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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01835

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel records amended to reflect receipt of non-waivered retirement pay with full Concurrent Receipt Disability Pay (CRDP) at a 50 percent with-dependent rate corrected retroactively to 2013.

APPLICANT'S CONTENTIONS

He was medically retired after 21 years of service following a Physical Evaluation Board (PEB). In 2013, his Department of Veterans Affairs (DVA) evaluation resulted in a 50 percent disability rating, identified as CRDP. Since 2013, he has been receiving waived retirement pay resulting in a partially taxable payment from the Defense Finance and Accounting Service (DFAS) with the remainder being non-taxable from DVA because of the PEB.

During the PEB, he was never given the option of a regular retirement. He initially rejected the decision, but felt he had no other option than to accept it. Only recently did he find that other retirees with over 20 years of service and a 50 percent disability were receiving non-waivered retirements and full CRDP. The DFAS website page for CRDP also states that he should be receiving his pay in this manner.

The DFAS representatives continued to explain to him that his full retirement was reduced starting in 2013 due to the addition of his disability pay. He no longer questioned the reduction, nor did he discuss the matter with anyone. He only learned of this mistake after speaking with other retirees in Mar 23. It was then that he began researching its validity and was told to apply to the Air Force Board for Correction of Military Records (AFBCMR) to request a change.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force technical sergeant (E-6).

On 21 Apr 05, according to DD Form 2839, *Career Status Bonus (CSB) Election*, the applicant elected to receive the CSB in a single lump sum payment of \$30,000. He acknowledged, by his signature, that he understood if and when he retired, it would be under the provisions of the 1986 Military Retirement Reform Act (1986 MRRA, known as REDUX), and his future retired pay, if based on length of service, would be reduced under such provisions.

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On 13 May 11, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, the applicant was diagnosed with an unfitting condition and recommended for permanent retirement with a 10 percent compensable rating.

On 20 May 11, according to AF Form 1180, *Action on Physical Evaluation Board Findings and Recommended Disposition*, the applicant agreed with the findings and recommended disposition of the informal PEB and waived his right to a formal PEB hearing.

On 23 Aug 11, according to Special Order Number **Work-Product** dated 26 May 11, the applicant was relieved from active duty, organization, and station of assignment. Effective 24 Aug 11, he was permanently disability retired with a compensable percentage for physical disability of 10 percent, and credited with 21 years, 3 months, 14 days active service for retirement.

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

AIR FORCE EVALUATION

DFAS-CL recommends denying the application. The applicant's current retirement is computed for longevity under his CSB agreement, with the lower computation of retired pay as a result of his election.

The applicant retired on 24 Aug 11 with a service-connected disability rated at 10 percent. He served for 21 years, 3 months, 14 days. He also has a compensable disability rated by the DVA at 50 percent. DFAS records show the applicant chose to take a CSB which offered an amount of \$30,000 upon reaching 15 years active service to service members who initially entered the armed forces on or after 1 Aug 86. By receiving the CSB, the service member agrees to complete 20 years of service and, upon retiring, will receive a reduced retired pay.

Under the 1986 MRRA/REDUX, the percentage multiplier that is used to compute retired pay for those who chose to take CSB is reduced by one percent for each year of service that is less than 30 years, and 1/12 of a percent for each month under one year. Prior to the 1986 MRRA, a service member with 20 years of service would have a percent multiplier of 50 percent. Under the 1986 MRRA, the percent multiplier is reduced to 40 percent, plus 3.5 percent for each year over 20 years of service. The applicant's percent multiplier used to compute his retired pay under REDUX is .4438 (.40 plus (.035 x 1.25)) versus .5313 (.025 x 21.25). The reduction in the percent multiplier, in addition to the one percent reduction in the Cost of Living Adjustment (COLA), is in place until age 62. At the age of 62, the percent multiplier is restored to .5313; however, the 1986 MRRA requires a yearly one percent reduction to the COLA for the lifetime of the retirement.

While the applicant retired under Title 10, United States Code § 1201, with a 10 percent compensable disability, he is a qualified Career Disability Retiree with more than 20 years of service. His retired pay is computed using his longevity and cannot exceed the amount of what he would have received had he not retired for disability. His pay continues to have a reduction through the VA Waiver shown on his statement so that his pay will not exceed what is computed under REDUX (Gross pay \$2,176 minus VA Waiver of \$360 equals \$1,816 pay after REDUX). Once the applicant reaches age 62, and qualifies to have his pay computed under the percent multiplier of .5313, the VA Waiver shown on his statement will also be adjusted so he receives his full retired pay without the reduction from REDUX.

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 21 Nov 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 DFAS-CL and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's current retired pay is calculated using longevity and his CSB election. The VA Waiver amount noted on his Retiree Account Statement reflects the reduction under REDUX and not a reduction in CRDP. The applicant's retired pay will be recalculated upon his reaching age 62, per the 1986 MRRA. 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)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.
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-2023-01835 in Executive Session on 20 Mar 24:

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| 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 5 May 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, DFAS-CL, w/atch, dated 17 Nov 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 21 Nov 23.

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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.

4/2/2024

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