



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01546

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

Her official military personnel record be amended to:

- a. Change her retirement date from 1 Nov 22 to 1 Mar 24.
- b. Provide relief from any potential claim for reimbursement of pay and allowances.
- c. Align with earned benefits (i.e., pay, earned leave, TRICARE, and retirement points).

APPLICANT'S CONTENTIONS

In 2021, she was asked to work for the Defense Health Agency (DHA) to stand up their new markets and to permanently change station (PCS) to Joint Base San Antonio (JBSA). The United States Air Force Surgeon General (USAF/SG) went to the Chief of Staff of the Air Force to request a line of the Air Force major general billet. There was an agreement to transfer an active duty general officer billet to DHA with the understanding it would come back to the Air Force. She transferred from the Air National Guard (ANG) to the active component and PCS'd to JBSA. While at JBSA, she received an Inspector General (IG) complaint; however, upon completion of her tour, she called the ANG General Officer Management Office (GOMO) to request retirement but was told she could not retire because she had not cleared the active duty legal review due to the IG issue. She was told by the IG she was required to interview until the issue cleared because she belonged to the active component. She PCS'd back to her home of record, continued to meet with the IG, was read her Article 31b rights, and continued to receive pay, benefits, and was given a new active duty identification card.

Upon learning the IG investigation was completed and unsubstantiated, she sought assistance from ANG GOMO on what was required to retire. She had not previously received any information or tasks required. She had not attended the Transition Assistance Program, was unable to out-process JBSA, and had not ever applied for retirement. She was told someone would get back to her to no avail until she pressed further. ANG GOMO indicated at this time her retirement should have been 1 Nov 22. Again, she had not been cleared from the active duty IG, and continued to receive pay and benefits. It appears the ANG notified the Defense Eligibility Enrollment Reporting System (DEERS) and the Defense Finance and Accounting Service (DFAS) at that time her retirement was 1 Nov 22, without informing her. She went to the pharmacy and was told she had no coverage, her pay was stopped, she received an adjusted W-2, *Wage and Tax Statement*, and a retirement order on 4 May 24, backdated to 1 Nov 22, all without her knowledge.

The applicant's complete submission is at Exhibit A.

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STATEMENT OF FACTS

The applicant is a retired ANG major general (O-8) awaiting retired pay at age 60.

On 10 Jun 21, according to Order Number [Work-Product], AROWS Tracking Number [Work-Product], the applicant was called to Statutory Tour - Extended Active Duty under Title 10, United States Code § 12301(d) [10 USC § 12301(d)] and 10 USC § 12310 for the period 19 Jun 21 to 30 Jun 22.

On 21 Jun 22, according to Order Number [Work-Product], AROWS Tracking Number [Work-Product], the applicant's itinerary was modified to reflect duty from 19 Jun 21 to 15 Aug 22.

On 15 Aug 22, according to Order Number [Work-Product], AROWS Tracking Number [Work-Product], the applicant was called to Statutory Tour - Extended Active Duty under 10 USC § 12301(d) and 10 USC § 12310 for the period 17 Aug 22 to 31 Oct 22.

On 13 Sep 22, according to AF Form 131, *Application for Transfer to the Retired Reserve*, the applicant requested transfer to the Retired Reserve, effective 1 Nov 22.

On 16 Sep 22, according to [State] TAG (The Adjutant General) memorandum, Subject: Notice of Involuntary Separation, the applicant was notified of TAG's intent to involuntarily separate her from the [State] ANG, not for cause, effective 1 Nov 22.

On 19 Sep 22, according to Special Order [Work-Product], the applicant was honorably discharged from the [State] ANG, effective 31 Oct 22 and transferred to the Air Force Reserve and assigned to Headquarters, Air Reserve Personnel Center (HQ ARPC), effective 1 Nov 22.

On 17 Oct 22, according to a SAF/IGS memorandum, Subject: IG Check #22-119, the applicant was pending evaluation for seven allegations with the Department of Defense (DoD) IG.

On 22 Jan 24, according to DoD IG memorandum, Subject: Updated Name Check for [Applicant], DoD IG Investigations of Senior Officials Directorate reviewed the DHA IG's report and concurred with their determination that the allegations against the applicant were not substantiated, and their records reflect no adverse or reportable information pertaining to the applicant.

On 6 Feb 24, according to Special Order [Work-Product], the Secretary of the Air Force announced withdrawal of Federal recognition from the applicant in the rank of major general and the [State], effective 1 Nov 22.

On 4 Mar 24, according to Reserve Order [Work-Product], the applicant was relieved from assignment, assigned to the Retired Reserve Section, and placed on the USAF Reserve Retired List, effective 1 Nov 22.

