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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-2023-02641

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: Work-P...

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APPLICANT'S REQUEST

Reinstatement of his retired rank/grade of major (O-4).

APPLICANT'S CONTENTIONS

Public Law (PL) 116-283, Fiscal Year National Defense Authorization Act (FY21 NDAA), mandates a time-in-grade (TIG) of three years to maintain the grade of O-4. However, the FY21 NDAA was not enacted until 1 Jan 21, following a complex legislative process involving approval by Congress, a veto by the President, and subsequent Senate override. On 23 Oct 20, two months before FY21 NDAA was enacted, he was approved for retirement in the rank of major, effective 1 Oct 21. Furthermore, no notification was provided upon the enactment of FY21 NDAA, which amended Title 10 United States Code § 1370 (10 U.S.C. § 1370), causing conflicts with Air Force regulations. Given the delayed enactment, conflicting regulations, and lack of notification, reinstatement is warranted, as he should not be penalized for issues beyond his control at higher levels of government and military leadership.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force captain (O-3).

On 1 Apr 20, according to Special Order Work-Product, dated Work-Product the applicant was promoted to the permanent rank of major, with the same date of rank.

On 30 Sep 21, according to Special Orders No. Work-Product, dated Work-Product, the applicant was relieved from active duty and retired, effective 1 Oct 21 per AFI 36-3205, *Service Retirements*, in the rank of major.

On 3 Jan 22, according to Special Orders No. Work-Product, dated Work-Product, the applicant's retirement orders No. Work-Product, dated Work-Product, were amended changing his retired rank to captain. Time-in-grade requirement was revised in Public Law 116-283, FY21 NDAA. The applicant was under the High-3 retirement plan; therefore, the change does not impact retired pay.

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

AIR FORCE EVALUATION

AFBCMR Docket Number BC-2023-02641

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AFPC/DPMSSR (Military Retirements) recommends denying the application. The applicant retired effective 1 Oct 21, with 18 months time-in-grade as a major. The FY21 NDAA, effective 1 Jan 21, outlined in 10 U.S.C. § 1370(a)(1), *Regular commissioned officers*, subparagraph (b), *Retirement of Officers Retiring Voluntarily*; increased the time-in-grade requirement from six months to three years for majors in the Army, Air Force, Marines, lieutenants in the Navy, or the equivalent in the Space Force, in order to retire in that grade, except that:

- The Secretary of Defense (SECDEF) may reduce such period of not less than two years for any officer; and
- The SECDEF may authorize the Secretary of the military department concerned to reduce such a period to a period of not less than two years.

10 U.S.C. § 1370, paragraph (b)(3) allows the President of the United States (POTUS) to approve longer waivers in individual cases involving extreme hardship or exceptional or unusual circumstances. The Office of the Secretary of Defense (OSD) will not support waivers that require approval by the POTUS if they are based on the legislative change alone.

The Services did not discover the legislative change until Jun 21. At the time of discovery, AFPC/DP3SA notified AF/A1PPS, and their office began discussions with SAF/LL and SAF/GC on how to proceed. Air Staff worked with SAF/LL to draft language grandfathering those officers approved for retirement prior to discovery of the legislative change, but unfortunately, those efforts were unsuccessful/not included in the FY22 NDAA. In Dec 21, Air Staff in discussions with OSD, found there was “no appetite” from the other Services or OSD to pursue a waiver for those who had not completed at least 2 years’ time-in-grade since that would require a waiver by the POTUS, and the impacts were minimal. On 6 Jan 22, AFPC sent notifications to the officers who were retired with less than 2 years’ time-in grade, advising them of the situation, the change to their retired grade, and the impacts of the legislative change. Specifically, impacts of the legislative change to the applicant:

- The applicant is under the High-3 retirement plan and his retired pay was based on an average of the highest 36 months of pay received prior to retirement. Because of this, the applicant WILL NOT see an adjustment of his retired pay.
- The applicant’s retirement order contains the highest grade held (major) as well as the retired grade (captain).
- The applicant’s DD Form 214, *Certificate of Release or Discharge from Active Duty* contains the highest grade held (major), because that is the grade held by the applicant on his last day of active duty.
- The grade on the applicant’s retired identification card should show the retired grade (captain).
- The applicant is entitled to shipment of household goods for the higher grade (major) allowance.
- If desired in the future, the applicant’s family can obtain a Department of Veterans Affairs’ headstone and marker inscribed with the applicant’s highest grade held (major).

Pursuant to 10 U.S.C. § 1370(a)(1), subparagraph (b) (2), allowing the SECDEF (or if delegated, the Service Secretary) to waive the time-in-grade requirement when a member has completed at least two but less than three years of time-in-grade. Based on the available waiver authority, the Services elected to pursue waivers for those officers who had completed at least two years of time-in-grade. This legislative change impacts all Services and all majors retiring on or after 1 Jan 21. While it is unfortunate the applicant was notified of the change after his retirement effective date, he has not provided evidence to show why a waiver should be granted for him over all others

impacted by the change. Should the Board choose to seek an after-the-fact waiver from POTUS, recommend all impacted officers, as well as the applicant, be considered for inclusion.

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 16 Nov 23 for comment (Exhibit D) 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 recommendation of AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions. The FY21 NDAA legislative change (10 U.S.C. § 1370) increasing the service-in-grade requirement from six months to three years for majors to retire in that grade, impacted all Services and all majors retiring on or after 1 Jan 21. The Board notes the legislative change did allow Service Secretaries to waive the three-year requirement for those officers with more than two years but less than three years' service-in-grade. However, the applicant had only 18 months service-in-grade as a major and has not provided any evidence of extreme hardship or exceptional or unusual circumstances that warrant pursuit of a POTUS waiver over all other officers impacted by the legislative change. 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-2023-02641 in Executive Session on 30 May 24:

Work-Product, Panel Chair
Work-Product, Panel Member
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All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 16 Jun 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DPMSSR, dated 7 Nov 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 15 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.

9/16/2025

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Board Operations Manager, AFBCMR
Signed by: USAF

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