



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-00683

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His records be corrected to reflect his retirement was due to a hardship, in order to be eligible to transfer his Post-9/11 GI Bill Transfer of Education Benefits (TEB) to his dependents.

APPLICANT'S CONTENTIONS

In February 2017, he had four Fit to Fight (F2F) failures in 24 months. His commander verbally counseled him and gave him an opportunity to apply for retirement or face a discharge board and be removed from the service. He did not receive written notification, nor did he understand his rights at that time. As a former Numbered Air Force Fitness Program Manager, he was familiar with the fitness Air Force Instruction (AFI) and the failed F2F tests were not punishable under the uniformed code of military justice (UCMJ). The Department of Veterans Affairs (DVA) indicated he did not complete his service commitment to transfer his benefits to his dependents. His daughter used the benefits, and the DVA billed him for the benefits used. The college his daughter attended sent him an additional bill for \$6,000.00. His son has been denied the use of the benefits. He further states he followed the blue book and the noncommissioned officer (NCO) creed; he believes he was punished by the commander for his loyalty to the Constitution and the core values over the commander's policies.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve senior master sergeant (E-8).

On 10 March 2006, according to DD Form 4/1, *Enlistment/Reenlistment Document Armed Forces of the United States*, the applicant with prior service reenlisted for a period of six years in the pay grade of E-8.

On 29 September 2011, according to DD Form 4/1, the applicant reenlisted for a period of six years in the pay grade of E-8.

The Benefits for Education Administrative Services Tool (BEAST) reflects a request for benefits on 19 July 2014 and the request was approved. The obligated end date reflected 18 July 2018.

AF Form 911, *Enlisted Performance Report (EPR) (MSgt thru CMSgt)*, for the period 15 April 2013 thru 14 April 2015, Section 3, Fitness (Maintains Air Force Physical Fitness Standards) reflects "Does Not Meet." On 27 July 2015, the applicant received notification from the

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

POC: SAF.MRBC.Workflow@us.af.mil

Work-Product, that his EPR was referred due to containing comments/ratings for not maintaining Air Force Fitness standards.

On 25 August 2014, AF Form 1411, *Extension of Enlistment in the Air Force*, reflects the applicant requested his current enlistment entered on 29 September 2011 for a period of 6 years be extended for 12 months for the purpose of Retainability for GI Bill Transfer. His date of separation (DOS) of 28 September 2017 was extended to 28 September 2018.

On 30 September 2017, according to Reserve Order Work-Product dated 2 June 2017, the applicant was relieved from his current assignment and assigned to the Retired Reserve Section (ZA) and placed on the Retired Reserve List. Reason reflects "Eligible for Retired Pay Except for Attainment of Eligibility Age."

An AFRC/IGQ Closure Letter for Inspector General (IG) Complaint, dated 17 January 2019, provided by the applicant states the IG received the applicant's complaint which was submitted on 8 January 2019 regarding alleged comments made by the Work-Pr... CEG personnel to an Office of Personnel Management (OPM) investigator. The IG dismissed the case due to lack of credible evidence of a violation of instruction, regulation or policy. OPM provided the applicant the opportunity to refute the information provided by others interviewed during the investigation. The applicant alleged someone from the Work-P... CEG informed the OPM investigator had the applicant not retired he would be facing charges under Article 134 UCMJ. The applicant informed their office that had he not retired he would have been discharged for failing his fitness assessment four times within a 24-month period. He was advised he could apply to the Air Force Board for Correction for Military Records for any discrepancies in his records or to appeal to the next higher-level IG (SAF/IGQ).

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

APPLICABLE AUTHORITY/GUIDANCE

DoDI 1341.13, *Post-9/11 GI Bill*, Enclosure 3, Paragraph 3, dated 31 May 2013 states: Any service member on or after 1 August 2009, who is entitled to the Post-9/11 GI Bill at the time of the approval of his or her request to transfer that entitlement under this section, may transfer that entitlement provided he or she has at least 10 years of service in the Military Services (active duty or Selected Reserve) on the date of approval, is precluded by either standard policy (Service or DoD) statute from committing to four additional years, and agrees to serve for the maximum amount of time allowed by such policy or statute. (Note: This provision uses the same language as AFI 36-2649, *Voluntary Education Program*, paragraph A13.18.1.1.2 paragraph 3.a.(2)). The effect of this paragraph is the elimination of the retainability requirement for members who have at least 10 years of service, who are subject to early separation due to policy or statute, and who agree (or would have agreed) to serve the maximum time allowed.

AFI 36-2905, *Fitness Program, Administrative and Personnel Actions* - 10.1. Adverse Personnel Actions (for Unsatisfactory Fitness Members). Members are expected to be in compliance with Air Force fitness standards at all times. When members fail to comply with those standards (receive an Unsatisfactory FA score), they render themselves potentially subject to adverse action. Commanders should consult with their servicing Staff Judge Advocate before taking such action.

10.1.1. Prohibited Actions:

10.1.1.1. Commanders may not impose nonjudicial punishment (Article 15, UCMJ) solely for failing to achieve a Satisfactory fitness score.

