



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02820

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His membership points be restored as a Reservist from 2005 to 2008 for the purposes of qualifying for a reduced retired pay age (RRPA) Reserve retirement.

APPLICANT'S CONTENTIONS

He was brought on active duty from the Air Force Reserve (AFR) in 2002 in pursuant to U.S.C. 12301D and served on active duty until 1 Dec 08; however, his Reserve membership points were reduced from 2005 to 2008 even though he was serving on an extended active-duty tour. He had three consecutive periods of 90 days of active duty after 28 Jan 08 that qualify for RRPA. He was involuntarily categorized as regular Air Force while he was in the Reserve. Consequently, he is now not eligible for RRPA resulting in a loss of nine months of retired income. His request was denied by ARPC for RRPA as indicated in the myPers response from ARPC/Retirements on 16 Nov 22.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former AFR lieutenant colonel (O-5) awaiting retired pay at age 60.

Dated 9 May 02, Reserve Order **Wor...** indicates the applicant was appointed to the AFR in the grade of second lieutenant (O-1), effective 16 May 02 with a date of enlistment into the AFR of 21 Aug 01.

On 10 Oct 02, Special Order **Work-Product** provided by the applicant, indicates he was voluntarily ordered to active duty in accordance with U.S.C. 12301D, effective 2 Dec 02 for a period of 72 months with a 4-year extended active-duty service commitment.

Dated 10 Jan 03, AF Form 1613, *Statement of Service*, indicates the applicant's military status was active duty.

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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 1 Dec 08, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged from the regular Air Force in the grade of captain (O-3) after serving six years of active service this period. He was discharged, with a narrative reason for separation of "Miscellaneous/General Reasons."

Dated 5 Jan 09, Reserve Order **Work-Product** indicates the applicant was appointed to the AFR in the grade of captain (O-3), effective 2 Dec 08.

On 28 Nov 22, the applicant was notified of his eligibility for retired pay at age 60 noting he completed the required years of service under Title 10 USC, Section 12731.

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

APPLICABLE AUTHORITY/GUIDANCE

DoDI 1215.07, *Service Credit for Reserve Retirement*, dated 18 Nov 05, incorporating changes through 7 Nov 08, under paragraph 6.4, *Retirement Point Credit by Activity*, active service shall be credited at the rate of one point per day of active service. Active service is service on active duty or full-time National Guard duty. Per paragraph 6.4.2.12, a maximum of 365 points (366 points in a leap year) may be awarded in any anniversary year.

Members of the Reserve and National Guard attain eligibility for retired pay under Title 10 U.S.C., Section 12731, normally at age 60, after completion of at least 20 years of satisfactory service. However, under 12731(f)2 subparagraph A, in the case of a person who as a member of the Ready Reserve serves on active duty or performs active service described in subparagraph (B) after 28 Jan 08, the eligibility age for purposes of subsection (a)(1) shall be reduced, subject to subparagraph (C), below 60 years of age by three months for each aggregate of 90 days on which such person serves on such active duty or performs such active service in any fiscal year after 28 Jan 08, or in any two consecutive fiscal years after 30 Sep 14.

Subparagraph B: A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph. Service on active duty described in this subparagraph is service on active duty pursuant to a call or order to active duty under section 12301(d) or 12304(b) of this title, or under a provision of law referred to in section 101(a)(13)(B) of this title. Such service does not include service on active duty pursuant to a call or order to active duty under section 12310 of this title. Active service described in this subparagraph is also service under a call to active service authorized by the President or the Secretary of Defense under section 502(f) of title 32 for purposes of responding to a national emergency declared by the President or supported by Federal funds.

Subparagraph C: The eligibility age for purposes of subsection (a)(1) may not be reduced below 50 years of age for any person under subparagraph (A).

AIR FORCE EVALUATION

ARPC/DPTSP recommends denying the application finding no evidence of an error. Due to the policy that was created, the applicant was transitioned to regular officer status on 1 May 06. The applicant was transitioned from a Reservist on an extended active duty (EAD) order to Regular Air Force in May 06, during his 2005-2006 anniversary year and was then again appointed into the Reserve of the Air force effective 2 Dec 08, after his EAD tour completed. Per the Fiscal Year 2005 National Defense Authorization Act, a memorandum was published to implement guidance to transition to an all-regular active-duty list (ADL). This policy directed the transition of all reserve commissioned officers currently on the ADL to regular officer status no later than 1 May 06. The officers' rights and obligations under their original contract shall remain unchanged and their oath of office remains in effect.

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 Mar 14 for comment (Exhibit D), and the applicant replied on 13 Mar 14. In his response, the applicant contends he is requesting his Reserve membership points be restored during fiscal year 2006 through 2009 for the period in question and his reduced retired pay application be reconsidered. In the policy memorandum cited by the advisory opinion, it makes clear an officer's rights remain unchanged; however, his rights to a RRPA pursuant to 10 U.S.C. Section 12731 have been denied when his commission was involuntarily converted. The policy was not so inflexible as to require regular commissions under all circumstances. The memorandum discusses waivers and continuing to serve with a Reserve appointment. Considering the reduced retired pay age law, his continued active service into fiscal year (FY) 09 should not go unrecognized. Denial would run afoul of the spirit of these laws to incentivize active-duty service generally and would restrict benefits rather than enhance them.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

ARPC/DPTT recommends denying the application finding no evidence of an error or injustice as the applicant's record has been audited and no errors were found. The applicant is not eligible for RRPA during the period requested because he was serving on active duty or performing active service as a member of the Ready Reserve. Under the provisions of 10 U.S.C. Section 12731(f), a person who as a member of the Ready Reserve serves on active duty or performs active service of sufficient length under certain statutory authorities after 28 Jan 08 may reduce the age at which that person becomes eligible to receive non-regular retired pay. However, active duty or active service rendered by a person who is not a member of the Ready Reserve does not qualify for RRPA. The applicant's status as a member of the Regular Air Force is reflected on his AF Form 1613 and his DD Form 214 demonstrating he served as a member of the Regular Air Force from 2 Dec 02 to 1 Dec 08. Consequently, his active duty and/or active service between those dates was not rendered as a member of the Ready Reserve and does not qualify for RRPA.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 13 May 24 for comment (Exhibit G), 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/DPTSP and ARPC/DPTT and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board noted the applicant's contention a waiver could have been pursued to allow his active-duty time to count as Reserve service for the purposes of qualifying for RRPA; however, the Board finds no national security requirement to allow for such a waiver nor does the Board find evidence to suggest the applicant did not meet the requirements to transition to regular officer status. Per the FY05 National Defense Authorization Act, a memorandum was published to implement guidance to transition the active-duty list (ADL) officer force to an all-regular status to enhance retention. All Reserve commissioned officers currently on the ADL were to transition to regular officer status provided they met all requirements for appointment under 10 U.S.C. Section 532; however, those not meeting the requirements may have continued to serve with a Reserve appointment. This policy memorandum discusses waivers stating requests for waivers by the Secretary of Defense are limited and should only be sought in cases where national security requires. 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-2023-02820 in Executive Session on 18 Jun 24:

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Panel Chair
Panel Member
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 28 Aug 23.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, ARPC/DPTSP, w/atchs, dated 31 Jan 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 12 Mar 24.

Exhibit E: Applicant's Response, dated 13 Mar 24.

Exhibit C: Advisory Opinion, ARPC/DPTT, w/atchs, dated 24 Apr 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 May 24.

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.

7/16/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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