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

APPLICABLE AUTHORITY

In accordance with Department of the Air Force Instruction (DAFI) 36-3203, *Service Retirements*, dated 29 Jan 21 [Incorporating Change 1, 13 Oct 23; Certified Current, 13 Oct 23]:

Table 3.1. *Conditions Prohibiting Initial Submission or Suspending Processing of Previously Submitted Retirement Applications*, Rule 1.a:

If a member is under civil or military investigation, or subject to civil or military criminal legal proceedings, then the member is not eligible to apply for voluntary retirement. If an application has already been submitted or a retirement has been approved prior to initiation of an investigation, the member's commander or the staff judge advocate (SJA) will immediately direct the RAA [Retirement Approval Authority] to place the retirement in suspension. Commanders or SJAs will follow verbal notification with a written request to place an administrative hold on the member's retirement under this regulation. The RAA will place the member on administrative hold which, if applicable, rescinds the previously published retirement order until the investigation and any subsequent actions are completed. (Table 3.2). After all investigation and subsequent actions are completed, and if the member remains eligible to retire, the member's commander or the SJA notifies the RAA that normal retirement processing can continue. (See Note 4.)

NOTE 4: If the retirement was suspended, contact the commander and member for a desired retirement date upon release from administrative hold. If the original retirement date passed, or does not allow use of permissive temporary duty (PTDY)/terminal leave, retirement should be effective as soon as possible after release from administrative hold; however, the RAA may adjust the date further provided the commander is authorizing use of PTDY/terminal leave.

Table 9.4. *ANG/AFR General Officers (GO) Procedures for Applying for Reserve Retirement.*

Step 1: GO completes DAF Form 131, *Application for Transfer to the Retired Reserve*, Sections I, II, and III.

Step 2: Obtain State TAG's recommendation on DAF Form 131, Section IV. (AF Form 131, Section V-OPTIONAL)

Step 3: Forward original DAF Form 131 to NGB/SL (National Guard Bureau Senior Leader Management Office).

Step 4: NGB/SL requests IG files check.

Step 6: If IG files check indicates ongoing investigations or pending allegations, State TAG will be advised, and GO will be transferred to Inactive Status List Reserve Section on the requested retirement date.

Step 8: If investigation does not substantiate allegations, NGB/SL annotates Remarks section on DAF Form 131 and forwards to ARPC Contact Center.

AIR FORCE EVALUATION

NGB/SL recommends partially granting the application. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. The applicant requests her retirement date be changed from 1 Nov 22 to 1 Mar 24 and she be placed in active duty status following her last set of active duty orders which ended on 31 Oct 22. The applicant was not retired on 1 Nov 22 as originally requested due to pending adverse issues. In preventing the applicant from retiring, she was not eligible for grey-zone retirement benefits, that would have allowed her to purchase TRICARE but would not have entitled her to retired pay until she reached her reduced retirement age. Following the applicant's orders end date on 31 Oct 22, her active duty pay was not stopped by DFAS. It is this advisor's understanding the applicant believed this was because the pending adverse action prevented her from retiring and she was being maintained on active duty. The applicant continued to erroneously receive active duty pay and benefits until her pending adverse allegations were found to be not substantiated.

The applicant was placed on active duty orders from 19 Jun 21 to 15 Aug 22. Following a one-day break in orders, she was placed on a second set of active duty orders from 17 Aug 22 to 31 Oct 22.

On 13 Sep 22, the applicant applied for retirement, with an effective date of 1 Nov 22. TAG notified the applicant and NGB/SL he had approved the retirement and initiated action to involuntarily separate and retire the applicant, effective 1 Nov 22.

On 17 Oct 22, NGB/SL received an IG Check indicating the applicant had seven cases pending evaluation. Accordingly, her retirement request was not approved by NGB/SL and the retirement action was placed on hold pending adjudication of the allegations. This advisor personally notified TAG of the hold placed on the applicant's retirement.

On 31 Oct 22, the applicant's orders ended; however, due to an error at DFAS, she continued to receive active duty pay and benefits.

On 13 Dec 23, DHA/OIG [Office of the Inspector General] notified NGB/SL the investigations had been completed and the applicant was being cleared of the adverse allegations.

On 22 Jan 24, NGB/SL received notification the applicant was clear and proceeded with processing her retirement.

On 26 Jan 24, this advisor personally spoke with the applicant, at which time this advisor became aware she was receiving active duty pay. This advisor verified this with the Chief, Financial Operations Division on 29 Jan 24. Following a discussion with this advisor's supervisor and the Director of NGB/SL, the advisor contacted the IG to consult, after which it was determined there was not a reasonable suspicion of Fraud, Waste or Abuse and the matter should be referred to the Commander, Air National Guard Readiness Center (ANGRC/CC) to evaluate.

The ANGR/CC coordinated with DFAS and terminated the applicant's active pay account that was erroneously generating active duty pay and benefits.

On 20 Mar 24, the retirement order (based on the original retirement request) was completed, and the applicant was retired, effective 1 Nov 22.

