

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-01154

COUNSEL: NONE

AUG 14 1998

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

His military service be extended so he may use terminal leave and receive medical treatment for 12 months.

APPLICANT CONTENDS THAT:

He went temporary duty (TDY) from July 1996 to October 1996 to [REDACTED]. In November and December 1996 he was taking a series of shots to the spine for a herniated disc and had rotator cuff surgery on 20 November 1996. Because of all the medical treatment he received, he was unable to prepare for a smooth transition from the military. When he initially applied for retirement, his medical problems weren't identified which prevented him from making a smooth move into the job market. Applicant states that he requested an extension at the local level, but was only granted four (4) months. His surgery for rotator cuff repair convalescent leave, and also taking a series of shots for herniated disc during the November-December 1996 time frame prevented him from preparing for retirement during his scheduled date.

Applicant's submission is attached at Exhibit A.

STATEMENT OF FACTS:

During the time period in question, applicant was serving in the Regular Air Force in the grade of master sergeant (E-7). Based on his initial enlistment on 11 March 1974, he had an established high year of tenure (HYT) date of March 1998. Master Sergeants have HYTs of 24 years.

Applicant applied for retirement on 12 April 1996 and his application was approved to become effective 1 April 1997.

On 31 March 1997, he requested an extension of his retirement for 12 months due to medical reasons. Applicant's request for an extension was approved for three months and his new retirement

date was to be effective 1 July 1997. At that time, applicant indicated "...I have 87 days before beginning terminal leave and I am eligible for 20 days house hunting and 5 days out processing." The Retirements Operations Section, HQ AFPC/DPPRSO indicates that applicant requested a subsequent extension of his retirement on 7 April 1997 and the request was approved with his new retirement date to be effective 1 August 1997, by Special Order Number AC-009106, dated 10 April 1997.

Applicant was released from active duty on 31 July 1997 and retired effective 1 August 1997 under the provisions of AFI 36-3203 (Voluntary-Retirement for Years of Service Established by Law) in the grade of master sergeant.

AIR FORCE EVALUATION:

The Chief, Special Activities, HQ AFPC/DPPAES, states that since the applicant entered the Regular-Air Force on 11 March 1974, his HYT is established as March 1998. He may extend his date of separation (DOS) to April 1998, which is one month following his established HYT.

A copy of the Air Force evaluation is attached at Exhibit C.

The Retirements Operations Section, HQ AFPC/DPPRSO, states that AFI 36-3203 provides for extension of an approved retirement by reason of hardship uncommon to a member's contemporaries or for the best interest of the Air Force. However, members may not request withdrawal or extension [of a retirement date] to stay on active duty solely to resolve a medical problem or receive medical treatment. If the applicant's medical conditions are of such a nature that he is found unfit for duty, he should have been placed on medical hold which would have delayed his retirement. The applicant voluntarily requested a retirement date much earlier than his established HYT date, signifying his intentions to retire sooner than necessary.

Applicant provided no documentation to justify a 12-month extension of his retirement date of 1 August 1997, based on best interest of the Air Force or for hardship uncommon to his contemporaries. He could have used ordinary leave to prevent its loss prior to his out processing for retirement. Leave and permissive TDY are not entitlements. Rather, they are available at the commander's option so long as mission requirements allow.

As a matter of additional information, following the applicant's request for the 1 August 1997 extension of his approved retirement, he never requested an additional extension through AFPC/DPPRSO. The BCMR request, submitted while he was still on active duty, was the first notice that he had additional requests. All Air Force channels must be applied through before

applicant can claim an "error or injustice." They recommend the applicant's request be denied.

A complete copy of the Air Force evaluation, with attachments, is attached at Exhibit D.

The Chief, Medical Standards Branch, HQ AFPC/DPAMM, states that a review of medical records does not disclose any evidence to support correction of records. The applicant had surgery on 20 November 1996 and was placed on a medical profile. He started rehabilitation in January 1997. Medical Hold for long term Physical Therapy was disapproved by the physicians at Headquarters AFPC/DPAMM, Medical Standards Branch as the applicant did not overcome the presumption of fitness for duty. Also, AFI 48-123 states Medical Hold is not approved for long term convalescence and/or rehabilitation. They recommend the applicant's request be denied.

A copy of the Air Force evaluation is attached at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant submitted a rebuttal to the Air Force evaluations and states, in part, that after his surgery, he was placed on profile during his recovery period and returned fit for duty shortly thereafter. He was placed on medical hold by the surgeon so that he could reevaluate multiple conditions for which the applicant was being treated. The recommendation for medical hold was not forwarded to the Medical Standards Branch for approval until 27 March 1997. Applicant states he did everything within his power to extend his date of separation to April 1998. He was fit for duty and this extension would allow time for his medical evaluation. Because he was denied the one-year extension, he had to continue to see the doctors after his retirement. Applicant states that he lost 21 days of leave and other benefits like 20 days house hunting.

A copy of the applicant's response, with attachments, is attached at Exhibit G.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and applicant's

submission, we are not persuaded that his retirement date should be extended for 12 months so that he may use leave and receive medical treatment. His contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the offices or the Air Force. We note that at the time applicant made his requests for an extension of his retirement date, so that he could receive medical treatment, he was receiving physical therapy; however, he was considered qualified for worldwide duty and was continuing to perform his duties. As stated by HQ AFPC/DPPRSO, AFI 36-3203 provides for extension of approved retirement by reason of hardship uncommon to a member's contemporaries or for the best interest of the Air Force. The AFI also states that members may not request withdrawal or extension to stay on active duty solely to resolve a medical problem or receive medical treatment. Information obtained from the Air Force Personnel Center, indicates that the applicant did receive 20 days of permissive TDY and also used terminal leave prior to his retirement. It appears that the applicant could have used his accrued leave subsequent to his surgery in November 1996. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.

4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without counsel, would not have materially added to that understanding. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable 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 in Executive Session on 14 July 1998, under the provisions of AFI 36-2603.

Ms. Patricia J. Zarodkiewicz, Panel Chair
Mr. Loren S. Perlstein, Member
Mr. Dana J. Gilmour, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 4 Sep 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPAES, dated 1 May 97.
- Exhibit D. Letter, HQ AFPC/DPPRSO, dated 8 Sep 97.
- Exhibit E. Letter, HQ AFPC/DPAMM, dated 14 Nov 97.
- Exhibit F. Letter, AFBCMR, dated 24 Nov 97.
- Exhibit G. Applicant's Letter, dated 18 Dec 97, w/atchs.



PATRICIA J. ZARODKIEWICZ
Panel Chair