

JUL 24 1998

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00425

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. Her involuntary discharge, under AFR 36-12, be changed to a medical retirement.
2. She be retroactively promoted to the grade of major with all back pay and allowances.

APPLICANT CONTENDS THAT:

She was unjustly removed from the Major's promotion list and separated from the Air Force against the recommendation and direction of a Board of Inquiry (BOI). The purpose of the BOI, convened on 22 March 1990, was to review her medical records, including several operations and procedures to correct severe nerve damage to her left side initially caused by a tubal ligation operation at [REDACTED] Air Force Base (AFB), [REDACTED]. Applicant states that by not being placed back on the promotion list, she was considered to have twice failed to make promotion and was therefore separated from the Air Force. The Veterans Administration (VA) has reviewed her case and found her physical claim to be true and accurate with a 30% disability rating.

In support of her appeal, applicant submits a statement from a former rater of an Officer Effectiveness Report (OER) for the period closing 26 May 1980, promotion documentation, a statement from a medical physician, dated 1 September 1987, a letter from the VA, dated 27 March 1991, and letter of appreciation, dated February 1986.

Applicant's submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant was appointed a second lieutenant in the Reserve of the Air Force on 5 June 1976 and was subsequently **ordered** to active duty on 15 October 1976.

Applicant was appointed a captain in the Regular Air Force on 3 September 1982.

Applicant underwent a laparoscopic tubal sterilization in 1985 and developed post-operative abdominal wall pain that required further corrective surgery in 1986 and 1988 after extensive work-up for other possible causes of the problem.

Applicant was selected for promotion to the grade of major by the Calendar Year 1986B (CY86B) Central Major Promotion Board which convened on 1 December 1986. On 22 December 1987 applicant was notified by her commander that action was being taken to delay her promotion to the grade of major. The specific reason was her continuous failure to meet the weight standards specified in AFR 35-11, the Air Force Weight Management Program.

On 14 June 1988, the Secretary of the Air Force approved the removal of the applicant's name from the list of officers selected for promotion to the grade of major by the CY86B Major Selection Board. The removal action resulted in applicant's becoming a once deferred officer.

Applicant was considered for promotion to the grade of major by the CY89 Central Major Selection Board which convened on 4 December 1989. She was not selected and this was considered a second non-selection. Applicant had a mandatory date of separation (DOS) of 31 July 1990.

Applicant's Officer Effectiveness Report/Officer Performance Report (OER/OPR) profile is as follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
31 Jul 85	1-1-1
31 Jan 86	1-1-1
31 Jan 87	1-1-1
31 Jan 88	1-1-1
# 31 Oct 88	1- X-2 (Referral)
	Does Not Meet Standards (Referral)
31 Oct 89	Does Not Meet Standards (Referral)
1 Jul 90	Meets Standards

Top report at time of non-selection for promotion to the grade of major by the CY89 Central Major Selection Board

Applicant was honorably discharged on 31 July 1990 under the provisions of AFR 36-12 (Involuntary Discharge for Twice Failed Promotion) in the grade of captain. She served 13 years, 9 months and 17 days of active duty.

AIR FORCE EVALUATION:

The Superintendent, Officer Promotion Management, HQ AFPC/DPPPOO, states that in accordance with AFR 36-89, Promotion of Active Duty List Officers, a commander should initiate action to remove an officer's name from a promotion list when the commander believes the officer should not be promoted. Promotion is not a reward for past service. It is an advancement to a position of greater responsibility based on the requirements of the Air Force and the officer's future potential. If there is reason to believe the officer is mentally, physically, morally, or professionally not qualified to perform the duties of the next grade, it is in the best interest of the Air Force for the proper authority to initiate action to delay the promotion, to find the officer not qualified, or to remove the officer from the promotion list.

Although the Board of Inquiry (BOI) recommended the applicant be retained on active duty, it also found the applicant had failed to meet and maintain Air Force standards of weight in that she: (a) did repeatedly fail to make satisfactory progress while participating in the Weight Management Program; and (b) she did have medical problems, being either physiological or psychological which did inhibit her ability to lose weight. The applicant has not provided any evidence to support her contention that she is entitled to be promoted to major. They recommend the application be denied.

