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## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03829

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COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

He receive back pay, with interest, for the correction of his service dates and he be refunded \$12,993.41 for his student loan payment

### APPLICANT'S CONTENTIONS

The Board previously voted unanimously to grant his request to correct errors and injustices in his record (BC-2012-04604-2). His case was referred to DFAS to determine what payments may be necessary as a result of the decision. DFAS did not adequately research his situation to determine what compensation was due. He made the decision to join the Air National Guard when he learned of the incentives: a \$75,000 cash payment and a \$50,000 student loan payment. He has spent years attempting to work through the issues in hopes of receiving the compensation.

Upon providing documentation to DFAS, they determined that there was compensation due for the period he was selected for promotion from major (O-4) to lieutenant colonel (O-5). They paid a sum of \$1,018.76. At that time, they said there was no additional compensation due. His Retention and Recruiting Office at the **Work...** Fighter Wing was able to help DFAS understand that the incentive he joined for was to be paid. The cash incentive was paid to him on 1 Jul 20. It then took a few more years but finally the student loan payment was made on 5 May 23. His loan balance was under \$50,000, so the amount paid was equal to the balance of the loan on 30 Sep 09. Thus, the initial incentive has been paid, however, he feels that additional funds are due to him. As of 30 Sep 09, his student loan balance was \$34,411.35. Since the incentive had not been paid at that time, he was required to continue making student loan payments to stay in good standing with the loan company. From 30 Sep 09 until May 13, he put his loan into forbearance. In May 13, he decided too much interest was accumulating so he felt the best thing to do was to start paying again. From 14 May 13 to 14 Mar 20, he paid a total of \$12,993.41 on the loan that he should not have had to pay if the incentive had been paid in 2009. This amount should be refunded back to him. His research led him to the Code of Federal Regulations, according to 5 United States Code (U.S.C.) Section 5596, he is authorized to be compensated for those 7 months, even though he did not actually drill those months. In addition, 5 U.S.C. states that any back pay that has been or is to be paid as a result of an error or injustice is to be paid with interest. He feels the seven months back pay, and the incentive payment of \$75,000 that was to be paid on 30 Sep 09, should be paid with interest, as the payment was subject to all applicable taxes. He feels like he lost that money, which could have been used for other expenses. He attempted to work with DFAS, who responded that they would not authorize or pay any additional amount unless it was put into a

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Controlled by: SAF/MRB

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Limited Dissemination Control: N/A

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decision by AFBCMR. Thus, he is requesting the board issue a decision that will authorize and instruct DFAS to make the payments as outlined.

The applicant's complete submission is at Exhibit A.

## STATEMENT OF FACTS

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

On 6 Sep 22, according to Reserve Order **Work-Product**, dated 2 Nov 22, the applicant was assigned to the Retired Reserve Section and placed on the USAF Reserve Retired List.

On 18 Oct 18, the Board granted the applicant's request in BC-2012-04604-2 to reflect his date of commissioning reflect as 30 Sep 09 rather than 7 May 20 and corrected his service dates accordingly.

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

## AIR FORCE EVALUATION

NGB/FMFF (Financial Services) recommends denying the application. The applicant had a previous AFBCMR application (BC-2012-04604-2) approved, which resulted in military pay and allowance, bonus, and student loan payments. As stated in the directive for the applicant's docket at that time in section 7.2 Settlement of Claims, the Air Force is authorized under Title 10 U.S.C., Section 1552, to pay claims for amounts due to applicants as a result of correction of military records. Section 7.2.2 states that DFAS settles claims on the basis of the corrected military record. Computation of the amount, if any, is a function of DFAS. There is no legal authority to pay interest on claims incident to correction of military records unless the correction of military records involves setting aside a conviction by court-martial as applicable under 10 U.S.C. Section 1552. As a special note, NGB/FMFF cannot interpret law or provide legal guidance or counsel and the advisory must not be considered legal interpretation.

The complete advisory opinion is at Exhibit C.

## AIR FORCE EVALUATION

NBG/A1Y (Recruiting and Retention) recommends no further action regarding the application. In accordance with the 2009 Air National Guard Incentive Program – Operational Guidance effective 1 Oct 08 – 30 Sep 09 states, "HEALTH PROFESSIONALS INCENTIVE PROGRAM: *Ten (10) medical Air Force Specialty Codes (AFSCs) were identified as critical; specialties (doctors and dentists). Fully qualified members may be eligible for the \$75,000 HP Cash Incentive and the \$50,000 HP Loan Repayment Program (HP LRP).*" After review of the applicant's file, it reflects he met all criteria to execute both a \$75,000 Health Professional (HP) Accession Bonus and \$50,000 HP Loan Repayment Program (LRP) in AFSC of **Work-Pr...** Dentist, as outlined on attachment 2-3 of the 2009 Air National Guard Incentive Program.

The complete advisory opinion is at Exhibit D.

## APPLICANT'S REVIEW OF AIR FORCE EVALUATION

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The Board sent copies of the advisory opinions to the applicant on 29 Apr 25, 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 not the victim of an error or injustice. The Board concurs with the rationale and recommendations of NGB/FMFF and NGB/A1Y and finds a preponderance of the evidence does not substantiate the applicant's contentions. There is no legal authority to pay interest for claims due to correction of military records except under certain conditions when the correction involves setting aside a conviction by court-martial. Furthermore, the applicant was eligible to receive the HP Accession Bonus and HP Student Loan Program, both of which have been paid. 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-2024-03829 in Executive Session on 30 May 25:

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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 24 Oct 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory, NGB/FMFF, dated 18 Mar 25
- Exhibit D: Advisory, NGB/A1Y, dated 11 Apr 25
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 29 Apr 25

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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.

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Signed by: USAF

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