



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02926

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military personnel record be amended to remove the \$1,600 Veterans Administration (VA) Waiver from his retirement pay.

APPLICANT'S CONTENTIONS

The applicant is 100 percent permanent and total disabled with the Department of Veterans Affairs (DVA) and was rated at 90 percent disabled by the United States Air Force (USAF). He is aware his retirement pay caps out at 75 percent. He wants the code on his retirement that is causing the \$1,600 VA Waiver from his pay each month to be removed. A correction should be made so he can improve his well-being. Losing \$1,600 a month is a lot when he is unable to work at this current time and will be unable to work for many months ahead. He has spoken with the Defense Finance Accounting Service (DFAS), DVA, Air Force Manpower/Personnel, and the Disabled American Veterans (DAV). They all have stated his pay should be corrected and he is eligible to receive all of both USAF and DVA pay.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 8 Mar 17, according to the DD Form 2839, *Career Status Bonus (CSB) Election*, the applicant elected to receive the CSB as a single lump sum payment of \$30,000.

On 31 Dec 22, according to the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, he was furnished an honorable discharge with Narrative Reason for Separation of Disability, Permanent IDES, and credited with 20 years, 9 months, and 12 days active service.

On 1 Jan 23, according to Special Order Number **Work-Product**, dated 30 Nov 22, the applicant was permanently disability retired in the grade of master sergeant with compensable percentage for physical disability of 90 percent.

On 2 Apr 23, according to the DVA letter, summary of benefits, provided by the applicant, his combined service-connected evaluation is 100 percent.

On 23 Aug 23, according to the Retiree Account Statement, provided by the applicant, his retirement pay is reduced by \$1,632 due to a VA Waiver.

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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 § 1201 (10 USC § 1201) - *Regulars and members on active duty for more than 30 days: retirement*

(a) *Retirement.* Upon a determination by the Secretary concerned that a member described in subsection (c) is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in subsection (c)(3), the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) *Required Determinations of Disability.* Determinations referred to in subsection (a) are determinations by the Secretary that:

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either:

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either:

(i) the disability was not noted at the time of the member's entrance on active duty (unless clear and unmistakable evidence demonstrates that the disability existed before the member's entrance on active duty and was not aggravated by active military service);

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

(c) *Eligible Members.* This section and sections 1202 and 1203 of this title apply to the following members:

(1) A member of a regular component of the armed forces entitled to basic pay.

10 USC § 1401 - *Computation of retired pay*

(a) *Disability, Non-Regular Service, Warrant Officer, and DOPMA Retirement.*

The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed "For sections", retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, and 3, as modified by the applicable footnotes.

- For sections 1201 and 1204, take retired pay base as computed under section 1406(b) or 1407; multiply by (as the member elects) (1) the retired pay multiplier determined for the member under section 1409 of this title; or (2) the percentage of disability, not to exceed 75 percent, on date when retired.

38 USC § 5305 - *Waiver of retired pay*

Except as provided in section 1414 of title 10, any person who is receiving pay pursuant to any provision of law providing retired or retirement pay to persons in the Armed Forces, or as a commissioned officer of the National Oceanic and Atmospheric Administration or of the Public Health Service, and who would be eligible to receive pension or compensation under the laws administered by the Secretary if such person were not receiving such retired or retirement pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired or retirement pay is paid of a waiver of so much of such person's retired or retirement pay as is equal in amount to such pension or compensation. To prevent duplication of payments, the department with which any such waiver is filed shall notify the Secretary of the receipt of such waiver, the amount waived, and the effective date of the reduction in retired or retirement pay.

10 USC § 1414 - *Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation*

(b) *Special Rules for Chapter 61 Disability Retirees.*

(1) *Career retirees.* The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title, or at least 20 years of service computed under section 12732 of this title, at the time of the member's retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

AIR FORCE EVALUATION

DFAS-CL recommends denying the application. DFAS is following the applicable laws pertaining to the applicant's retirement pay account and does not have the authority to eliminate the offset due to the VA Waiver.

The applicant retired from the Air Force on 1 Jan 23 with a service-connected disability of 90 percent and 20 years, 9 months, and 12 days active service. He also has a compensable disability currently rated by the DVA at 100 percent. The applicant chose to take a CSB which offered airmen, who initially entered the armed forces on or after 1 Aug 86, \$30,000 upon reaching 15 years active service. By electing to receive the CSB, the airman agrees to complete 20 years of service and, upon retiring, will receive a reduced retirement pay.

Under the Military Retirement Reform Act (MRRA) of 1986, also known as REDUX, the percentage multiplier used to compute retired pay for those who chose to take CSB is reduced by one percentage for each year of service less than 30 years and 1/12th of a percentage point for each month under one year. Prior to the MRRA, a member with 20 years of service would have a percentage multiplier of 50 percent. Under the MRRA, the percentage multiplier is reduced to 40 percent plus 3.5 percent for each year over 20 years of service. The applicant's percentage multiplier used to compute his retired pay under REDUX is .4263 [.40 plus (.035 times .75)] versus .5188 [.025 times 20.75]. The reduction in the percentage multiplier in addition to a one percent reduction in the Cost-of-Living Adjustment (COLA) is in place until age 62. At the age of 62, the percentage multiplier is restored to .5188; however, the MRRA requires a yearly one percent reduction to the COLA for the lifetime of the retirement.

Under 10 USC § 1201, a service member with a disability of at least 30 percent or who has served at least 20 years can be retired for a disability that was incurred while entitled to basic pay. The applicant's disability for retirement is 90 percent; however, only the maximum 75 percent¹ of a service member's High Average can be received. The applicant's retired disability pay is currently \$3,863 (75 percent of his highest 36 months of pay). In accordance with 38 USC § 5305, a military retiree is required to waive a portion of their gross retired pay, dollar-for-dollar, by the amount of their DVA compensation. This is commonly referred to as a "VA Waiver." The applicant's DVA compensation is in the amount of \$4,098.87. He is a qualified Career Disability Retiree with more than 20 years of service. Under the authority of 10 USC 1414(b)(1), service members with 20 years of service who retire for disability can only receive pay to the extent of what their pay would have been had they not retired for disability. In the applicant's case, his pay had he not retired for disability is \$2,195. As a result, the VA Waiver shown on his account is adjusted to \$1,688 (gross retired disability pay of \$3,863 less the VA Waiver of \$1,688 equals \$2,195) to only allow what is payable by law. This includes the reduction described in the provisions under REDUX. Once the applicant reaches age 62 and qualifies to have his pay computed using the percentage multiplier of .5188, the offset due to REDUX will also be adjusted so he receives his full retired pay without the reduction.

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 22 Feb 24 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 DFAS-CL and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant's monthly retirement pay was reduced because of his CSB election. As a Career Disability Retiree with more than 20 years of service, his disability retired pay was offset by the VA Waiver to match the CSB-reduced retired pay amount, in accordance with 10 USC 1414(b)(1). The applicant's retirement pay and VA Waiver, were correctly computed in accordance with current statutes and will be re-computed upon reaching age 62. Therefore, the Board 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 evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

¹ 75% maximum under 10 USC 1401.

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-2023-02926 in Executive Session on 9 Jul 24:

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 12 Sep 23.

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

Exhibit C: Advisory Opinion, DFAS-CL, atch, dated 23 Jan 24.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 22 Feb 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.

10/1/2024

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