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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-04061

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His previously approved Mandatory Separation Date (MSD) waiver, dated 25 May 22 be modified from 10 USC § 14702 to 10 USC § 14701.

APPLICANT'S CONTENTIONS

He was never informed his original MSD waiver was contingent on remaining in a full-time Title 32 technician status. When he changed his status from a Title 32 technician to a Title 5 Drill Status Guardsman (DSG) in Aug 23, he was not informed this change in status would require a new 14701 waiver be submitted and it needed to be accomplished 30 days prior to his change in status. Neither he, his chain of command or the New York Air National Guard (NYANG) knew of these requirements. Had he known, he would have submitted a timely request under 10 USC 14701 prior to his departure and if the new waiver was not approved, he would have never left his position as a full-time Title 32 technician. However, upon discovery of this requirement, a new 10 USC 14701 waiver request was submitted to the National Guard Bureau (NGB) on 19 Oct 23.

He has not been performing military duties of any kind while awaiting resolution of this matter. He is critically needed to perform Work-Product duties due to the arrival of a new wing commander and with four of five Group Commanders retiring imminently. It is in the best interest of the wing and the NYANG for this matter to be resolved quickly.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an ANG colonel (O-6).

On 1 May 22, the applicant, who at the time was a Title 32 Air Reserve Technician (ART), received notification his mandatory separation date (MSD) expires on 1 Apr 23, which requires him to leave active status after completing 30 years commissioned service, in accordance with 10 USC § 14507, at which point he will automatically be transferred to the Retired Reserve on his MSD.

On 13 May 22, according to memorandum, *Request for Extension of Mandatory Separation Date (MSD)* the applicant requested an extension to his MSD of 1 Apr 23 to 1 Apr 25 in accordance with 10 USC § 14702. On the same date, his wing commander concurred.

On 25 May 22, The Adjutant General (TAG) for the State of New York, approved the request to extend the applicant's MSD of 1 Apr 23, in accordance with 10 USC § 14702 to 1 Apr 25.

AFBCMR Docket Number BC-2023-04061

Work-Product

Work-Product

On 13 Aug 23, according to SF-50, *Notification of Personnel Action*, the applicant transferred from his Title 32 position to accept a Title 5 position at Work-Product

On 19 Oct 23, according to the memorandum, *Request Extension of Mandatory Separation Date (MSD)*, the applicant requested an extension to his MSD of 12 Aug 23, based on selection by the Selective Continuation Board process in accordance with 10 USC § 14701, as outlined in AFI 35-2504, *Officer Promotion, Continuation and Selective Early Removal in the Reserve of the Air Force*, until 1 Apr 25. On the same date, his wing commander concurred with the request.

On 17 May 24, according to the applicant's Retrieval Application Website (RAW) Single Unit Retrieval Format (SURF), dated 13 May 24, reflects the following: Air Tech ID - (2) Not employed by ANG as Air Tech; ANG Mandatory Sep Date – 12 Aug 23.

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

APPLICABLE AUTHORITY/GUIDANCE

10 U.S. Code § 14701 - *Selection of officers for continuation on the reserve active-status list*, (a) Consideration for Continuation. (1)(A) a reserve officer of the Army, Navy, Air Force, or Marine Corps who is required to be removed from the reserve active-status list under section 14505, 14506, or 14507 of this title, may be considered for continuation on the reserve active-status list under regulations prescribed by the Secretary of Defense.

10 U.S. Code § 14702 - *Retention on reserve active-status list of certain officers in the grade of major, lieutenant colonel, colonel, or brigadier general*, (a) Retention. - Notwithstanding the provisions of section 14506, 14507, or 14508 of this title, the Secretary of the military department concerned may, with the officer's consent, retain on the reserve active-status list an officer in the grade of major, lieutenant colonel, colonel, or brigadier general who is - (a)(2) a reserve officer of the Army or Air Force who, as a condition of continued employment as a National Guard or Reserve technician is required by the Secretary concerned to maintain membership in a Selected Reserve unit or organization.

Department of the Air Force (DAFI) 36-3211, *Military Separations*, 24 Jun 22:

15.12. Extending an Approved Separation Date. Extension applications based on hardship or best interest of the USAF or USSF are accepted at any time (normally no later than 30 days prior to DOS), but it must be received by AFPC Separations before the member's approved DOS.

16.15.3. For ANG only, retention beyond the MSD is authorized as follows: 16.15.3.2. Federal Employee Retirement System (FERS) Technicians. An ANG officer employed as an MT and whose separation is required by paragraph 16.16.1 may be retained beyond the MSD. The state adjutant general may approve the retention until the FERS technician qualifies for an immediate, full (basic and supplement) annuity or age 57, whichever is earlier. A written request is submitted by the technician through the appropriate chain of command to the State Human Resources Office (HRO). HRO forwards the request to the State Adjutant General. A copy of the written approval signed by TAG is forwarded to NGB/A1PP 16.15.3.3. The State Adjutant General may request the retention of a CSRS or FERS technician beyond those limits established in paragraph 16.15.3.1. or paragraph 16.15.3.2 by submitting a request to NGB/A1PP for approval by Chief, Air National Guard Bureau (CNGB) or the Director, Air National Guard (NGB/CF) as delegated. *CNGB or NGB/CF can approve the retention of an MT up to age 60.* The request submitted by TAG fully justifies further retention based on the needs of the ANG and not based on the personal gain or needs of the member.

AIR FORCE EVALUATION

NGB/A1PP recommends granting the request. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice in communication to the applicant concerning his status change. Under 10 USC 14702, the applicant initiated a Title 32 Technician MSD extension waiver, which was approved by the NYANG TAG on 25 May 22. On 12 Jul 22, the Military Personnel Data System (MilPDS) was updated to reflect a new MSD of 1 Apr 25. On 5 Oct 22, NGB/A1PP received a request for the applicant to be assigned as a

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After reviewing the applicant's package and record, NGB/A1PP queried the state's Military Personnel Management Assistant (MPMA) regarding the assignment request as he had back-to-back Air Guard/Reserve orders from 1 Aug 19 – 30 Jun 23, which prompted questions regarding his recent MSD extension and his plan for returning to his technician status. Further NGB/A1PP advised MPMA if the member was not returning to technician status, the appropriate action was to initiate an MSD request under 10 USC 14702 as a traditional guardsman. The state MPMA response on 5 Nov 22 included an email thread detailing a conversation with the wing executive officer, which mentioned the applicant's plan when he came off orders to revert to technician status on 30 Jun 23. Between 13-16 Oct 23, the applicant's wing commander spoke with NGB/A1PP regarding the applicant's MSD due to him resigning his technician status. NGB/A1PP requested the applicant's SF-50 to validate the resignation date and explained to the state the applicant may have to stop participating and submit a BCMR for reinstatement due to the 10 USC 14702 legal requirement for a reserve officer who, as a condition of continued employment as a National Guard technician is required by the Secretary concerned to maintain membership in a Selected Reserve unit or organization.

In Aug 23, the applicant's status changed from a full-time Title 32 Technician to a Title 5 DSG. In accordance with DAFI 36-3211, paragraph 15.12, the member was responsible for submitting a new MSD extension, under 10 USC 14701, no later than 30 days prior to his date of separation. The applicant states he was unaware of this requirement; however, upon discovery, he submitted a new MSD waiver request under 10 USC 14701 on 19 Oct 23.

Therefore, based on the documentation provided by the applicant, timeline of events, discussion between NGB/A1PP and the NGB General Counsel, the applicant's request for an MSD extension under 10 USC 14701 should be approved.

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 21 Feb 24 for comment (Exhibit D), and the applicant replied on 26 Feb 24. In his response, the applicant contended no one informed him, nor did the NYANG or his chain of command know, his MSD waiver under 10 USC 14702 was contingent on him staying a full-time Title 32 technician. Had they known, he would have submitted a new waiver, under 10 USC 14701, prior to his departure. *If the new 14701 waiver had not been approved, he would never have left as a full-time Title 32 technician* [emphasis added by applicant].

The applicant's complete response is at Exhibit E.

AIR FORCE EVALUATION

SAF/MRBP, defers to NGB/A1PP for an analysis of the facts and circumstances leading up to the expiration of the applicant's MSD when he apparently left his full-time technician position and adopts the rationale of NGB/A1PPS that relief is warranted. This advisory only addresses the

matter under their purview, which is whether or not the Director, Secretary of the Air Force Personnel Council (SAFPC) would have approved his MSD extension under 10 USC 14701 had the request been initially properly referred to SAFPC. Given the fact the justification for such a request seems to be the NYANG's proposed assignment of the applicant to a non-rated Vice Commander position, they believe the Air Force Personnel Board would have recommended approval of the extension under 10 USC 14701 and the Director, SAFPC, would have approved the request. Therefore, consistent with the recommendation of NGB/A1PP, they recommend correcting the applicant's records to reflect his MSD was extended to 1 Apr 25 under the 10 USC 14701 instead of under the authority of 10 USC 14702.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 12 Jun 24 for comment (Exhibit G), and the applicant replied on 17 Jun 24. In his response, the applicant concurs with both the advisory recommendations of NGB/A1PP and SAF/MRBP and asks for his case to proceed post haste as he has not been able to perform military duty since 13 Oct 23 while waiting resolution of this matter.

The applicant's complete response is at Exhibit H.

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. The Board concurs with the rationale and recommendation of both NGB/A1PP and SAF/MRBP and finds a preponderance of the evidence substantiates the applicant's contentions. 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 on 25 May 22 his Mandatory Separation Date was extended to 1 Apr 25 under the authority of 10 USC § 14701.

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-2023-04061 in Executive Session on 9 Jul 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:

AFBCMR Docket Number BC-2023-04061

Exhibit A: Application, DD Form 149, w/atchs, dated 7 Dec 23.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, NGB/A1PP, w/atchs, dated 7 Feb 24.
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 21 Feb 24.
Exhibit E: Applicant's response, dated 26 Feb 24.
Exhibit F: Advisory opinion, SAF/MRBP, dated 11 Jun 24.
Exhibit G: Notification of advisory, SAF/MRBC to applicant, dated 12 Jun 24.
Exhibit H: Applicant's response, dated 17 Jun 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	
X	Work-Product
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Board Operations Manager, AFBCMR	
Signed by:	Work-Product