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

The Chief, Medical Consultant, BCMR, Medical Advisor SAF Personnel Council, states that applicant weighed 132 pounds and was 64" tall ("WNL"-within normal limits per examining physician) at the time of her Reserve Officer Training Corps (ROTC) physical examination in June 1974, having lost 20 pounds over the preceding four months. This would indicate a pre-service weight problem even then. Applicant had gained excessive weight during two pregnancies and had been placed on the Weight Management Program (WMP) because of this. In the three years she was suffering the pain, she attributed inability to lose weight to being unable to exercise properly due to the pain, and that this led to her failing to progress in the WMP. This, in turn, is at least partially the reason she contends she failed her first promotion opportunity to major. Following corrective surgery in August 1988, she reported that complete relief of her pain was provided. In spite of this, she continued to fail to progress in the WMP leading to referral performance reports.

While some of the failure of this individual to progress in the WMP may be attributed to her pain and inability to perform certain exercises, this is far from the sole cause of her problems as noted in her records. The fact that applicant failed to control her weight in almost two years after relief of her pain is evidence of factors other than the pain being responsible

for her administrative separation. Evidence of record and medical examinations prior to separation indicate the applicant was fit and medically qualified for continued military service or appropriate separation and did not have any physical or mental condition which would have warranted consideration under the provisions of AFR 35-4.

The reason why the applicant could be declared fit for duty by the Air Force and later be granted service-connected disability by the Department of Veterans Affairs (DVA) lies in understanding the differences between Title 10, USC and Title 38, USC. Title 38, USC, which governs the DVA compensation system, was written to allow awarding compensation ratings for conditions that are not unfitting for military service. Evidence of record establishes beyond all reasonable doubt that the applicant was medically qualified for continued active duty, that the reason for separation was proper and that no error or injustice occurred in this case. They recommend the request be denied.

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

The Chief, Physical Disability Division, HQ AFPC/DPPD, states that they reviewed the applicant's application and verify the applicant was never referred to or considered by the Air Force Disability System under AFR 35-4. Eligibility for disability processing is established by a Medical Evaluation Board (MEB) when that board finds that the member may not be qualified for continued military service. The decision to conduct an MEB is made by the medical treatment facility providing health care to the member. The record clearly shows that while the applicant may have been treated for various medical conditions while on active duty, none were serious enough to render her unfit for further military service under the provisions of disability law and policy. The Chief, HQ AFPC/DPPD fully agrees with the AFBCMR Medical Consultant's comments and recommendations.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant on 15 September 1997 for review and response. Applicant states, in part, that the Air Force did not take the recommendation of the BOI into Consideration and did not correct her records to reflect extenuating circumstances as they are required to do. The neurosurgical consultation, dated 14 May 1991, clearly states the severity of her nerve damage. She was given Doxepin which has a side effect of weight gain. Applicant states that she had outstanding performance and she could perform management and acquisition duties but not any physical duties.

Applicant contends that key records on consultants and doctor reports are missing from her file from 1988 to 1990 and the only ones which remain are from 1991, which clearly verify her claim of "continue chronic post-operative pain."

A complete 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 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 probable error or injustice. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that her involuntary discharge should be changed to a medical retirement or that she be promoted to the grade of major with back pay and allowances. Her contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. 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 her burden that she has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.

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 2 June 1998, under the provisions of AFI 36-2603.

Mr. LeRoy T. Baseman, Panel Chair
Mr. Joseph G. Diamond, Member
Ms. Peggy E. Gordon, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 18 Nov 96, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPPPOO, undated.
- Exhibit D. Letter, BCMR Medical Consultant, dtd 8 May 97.
- Exhibit E. Letter, HQ AFPC/DPPD, dated 11 Jul 97.
- Exhibit F. Letter, AFBCMR, dated 15 Sep 97.
- Exhibit G. Applicant's Letter, dated 23 Nov 97, w/atchs.



LEROY T. BASEMAN
Panel Chair