10.1.1.3. While units may perform unofficial practice tests for diagnostic purposes, the chain of command will refrain from taking adverse action based solely on the results of these tests. The ultimate goal of the fitness program is to motivate members to adopt a lifestyle of fitness through realization of positive health-benefits from regular exercise and good nutrition. Members are more likely to embrace and positively view unit practice testing when conducted in the spirit of camaraderie rather than potential penalization.

10.1.2. Unit Commanders or equivalent may take adverse administrative action upon a member's Unsatisfactory fitness score on an official FA (see Attachment 14). For administrative separation criteria, see paragraph 10.1.5.

10.1.5. Administrative Separation. (See AFI 36-3208, *Administrative Separation of Airmen*, for active duty enlisted members, AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, for active duty officers, AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, for all ARC members.)

10.1.5.1. Unit Commanders must make a discharge or retention recommendation to the separation authority (enlisted Airmen), show cause authority (officers), or appropriate discharge authority for AFR and ANG members once an airman receives four Unsatisfactory FA scores in a 24-month period and a military medical provider has reviewed the Airman's medical records to rule out medical conditions precluding the Airman from achieving a passing score (see Attachment 16 as template). If the separation authority (enlisted Airmen), show cause authority (officers), or appropriate discharge authority for AFR and ANG members disagrees with the Unit Commander's retention recommendation, discharge action is initiated pursuant to applicable discharge instruction.

10.1.5.2. If an airman is retained, any subsequent FA failure that re-establishes the basis for discharge (i.e., four failures in 24-months based on most recent failure date) requires the Unit Commander to initiate a medical records review and submit another discharge or retention recommendation. Retention does not prevent previous failures from being included in the most recent 24-month period for FA failure count.

10.1.5.2.1. Retention decision memorandums will be filed in member's fitness program case file.

10.1.5.3. The 24-month period for discharge/retention recommendation is calculated from the most recent Unsatisfactory FA and is measured in months, not days, including the month of the most recent failure. For example, if the most recent failure is 15 June 2012, then count the failures in the previous 23 months plus the month of the most recent failure (June 2012). In this example, the inclusive months in which you must count FA failures are July 2010 through June 2012. Four FA failures anytime in those 24 months meets the criteria and would require the Unit Commander to make a discharge or retention recommendation, provided the member does not have a medical condition to preclude him/her from achieving a passing score. A recommendation for discharge or retention will be made regardless of an airman's achieving one or multiple passing FAs in between the four failures.

10.1.5.4. Unit Commanders may initiate (enlisted Airmen) or recommend (officers) administrative discharge only after the Airman has: received four Unsatisfactory FA scores in a 24-month period; failed to demonstrate significant improvement (as determined by the

commander) despite the reconditioning period; and a military medical provider has reviewed the Airman's medical records to rule out medical conditions precluding the member from achieving a passing score.

AIR FORCE EVALUATION

AFRC/DPAT recommends denying the application. The BEAST system indicates the applicant has an obligated end date of 18 July 2018. However, the applicant retired effective 1 October 2017 due to being retirement eligible per Reserve Order [Work-Product]. Failure to complete the service commitment terminates the TEB and DVA will recoup funds. As it currently stands, the applicant's retirement is based on eligibility. However, if the Secretary of the Air Force determines the retirement is due to hardship, the applicant will be considered to have fulfilled their previously approved TEB-related service agreement in accordance with DoDI 1341.13, 25 October 2022, change 1, 8 November 2023, section 3, paragraph 3.3, subsection h.

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 26 August 2024 for comment (Exhibit D), and the applicant replied contending he is requesting his retirement was due to hardship, which would provide an exception to the "no waiver" process for the service obligation incurred to transfer Post-9/11 GI Bill benefits to his dependents. The ARPC advisory states the BEAST system reflects he had an obligated end date of 18 July 2018. However, he retired 1 October 2017 due to being retirement eligible. He applied for retirement because his commander verbally told him the NAF/CC reviewed his case and supported her decision to pursue discharge. Since his retirement date was prior to the obligated end date of 18 July 2018, he was unable to complete the service commitment due to circumstances beyond his control. His former commander denied his request to cancel the retirement and denied two transfer requests. There were no retirement briefings, out processing or medical appointments. As a result of his inability to complete the service commitment, the DVA is now collecting back the Post-9/11 GI Bill benefits used by his daughter and the DVA has denied his son the right to use these benefits. This recoupment places an undue financial burden on him and his dependents, who were relying on these benefits for education. He served honorably and faithfully for almost 31 years. He did his best to live by the core values and trusted his commander to do the same. Fair and just treatment is how he strived to lead. The Air Force is designed for fair and just treatment of all airmen.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was not timely filed. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence.
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 ARPC/DPAT and finds a

preponderance of the evidence does not substantiate the applicant's contentions. 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 application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2024-00683 in Executive Session on 8 October 2024:

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, Panel Chair

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, Panel Member

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, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 16 February 2024

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

Exhibit C: Advisory Opinion, ARPC/DPAT, w/atchs, dated 9 August 2024.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 26 August 2024.

Exhibit E: Applicant's Response, w/atch, undated.

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.

4/23/2025

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Board Operations Manager, AFBCMR

Signed by: Work-Product

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