

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00737
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

He be entitled to a lump sum payment for leave accrued at the time of separation on 28 February 1973.

APPLICANT CONTENDS THAT:

The accrued leave balance was not available at the time of separation - 39 years ago.

In support of the applicant's appeal, he provides a personal statement and a copy of his DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*.

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

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 13 May 1969.

On 28 February 1973, the applicant was honorably released from active duty and transferred to the Air Force Reserve. He served 3 years, 9 months and 18 days on active duty.

AIR FORCE EVALUATION:

DFAS-POCC/DE recommends denial. DFAS states the Department of Defense Instructions (DODI) 1340.21, enclosure 5, paragraph E5.7, states "The claimant must prove, by clear and convincing evidence, on the written record that the United States is liable to the claimant for the amount claimed. All relevant evidence to prove the claim should be presented when a claim is first submitted. In the absence of the compelling circumstances, evidence that is presented at later stages of the administrative process will not be considered." This rule was formally stated in Title 4, code of Federal Regulations, section 31.7.

The documents the applicant submitted with his claim do not meet this burden of proof. Settlement of this claim is based upon written military pay records to prove or disprove a member's claim. Since these records no longer exist for this time period, DFAS is not able to verify whether or not the applicant already received special pay for this duty.

The DFAS complete evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

On 7 May 2012, a copy of the Air Force evaluation was forwarded to the applicant for review and response within 30 days (Exhibit C). As of this date, no response has been received by this office.

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 an error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinion and recommendation of DFAS-POCC/DE and adopt their rationale as the basis for our conclusion the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought.
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THE BOARD DETERMINES THAT:

The applicant be notified the evidence presented did not demonstrate the existence of an error or injustice; the application was denied without a personal appearance; and 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 AFBCMR Docket Number BC-2012-00737 in Executive Session on 31 July 2012, under the provisions of AFI 36-2603:

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-00737 was considered:

- Exhibit A. DD Form 149, dated 16 February 2012, w/atchs.
- Exhibit B. Letter, DFAS-POCC/DE, not dated.
- Exhibit C. Letter, SAF/MRBR, dated 7 May 2012.