

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01531
COUNSEL:
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His records be corrected to show that his dependent son is his designee for Transfer of Education Benefits.

APPLICANT CONTENDS THAT:

1. As a result of his retroactive retirement, he did not receive a proper retirement briefing and various elections that should have been made before his actual retirement date were not accomplished. His DD Form 214, *Certificate of Release or Discharge from Active Duty* establishes that he was retired pursuant to the litigation settlement and demonstrated the effective date of his retirement was retroactively determined.

2. He is a Gulf War veteran and entitled to have his Veterans Affairs (VA) educational benefits transferred to his dependent son. Notwithstanding, the circumstances leading to his retirement, he is entitled to the benefits of a retired military officer, including the transfer of educational benefits.

3. While attempting to execute the transfer of education benefits, he was informed his records do not reflect he made a timely election. A timely election was not available to him, since his retirement date was retroactively determined.

4. There is a precedent for this action. Another member in the Berkley litigation, Major B, was similarly retroactively retired, resulting in an inability to make a Survivor Benefit Plan (SBP) election at the time of his retirement. Major B, appealed to the Air Force Board for Correction of Military Records (AFBCMR) and the Board granted his request to change his records to reflect he elected child only SBP coverage based on full retired pay effective 1 Feb 05.

In support of his request, the applicant provides a three-page legal brief, a copy of his DD Form 214, DFAS-JECC/DE memorandum and various other documentation associated with his request.

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

STATEMENT OF FACTS:

On 31 May 05, the applicant retired in the grade of captain. He served 16 years and 29 days of total active service.

In 1992, the applicant was selected for involuntary separation from active duty as a first lieutenant by a Reduction in Force (RIF) Board. In 1999, the applicant was part of a class action lawsuit against the Air Force in the United States Court of Federal Claims alleging the instructions provided by the Secretary of the Air Force (SECAF) to the RIF board denied to members of the class certain constitutional rights by according preferential treatment to women and minorities. After the litigation process, including an appeal to the United States Court of Appeals for the Federal Circuit which overturned the lower court ruling that dismissed the case, the United States settled the litigation with the class members, providing several alternative avenues for recourse from which class members could select.

The applicant chose to be reconsidered for retention on active duty. As a first lieutenant, the reconstituted and properly instructed RIF Board selected him for retention. A selection board considered him for promotion; he was selected and retroactively promoted to the grade of captain. Twenty years after he entered active duty, the applicant retired, having received constructive active service credit for the period during 1 Jan 93 (the first day after his involuntary separation) to 31 May 05 (the date of his retirement). Final judgment was entered in the applicant's case on 30 Jun 08.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force, which is attached at Exhibit B.

AIR FORCE EVALUATION:

AFPC/DPSIT recommends denial since the program was not in effect at the time of the applicant's retirement.

The complete DPSIT evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 25 Jun 12, for review and comment within 30 days (Exhibit C). As of this date, this office has not received a response.

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 opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion that 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 in this application.
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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 AFBCMR BC-2012-01531 in Executive Session on 8 Jan 13, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-01531 was considered:

- Exhibit A. DD Form 149, dated 10 May 12, w/atch.
- Exhibit B. Letter, AFPC/DPSIT, dated 31 May 12.
- Exhibit C. Letter, SAF/MRBR, dated 25 Jun 12.