The fact that DFAS failed to properly stop the applicant's pay led her to believe not only was she being prevented from retiring, but she was being held on active duty. It is this advisor's understanding the applicant spoke with her supervision at DHA and with the Director, Manpower, Personnel, Recruiting, and Services, Air National Guard who reinforced this mistaken notion.

The complete advisory opinion is at Exhibit C.

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. A review of the applicant's military personnel record shows Retirement Order [REDACTED] [REDACTED] with an effective retirement date of 1 Nov 22, was finalized on 4 Mar 24. The retirement request package received by ARPC from NGB/SL contained a wet-signed AF Form 131, dated 13 Sep 22, and electronically signed by TAG recommending approval for retirement. The package also contained the memorandum signed 16 Sep 22, notifying the applicant of TAG's intent to involuntarily separate her, not for cause, from the [State] ANG, effective 1 Nov 22. The applicant was discharged in accordance with the dates on the package received and was processed for a Reserve retirement, which was completed on 4 Mar 24.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent copies of the advisory opinions to the applicant on 3 Oct 24 for comment (Exhibit E) 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 the victim of an error or injustice. While the Board notes the recommendations and rationales of NGB/SL and ARPC/DPTT, the Board finds a preponderance of the evidence substantiates the applicant's contentions. On 13 Sep 22, while serving on extended active duty, the applicant submitted her original request for retirement, effective 1 Nov 22, which was approved by her [State] Adjutant General. However, an IG check on the applicant, conducted in accordance with AFI 36-3203, indicated she had seven cases pending evaluation. Accordingly, the applicant's retirement request was not approved by NGB/SL, the retirement action was placed on hold pending adjudication of the allegations, and the applicant's [State] Adjutant General was notified. With the applicant's extended active duty orders ending 31 Oct 22, she should have been transferred to the Inactive Status List Reserve Section on her requested retirement date of 1 Nov 22 pending resolution of the IG investigation, in accordance with AFI 36-3203. Additionally, upon expiration of the applicant's extended active duty orders, DFAS should have discontinued her active duty pay and allowances. Neither of these actions occurred, reasonably contributing to the applicant's belief that she was continued on extended active duty pending the outcome of the IG review.

In Dec 23, both the applicant and NGB/SL were notified by the DHA OIG the allegations against the applicant were found to be unsubstantiated and the investigations closed. On 22 Jan 24, NGB/SL was notified the applicant's retirement request was clear to proceed. During the interim period between 31 Oct 22 and 22 Jan 24, the applicant remained in contact with DHA OIG, NGB/SL, and her local unit leadership. She continued to participate in interviews with DHA IG, complete required annual training requirements, submit fiscal compliance documentation, and coordinated with the NGB Data Management Office to assist with updating her transition data in DEERS. There is no evidence the applicant was notified of any change in her active duty status during this time. In fact, according to the NGB/SL advisory, after consultation between NGB/SL and IG, it was determined there was no reasonable suspicion of Fraud, Waste, and Abuse, and the matter was referred to the ANGRC/CC for evaluation.

Upon review, the ANGRC/CC determined the tour length of the applicant's final extended active duty order did not require AFPC to generate a DD Form 214, which would in turn trigger DFAS to terminate her active component pay record. While the applicant was separated from her extended active duty tour in the Military Personnel Data System (MilPDS) and her record projected back to her [State] ANG unit, her unit did not pull her record from MilPDS until five months later. Even after the delay and the applicant's attempts to update her DEERS record after transfer, the applicant still did not reflect on any loss reports for DFAS to terminate her active component pay record. The final conclusion was there are too many unknowns to determine how this oversight could have continued for such an extended period; however, the applicant had no input to the system/transactional portion of these actions. Her only obligation was to remain in contact with her [State] ANG unit and work with them on her retirement request. Further, executing the applicant's retirement with the effective date established by her original application is in direct violation of AFI 36-3203. The governing guidance required the commander to

coordinate a desired retirement date with the applicant that was effective as soon as possible after release from administrative hold. Again, this action was not executed in compliance with the established guidance, and the applicant received discharge and retirement documents reflecting the originally requested retirement date of 1 Nov 22. Allowing the applicant's retirement effective date to remain unchanged would result in a loss of medical coverage and create a significant debt. Given the multiple errors on the part of the government, which were outside of the applicant's control, this would constitute a grave injustice. 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 she was not released from active duty on 31 Oct 22, but on that date, she continued to serve on extended active duty under 10 USC 12301(d) and 10 USC 12310 until 29 Feb 24, on which date she was relieved from assignment and honorably discharged. She was assigned to the Retired Reserve Section ZA and placed on the USAF Retired List, effective 1 Mar 24.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-01546 in Executive Session on 19 Dec 24:

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Panel Chair

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Panel Member

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Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 24 Apr 24.

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

Exhibit C: Advisory opinion, NGB/SL, atchs, dated 8 Aug 24.

Exhibit D: Advisory opinion, ARPC/DPTT, atchs, dated 11 Sep 24.

Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 3 Oct 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.

1/28/2025

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