

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00097

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

He be issued a letter from the United States Air Force (USAF) stating that he completed twenty years of service based upon his 19 years, 10 months and 5 days of active duty service.

APPLICANT CONTENDS THAT:

He entered the USAF on 18 August 1967, was commissioned as a Regular Officer and attained the rank of Major, O-4 before he had to undergo open heart surgery on 4 August 1985, for replacement of his aortic valve. The Wilford Hall Medical Center personnel informed him that he would have to return each year to be evaluated for suitability to remain on active duty.

In 1986 and 1987, the medical board recommended his continuation on active duty. In June 1987, the Patrick AFB personnel officer advised him that he was to be retired effective 23 June 1987. No reason was given as to why the medical board recommendation was not accepted. He was not given any options and had to retire immediately. He asked if he could utilize his accrued leave to complete his 20 years and was told it was neither possible nor necessary. Since he had over 19 years and 6 months of active duty service the personnel officer assured him that he would be credited with a full 20 years of service. Until February 2011 he assumed this to be the case.

After he retired he went to work for the local sheriff's office as a civilian employee. He experienced a number of medical problems directly related to his time in service. He began working with the Veterans Administration (VA) to have his percentage of disability upgraded. As of 9 February 2011 the VA advised him that his disability rating had been determined to be 70 percent based on a number of factors and his VA pension would no longer be withheld from his Air Force retirement pay, however, Defense Finance and Accounting Service (DFAS) did not agree and he was advised that he did not qualify for the Concurrent Retirement and Disability Pay (CRDP) option because he has less than 20 years of creditable service. This makes a very big difference in the funds he has available each month to live on.

He also had one year of Air Force Reserve Officer Training Corps (ROTC) in college, prior to being told he would not be able to fly so he discontinued the program. He later went to Officer Training School (OTS) and pilot training after graduation from college. He has never been given any credit for this time.

In support of his request, the applicant provides copies of letters from DFAS, his congressman, and the Department of Veterans Affairs (DVA), a copy of his February 2011 military retiree account statement and his DD Form 214, *Certificate of Release or Discharge from Active Duty*.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is a former commissioned officer of the Regular Air Force who served from 18 August 1967 through 23 June 1987. He was progressively promoted to the rank of Major (Maj), (O-4), with an Effective Date of Pay Grade of 11 August 1978.

The applicant was placed on the Temporary Disability Retired List (TDRL) on 24 June 1987 with a compensable disability rating of 30 percent. On 7 February 1989, the Informal Physical Evaluation Board (IPEB) reevaluated the applicant's case and recommended the applicant be removed from the temporary disability retired list and be permanently retired with a compensable disability rating of 30 percent. The applicant did not concur with the recommended findings, waived a formal hearing and submitted a written rebuttal. On 14 March 1989, the applicant was notified that after a thorough review of his case, officials within the office of the Secretary of the Air Force directed his permanent retirement with a compensable disability rating of 30 percent. He was permanently retired effective 24 March 1989 and credited with 19 years, 10 months, and 5 days of active duty service.

On 3 April 2012, AFPC/DPSOY advised the applicant that ROTC is not considered creditable service on a DD Form 214. The applicant's prior active service will remain 2 months and 28 days with a net active service of 19 years, 10 months and 5 days.

AIR FORCE EVALUATION:

HQ AFPC/DPSD recommends denial. DPSD states the applicant does not have the required twenty years of active service time to

apply for Concurrent Receipt of Disability Pay. The service dates on his temporary and permanent retirement special orders, ACD-01692, dated 22 May 1987 and ACD-817, dated 19 March 1987, respectively, are correct. The preponderance of evidence reflects that no error or injustice occurred during the disability process or at the time of separation.

The complete AFPC/DPSD evaluation is at Exhibit C.

AFPC/DPSOR recommends denial. DPSOR states the applicant must be able to show evidence that the Air Force committed an error or injustice during his physical disability retirement processing that prevented him from obtaining 20 years Total Active Federal Military Service (TAFMS). In order to be credited with 20 years TAFMS, the applicant must provide evidence to show that he had 20 years TAFMS to retire under 10 USC 8914. He has provided no evidence to show that he had 20 years TAFMS to qualify him for a non-disability retirement.

The complete AFPC/DPSOR evaluation, with attachments, is at Exhibit D.

DFAS/CL recommends denial. CL states the applicant's retired pay was computed pursuant to the provisions of Title 10 USC, section 1401, formula 1. Note 1 to formula 1 provides: "Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month." Based on this formula, the applicant's pay was computed using 19 years, and 10 months. The retired pay has been computed correctly.

The complete DFAS/CL evaluation is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant indicates in his response that he accepts the statement that his DD Form 214 shows a combined active service of 19 years, 10 months and 5 days. What he is contesting is the fact that was it necessary for him to be medically retired with less than two months remaining for completion of a full twenty years of service. He expands on the medical issue with his heart and reiterates his previous contention that he relied on the advice of the Patrick AFB personnel officer who told him his active duty service time of 19 years, 10 months and 5 days, far exceeded the 19 years and 6 months time needed to be considered to have completed a full 20 years. His post service work was more strenuous and in many cases, significantly more dangerous than his last military position and he believes his career in the Sheriff's office more than demonstrates that he was more than capable of completing an additional two months in the Air

Force so that he might now be eligible for concurrent receipt of both Air Force retired pay and VA pension.

The applicant's complete response is at Exhibit G.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinions and recommendations of the Air Force offices of primary responsibility and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. The Board took note of the applicant's contention he was not given any options and had to retire immediately with 19 years, 10 months and 5 days of active duty service and was assured that he would be credited with a full 20 years of service. However, the evidence available to us reflects that his disability discharge was properly executed and we find no basis to grant any additional service credit. In view of the above, and in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application BC-2012-00097 in Executive Session on 11 September 2012, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 16 January 2012, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPSD, dated 22 February 2012.
- Exhibit D. Letter, AFPC/DPSOR, dated 7 March 2012, w/atchs.
- Exhibit E. Letter, DFAS/CL, dated 16 March 2012.
- Exhibit F. Letter, SAF/MRBR, dated 7 May 2012.
- Exhibit G. Letter, APPLICANT, dated 13 May 2012.

Panel Chair