



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02098

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

He be given a 20-year active-duty retirement.

APPLICANT'S CONTENTIONS

He served over 22 years on active duty and has enough points for an active duty retirement. Originally, he was supposed to retire on 1 Jun 22; however, due to an investigation, his enlistment was extended. In Dec 22, he was cleared of the investigation but received an Article 15 and was demoted. His expiration term of service (ETS) was 12 Dec 22, but his commander would not allow him to extend until 1 Jan 23 to retire and would not sign the memo for record (MFR) to allow him to retire on 1 Dec 22. He is currently not receiving his retirement benefits because his ETS expired before the first of the month.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Reserve (AFR) senior airman (E-4).

Dated 28 Jun 21, Special Order Work-Product indicates the applicant would be retired with an effective date of 1 Jun 22. Active Service for Retirement indicates he served 20 years, 1 month, and 15 days in the retired pay grade of technical sergeant (E-6).

On 11 Apr 22, the notification letter from the Air Force Office of Special Investigation (AFOSI) indicates the applicant was undergoing a criminal investigation.

On 18 Apr 22, a request for the suspension of the applicant's retirement of 1 Jun 22 was made by his commander due to a criminal investigation being conducted by military and civilian authorities.

Dated 26 Apr 22, Reserve Order Work-Product indicates the applicant's previous order number Work-... was revoked.

AFBCMR Docket Number BC-2023-02098

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Controlled by: SAF/MRB

CUI Categories: Work-Product

Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

On 5 Oct 22, AF Form 3070B, *Record of Nonjudicial Punishment Proceedings (TSgt thru CMSgt)*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for disobeying a lawful order by wrongfully visiting the residence of staff sergeant [Work-Pro...] to which he was ordered to remain at least 300 feet away from at all times. He received a reduction in grade to staff sergeant (E-5) and forfeiture of \$1,852.00 in pay for 2 months of which forfeiture in excess of \$1,852.00 for 1 month was suspended until 31 Jan 22.

On 6 Dec 22, AF Form 3070A, *Record of Nonjudicial Punishment Proceedings (AB thru SSgt)*, indicates the applicant received NJP, Article 15 for unlawfully strangling staff sergeant [Work-Prod...]. He received a reduction in grade to senior airman (E-4) and forfeiture of \$1,452.00 in pay for 2 months.

On 11 Dec 22, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged in the grade of senior airman (E-4) after serving 20 years, 7 months, and 16 days of active duty. He was discharged, with a narrative reason for separation of "Completion of Required Active Service."

Dated 31 Jan 23, a letter from the applicant's commander to the Air Reserve Personnel Center (ARPC) indicates as of 11 Dec 22, the applicant was no longer the subject of any civil or military investigation and was not pending any NJP under Article 15 of the Uniform Code of Military Justice (UCMJ).

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

APPLICABLE AUTHORITY/GUIDANCE

Title 10 United States Code (U.S.C.), Section 9314, *Twenty to Thirty Years – Enlisted Members*, under regulations to be prescribed by the Secretary of the Air Force, an enlisted member of the Air Force or the Space Force who has at least 20, but less than 30, years of service computed under section 9325 of this title may, upon his request, be retired. Title 10 U.S.C., Section 9325, *Computation of Years of Service: Voluntary Retirement; Enlisted Members*, states for the purpose of determining whether an enlisted member of the Air Force or the Space Force may be retired under section 9314 or 9317 of this title, his or her years of service are computed by adding all active service in the armed forces.

AIR FORCE EVALUATION

ARPC/DPTT recommends denying the applicant's request for a 20-year active duty retirement finding no evidence of an error or injustice. The applicant did not voluntarily extend his ETS from 12 Dec 22 to 1 Jan 23, which would have allowed ARPC to process his Regular retirement. Subsequently, he was discharged on his ETS in accordance with DAFI 36-3211, *Military Separations*.

