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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03029

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His official military record be corrected to reflect Reserve Retired status.

APPLICANT'S CONTENTIONS

He became eligible for retirement on 12 Apr 03, with 23 years of combined active, guard, and reserve duty with 5,586 points. His application for retirement was delayed until 9 Aug 23, due to an issue with the Force Support Squadron website ([REDACTED] Work-Product), to include submission of his DD Form 2656, *Data for Payment of Retired Personnel*. On 11 Sep 23, he received an email from the Air Force myFSS stating he was not eligible as his status was listed as a former member. As a combat veteran with 23 years of faithful service, he needs the retirement to survive.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air National Guard (ANG) master sergeant (E-7).

On 31 Mar 04, ARPC/DPPR sent the applicant the standard Notification of Eligibility for retired pay (20-year letter) informing him that he has completed the required years under the provisions of Title 10 United States Code, Section 12731 (10 U.S.C. § 12731) and is entitled to retired pay upon application at age 60.

On 22 Sep 07, according to [REDACTED] Work-Product, dated 10 Oct 07, the applicant was honorably discharged from the [New York] ANG and as a Reserve of the Air Force. On this same date, according to NGB Form 22, *Report of Separation and Record of Service*, the applicant was furnished an honorable discharge with authority and reason: AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, paragraph 3.12.1. for expiration of enlistment and was credited with 23 years and 8 days of total service for retired pay.

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

APPLICABLE AUTHORITY/GUIDANCE

AFBCMR Docket Number BC-2023-03029

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Air Force Instruction (AFI) 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, dated 14 Apr 05. Paragraph 1.2.1. *Former Members*. All members who are eligible for transfer to the Retired Reserve and choose discharge must be formally counseled concerning this policy and its effects on their benefits.

AIR FORCE EVALUATION

ARPC/DPTT (Transition Division) recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice because the applicant did not apply for a Reserve retirement prior to being discharged. HQ ARPC Retirement Eligibility Section reviewed the applicant's Military Personnel Record and found the applicant received the Notification of Eligibility for Reserve Retired Pay at age 60 letter. Per Air Force Instruction (AFI) 36-3203, *Service Retirements*, paragraph 8.6, Reserve component members use AF IMT 131, *Application for Transfer to the Retired Reserve*, to apply for transfer to the Retired Reserve. He was discharged on 22 Sep 07. The applicant applied for retired pay on 9 Aug 23 with an effective date of 12 Apr 23 which is currently being processed pending a corrected DD Form 2656 from the applicant.

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 7 Nov 23 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. Although the application was not timely filed within the three-year limitation period established by 10 U.S.C. § 1552 (b), the untimeliness is waived in the interest of justice.
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. The Board finds that if the applicant had known the proper procedures for the retirement application process, he would have adhered to them since he served sufficient time to be eligible for a Reserve retirement. While his military personnel record contains a letter sent to him by ARPC notifying him of his options for retirement and the effects of his election on his benefits, there is no evidence of the applicant's receipt of this letter. To deny relief in this circumstance would be to place form over substance, to the detriment of the applicant. Therefore, the Board recommends correcting the record 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 he was not discharged from the Air Force Reserve on 22 Feb 07, but on that date, he was assigned to the Retired Reserve Section, and his name was placed on the Retired Reserve List, and he was eligible for retired pay at age 60, under the provisions of Title 10, United

States Code, Section 12731, or, if applicable, under reduced retired pay age authorized by the National Defense Authorization Act for 2008.

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-2023-03029 in Executive Session on 23 Apr 24:

Work-Product, Panel President

Work-Product, Panel Member

Work-Product, Panel Member

All members voted to correct 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, ARPC/DPTT, w/atchs, dated 25 Oct 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Nov 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.

7/30/2024

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