive retirement benefits upon attaining age 60.

The complete advisory opinion is at Exhibit F.

ARPC/DPTT recommends denying the applicant's request to be placed on the RRL finding no evidence of an error or injustice because the applicant was ineligible for transfer to the Retired Reserve. The NERP letter does not notify the member to apply for Reserve Retirement but confirms the member will be entitled to retired pay upon application at Age 60 and notifies them of their eligibility to participate in the Reserve Component Survivor Benefit Plan. According to 10 U.S.C. Section 12738, once a member receives the NERP it may not be denied or revoked based on any error, miscalculation, misinformation, or administrative determination of years of service performed, unless it resulted directly from the fraud or misrepresentation by the member concerned. Since the applicant obtained the NERP letter, the applicant may still request pay on his 60th birthday and is also eligible for an ID card and same benefits as a retired reservist (gray area). The applicant may contact the ARPC Reserve Retirement Counseling Cell to assist in completing his DD Form 2656, *Data for Payment of Retired Personnel*.

The complete advisory opinion is at Exhibit G.

## APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 25 Jul 24 for comment (Exhibit H), but has received no response.

## 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 not the victim of an error or injustice. The Board concurs with the rationale and recommendations of ARPC/DPTT and AFRC/JA and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds the applicant elected DWSP in lieu of being transferred to the Retired Reserve and finds no evidence his severance pay was recouped by the Air Force or the Defense Finance and Accounting Service (DFAS). The DVA applied an off set to his disability payments per 38 U.S.C. Section 1161 which does not allow for dual payment of monetary compensation for disabilities he incurred in the service. However, this does not preclude the applicant from applying for retirement pay once he reaches the age of 60. 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-2023-01320 in Executive Session on 22 Aug 24 and 26 Aug 24:

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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 20 Apr 23 and 23 May 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 20 Oct 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 Oct 23.
- Exhibit E: Applicant's Response, w/atchs, dated 31 Dec 23.
- Exhibit F: Advisory Opinion, AFRC/JA, w/atch, dated 15 Feb 24.
- Exhibit G: Advisory Opinion, ARPC/DPTT, w/atchs, dated 24 Jul 24.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Jul 24.

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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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Board Operations Manager, AFBCMR  
Signed by: USAF

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