A review of the applicant's military personnel record shows the applicant was approved for a Regular retirement; however, ARPC was notified on 18 Apr 22 of an administrative suspension

due to the applicant being the subject of an investigation and subsequent adverse action in the form of NJP action. Per AFI 36-3203, *Service Retirements*, Table 3.1, Rule 1.a, *Processing of Previously Submitted Retirement Applications*, if a member is under civil or military investigation and if an application has already been submitted or a retirement has been approved prior to initiation of an investigation, the member's commander or the wing's Staff Judge Advocate (SJA) will immediately direct the retirement approval authority (RAA) to place the retirement in suspension. Due to this rule, his retirement order was revoked. The suspension was subsequently terminated a day before the applicant's ETS. Upon that date, the applicant's suspended retirement application was released from administrative suspension and ARPC returned the application back to normal processing. The applicant would then be eligible to retire as soon as possible per AFI 36-3203, Table 3.1, Note 4, which states if the original retirement date passed, or does not allow use of permissive temporary duty (PTDY)/terminal leave, retirement should be effective as soon as possible after release from administrative hold. However, Regular retirements are only processed on the first of the month per 5 U.S.C. Section 8301, which states retirement authorized by statute is effective on the first day of the month following the month in which retirement would otherwise be effective. Consistent with 5 U.S.C. Section 8301 and the ARPC's normal processing, the applicant's retirement would have to be effective 1 Jan 23; however, he did not voluntarily extend his ETS date and without the voluntary ETS extension, normal processing required he be discharged on 12 Dec 22. In turn, this rendered him ineligible for transfer to the Retired Reserve on 1 Jan 23 in accordance with DAFI 36-3211, paragraph 4.8, which states members who are pending adverse action or are subjects of an investigation may be given the option to voluntarily extend past their ETS date in order to reach resolution of the investigation or pending adverse action, but if they elect not to extend, are separated on their ETS date.

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 12 Dec 23 for comment (Exhibit D), and the applicant replied on 14 Dec 23. In his response, the applicant contends after he was cleared of the investigation on 11 Dec 22, he tried to get an extension so he could retire on the first of the month; however, his commander refused to extend his orders due to the Article 15. His commander did not want to see him retired even though the investigation was closed, and he was cleared.

In support of his request, the applicant provided a statement from his superintendent at the time which states the applicant was told by his administrative representative not to extend his enlist until a decision was made regarding his case. The applicant applied for retirement with an effective date of 1 Jan 23; however, his commander at the time refused to sign the form due to the administrative actions and felt he was not fit for duty nor met the requirements for an extension. The superintendent goes on to explain he felt this decision was a little excessive as the applicant was already punished and by denying him a retirement, was double punishment. The applicant served faithfully up to this point and only had these administrative actions pending at the end of his career.

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, the Board concludes the applicant is the victim of an error or injustice. While the Board notes the recommendation of ARPC/DPTT against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant’s contentions. Per AFI 36-3203, once the investigation was concluded and he was released from administrative hold, the applicant was eligible to be retired; however, regular retirements are only processed on the first of the month per 5 U.S.C. Section 8301, which states retirement authorized by statute is effective on the first day of the month following the month in which retirement would otherwise be effective. The Board finds the applicant was not given the opportunity to extend his enlistment in order to process his retirement properly and the letter from his superintendent in his chain of command indicated the applicant’s commander refused to allow him to extend his enlistment in order to retire on the first of month, compelling enough to warrant relief. 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:

- a. He was not separated on 12 December 2022 but instead remained on active duty through 31 December 2022 and was retired for length of service, effective 1 January 2023.
- b. His election of the Survivor Benefit Plan option will be corrected in accordance with his expressed preferences and/or as otherwise provided for by law or the Code of Federal Regulations.

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-2023-02098 in Executive Session on 9 Apr 24:

Work-Product	Panel Chair
Work-Product	Panel Member
Work-Product	Panel Member

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

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- Exhibit A: Application, DD Form 149, w/atchs, dated 29 May 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, ARPC/DPTT, w/atchs, dated 9 Nov 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 12 Dec 23.
- Exhibit E: Applicant's Response, w/atch, dated 14 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.

5/7/2024

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Board Operations Manager, AFBCMR

Signed by: *Work-Product*

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