



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00675

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

Forty-nine and a half (49.5) days of leave be restored to his current leave balance.

APPLICANT'S CONTENTIONS

In accordance with (IAW) AFI 36-3003, *Military Leave Program*, dated 24 August 2020, paragraph 6.10 states "RC members are not required to use, sell or lose their earned leave at the end of an active-duty tour." When he transitioned from the Air Guard Reserve (AGR) (active component pay status) to Drill Status Guard (DSG), (Reserve component pay status) he experienced major problems with his pay. He was owed \$50,000 in back pay and has been battling with the 140th WG Comptroller office since June 2022. When the Defense Finance and Accounting Services (DFAS) Center issued a correction to his pay all of his leave was sold back without his permission. He plans to retire 1 March 2025 and would like to use this leave before he retires.

In support of the applicant's appeal, he provided a letter from his commander indicating there has been significant oversights and errors in the handling of the applicant's leave entitlements during his transition from AGR status to DSG status in April 2022 by various Air Force entities. He submitted documentation to be gained into the Reserve component; filled out an AF Form 1089, *Leave Settlement Option*, and signed the form in person with the 140th WG Finance Office in August 2022. He later found out the form was never submitted to DFAS. He has been actively trying to engage with the 140th WG Leadership, NGB/A1 and DFAS for nearly two years to fix this error. It is imperative this issue be expeditiously resolved to afford the applicant the opportunity to utilize his accrued leave entitlements before his retirement on 1 March 2025.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air National Guard lieutenant colonel (O-5).

Order Number **Work-Product**, dated 6 April 2022, provided by NGB/A1PS reflects Type of Duty: Full Time National Guard Duty – Active Guard Reserve – Occasional Deployment Backfill Tour 32 USC 502(f)(1) & 32 USC 328. Purpose: Full-Time Duty (AGR Tours Only); Itinerary: 27 December 2021 to 14 April 2022.

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

AFBCMR Docket Number BC-2024-00675

Work-Product

Work-Product

AIR FORCE EVALUATION

NGB/A1PS 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. NGB/A1PS concurs with the applicant's active component pay record leave sell of 49.5 days.

The applicable policy at the time of the alleged error or injustice is AFI 36-3003, *Military Leave Program* (24 August 2020). 37 U.S. Code § 501 – *Payments for Unused Accrued Leave*. 10 USC §701, *Entitlement and accumulation*. DoD 7000.14-R, *Department of Defense Financial Management Regulation (DoD FMR)*, Volume 7B, Chapter 35 (July 2020).

Based on the package provided, NGB/A1PS confirms the AF Form 1089, *Leave Settlement Option*, was not presented to substantiate the applicant requested to have his accumulated 49.5 days of leave to be carried over. The AF Form 1089 should have been completed and submitted immediately upon out-processing prior to the applicant's order end date of 14 April 2022, in conjunction with an immediate reentry of active-duty service.

Title 10 United States Code § 701, *Entitlement and accumulation* (3) (B) (7) (B) (i), states "A member of a Reserve component who accumulates leave during a period of active service may carry over any leave so accumulated to the member's next period of active service, subject to the accumulation limits in subsections (b) and (e), without regard to separation or release from active service if the separation or release is under honorable conditions. The taking of leave carried over under this subsection shall be subject to the provisions of this section." There are required actions by law that a service member must abide by prior to the order end date to exercise this option. Title 37 United States Code § 501, *Payments for unused accrued leave* (b)(3), states "Payment may not be made to a member for any leave he elects to have carried over to a new enlistment in any uniformed service on the day after the date of his discharge; but payment may be made to a member for any leave he elects not to carry over to a new enlistment."

The sold 49.5 days of leave experienced by the applicant was not attributable to the typical "Use or Lose Leave" scenario at the end of the fiscal year. It was sold due to, members who are associated with an active duty pay record are not able to carry over leave to their Reserve component pay record to place on the leave management record for Reserve component pay record service members. Any Reserve component service member separating from an active duty pay record without immediate reentry on an active-duty status must either sell or use the leave. DoD 7000.14-R *Financial Management Regulation*, Volume 7A, Chapter 35 (July 2020), Table 35-1, *Payment of Accrued Leave – Officers and Enlisted Members – Separation Without Immediate Reentry on Active-Duty Force*, states in rule 2, "If a member has been on active duty for 30 or more consecutive days and is released from active duty and separation is under honorable conditions then the accrued leave is payable."

To receive the requested 49.5 leave day restoration, the applicant should have completed an AF Form 1089 and submitted it prior to the applicant's order Work-Product [sic] end date of 14 April 2022 and separated from an active service with an immediate reentry of active-duty service. The marginal of evidence is defined as the greater weight of improbable evidence.

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 20 June 2024 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 NGB/A1PS and finds a preponderance of the evidence does not substantiate the applicant's contentions. 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-2024-00675 in Executive Session on 10 September 2024:

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 15 February 2024.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, NGB/A1PS, w/atchs, dated 11 June 2024.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 20 June 2024.

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.

4/3/2025
Work-Product

AFBCMR Docket Number BC-2024-00675

Work-Product