

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02392

COUNSEL: None

HEARING DESIRED: No

AUG 14 1998

APPLICANT REQUESTS THAT:

A waiver of 12 days be granted to meet the 15 year minimal requirement for early retirement under the provision of the FY 95 National Defense Authorization Act.

APPLICANT CONTENDS THAT:

Because of the bureaucratic process that took almost one year to complete, while at the same time, denying him the right to participate in any drill or activity, he lacked 12 days to meet the fifteen years of service. Having served and devoted over 14 years, 11 months and 18 days of his life to the Air Force and the Reserves, it would be in the best interest of the Reserves, himself and family that he be granted a waiver of the remaining 12 days. He thinks that it is only fair, just and equitable to grant the waiver, instead of granting him the status of "Honorary Retired Reserve" without just compensation or the benefits he deserves.

In support of the appeal, applicant submits a statement from the 44 APS/CC stating that applicant received contradictory guidance in regard to his ability to participate. On 1 August 1994, he was detailed by Captain M--- to return to light duty until 1 January 1995 at which time this restriction was to expire. Unfortunately, even though applicant had a document allowing him to return to light duty, he was instructed by the Health Services Management Supervisor not to participate until a final board hearing was reached. Due to the excellent performance rendered to the Air Force Reserves by the applicant, and the confusing guidance he received which precluded him from amassing the additional 12 man-days necessary to qualify for the medical retirement through no fault of his own, he requests that strong consideration be given to waiving the 12 day shortfall and grant applicant a medical retirement.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 1 February 1968. He was honorably discharged on 31 January 1972 and transferred to the United States Air Force Reserve (USAFR). Applicant served a total of 4 years of active service. On 21 March 1981 he enlisted in the Air Force Reserve (AFRES) in the grade of sergeant.

On 1 August 1994, applicant was placed in a physical "4" profile status (no lifting, physical training, strenuous activity, or loading cargo out of doors) pending a Medical Evaluation Board for Reactive Airway Disease. When a reservist's profile contains a "4," the member is restricted from reserve participation for pay or points. Release date of temporary profile or duty restrictions was 1 January 1995.

On 31 May 1995, applicant was notified of his "4" profile because of Reactive Airway Disease and his restriction from military participation for pay or points until a final determination was made by HQ AFRES/SGP.

On 26 June 1995, HQ AFRES/SGP, found applicant was medically disqualified for worldwide duty by reason of Reactive Airway Disease.

On 12 July 1995, applicant was notified that he had been certified by the appropriate AFRES Surgeon as physically disqualified from worldwide duty and did not meet the requirements for retention in the AFRES. He was advised that separation action had been initiated for the specific reason of Reactive Airway Disease.

On 30 August 1995, applicant was transferred to the Retired Reserve (Honorary). Applicant had 14 years, 11 months, and 18 days of satisfactory service.

Title 10, USC Para 12731a authorizes early retirement to a member who has at least 15 but less than 20 years of satisfactory service who no longer meets the physical qualifications for membership in the Selected Reserve.

AIR FORCE EVALUATION:

The Chief, Military Personnel Division, Directorate of Personnel, AFRC/DPM, reviewed the application and states that although applicant's request for correction of military records contains no documentation of his placement on "light duty," it is highly likely that his active duty treating physician may have erroneously given him verbal approval to perform "light duty" since an active duty physician would not likely be aware that a

"4" physical profile restricts reservists from reserve participation for pay or points, and the Health Services Management Supervisor's instructions to not participate for pay or points were consistent with reserve policy governing reservists placed on a "4" physical profile. Although it is unfortunate that applicant's years of service fall just short of having the minimum 15 years service required for early retirement eligibility, they must recommend denial of his request. They have from time to time processed other reservists for administrative discharge for physical disqualification where the member also falls just short of having the minimum 15 years service required for early retirement eligibility. Therefore, they recommend denial of applicant's request.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A complete copy of the Air Force evaluation was forwarded to the applicant on 22 December 1997, for review and response. 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 timely filed.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. The Board is of the opinion that in view of the fact that applicant needs only 12 days in order to qualify for early retirement under Title 10, USC Para 12731a, is unjust. Title 10, USC Para 12731a authorizes early retirement to a member who has at least 15 but less than 20 years of satisfactory service who no longer meets the physical qualifications for membership in the Selected Reserve and we believe the applicant falls into this category, with the exception of lacking 12 days to meet the 15 year minimum. Due to circumstances beyond his control and in view of the above findings, we recommend the applicant's records be corrected to the extent indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. On 30 August 1995, he was not placed on the Retired Reserve (Honorary) list.

b. For retirement year ending (RYE) 13 October 1995, he was awarded an additional 12 nonpaid Inactive Duty Training (IDT) training points for a total of 35 IDT points and 15 membership points, 50 total and retirement points and a year of satisfactory Federal Service.

c. On 14 October 1995, he was found medically unfit for continued military service and was relieved from the Air National Guard and Air Force Reserve on 15 October 1995, under the provisions of Title 10, United States Code, Section 12731a, and retired in the grade of technical sergeant, with entitlement to retired pay at age 60.

The following members of the Board considered this application in Executive Session on 10 June 1998, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chair
 Mr. Gregory H. Petkoff, Member
 Mr. Michael P. Higgins, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 1 Aug 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFRC/DPM, dated 21 Nov 97.
- Exhibit D. Letter, AFBCMR, dated 22 Dec 97.


 MARTHA MAUST
 Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

AUG 14 1998

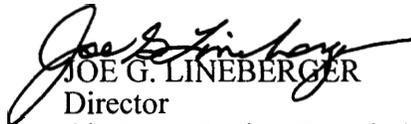
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MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that:

- a. On 30 August 1995, he was not placed on the Retired Reserve (Honorary) list.
- b. For retirement year ending (RYE) 13 October 1995, he was awarded an additional 12 nonpaid Inactive Duty Training points for a total of 35 Inactive Duty Training points and 15 membership points, 50 total and retirement points and a year of satisfactory Federal Service.
- c. On 14 October 1995, he was found medically unfit for continued military service and was relieved from the Air National Guard and Air Force Reserve on 15 October 1995, under the provisions of Title 10, United States Code, Section 12731a, and retired in the grade of technical sergeant, with entitlement to retired pay at age 60.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency