

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 95-03756

COUNSEL: NONE

HEARING DESIRED: NO

24 JUL 1998

APPLICANT REQUESTS THAT:

He be reinstated to active duty, or if this is not possible or feasible, he at least be given some form of retirement compensation, and that the narrative reason for discharge be changed.

APPLICANT CONTENDS THAT:

He was involuntarily discharged against the recommendation of his discharge board when, in fact, he was within weight standards.

His work performance and judgment were never affected by the extra weight he had not realized he had gained.

The weight and body fat program on his base has been placed in question. No one can be sure whether he received fair treatment in his measurement and support from his squadron. His weight file was incomplete, his measurements were never kept and results were gotten which did not seem logical.

The discharge authority used him as an excuse to fulfill a force reduction quota.

In support of his request, the applicant provided his personal statement. He also provided copies of letters submitted to the discharge authority from the president and two members of the discharge board recommending the applicant be given probation and rehabilitation, a copy of a letter from his wife to their member of Congress, and nine letters of character reference/recommendation. (Exhibit A)

STATEMENT OF FACTS:

Applicant contracted his initial enlistment in the Regular Air Force on 1 June 1981 in the grade of airman first class (E-3). He served on continuous active duty and entered his last enlistment on 25 May 1993. Prior to the events under review, he attained the grade of staff sergeant (E-5). The record contains nine APRs

reflecting overall evaluation ratings of 9, and six EPRs reflecting promotion recommendation ratings of 4, 4, 3, 4, 3, and 4.

On 26 June 1995, the squadron commander initiated administrative discharge action against the applicant for failure in the weight control program. The basis for the proposed discharge was that applicant failed to make satisfactory progress on the Weight Management Program (WMP) on five occasions between 28 December 1993 and 31 May 1995. These failures resulted in the applicant receiving a letter of admonishment, a letter of reprimand, two letters of reprimand with establishment of an Unfavorable Information File (UIF) and control roster actions, and a record of counseling.

On 30 and 31 August 1995, an administrative discharge board convened to determine whether the applicant should be discharged due to exceeding body fat standards and thereby failing the weight control program. After carefully considering all the evidence, the board found that applicant did fail to make satisfactory progress on the WMP, on or about 28 December 1993, 30 March 1994, 31 May 1994, 15 August 1994 and 31 May 1995, as reflected by AF Form 393. The Board recommended applicant be separated with an honorable discharge. They further recommended he be offered probation and rehabilitation with a conditional suspension of the discharge.

On 12 September 1995, applicant's area defense counsel submitted statements from the president and two members of the discharge board, and the applicant and his wife, for consideration by the separation authority as to whether probation and rehabilitation was appropriate.

On 17 September 1995, the Deputy Staff Judge Advocate reviewed the Record of Board Proceedings and found the record complete and legally sufficient. On 20 September 1995, the discharge authority approved an honorable discharge, without probation and rehabilitation.

Information extracted from applicant's service medical records reflects the following weights were recorded during applicant's follow-up visits to the nutrition clinic subsequent to being notified of the discharge action:

7 June 95, weighed 182, the same as previous visit.

13 Jun 95, weighed 183, lost two pounds. Maximum allowable weight (MAW) was 172.

30 Jun 95, weighed 182, lost one pound.

7 Jul 95, weighed 182, weighed same as last visit.

12 Jul 95, weighed 180½, lost 1½ pounds.

21 Jul 95, weighed 181, gained ½ pound.

28 Jul 95, weighed 179, lost two pounds.

1 Aug 95, weighed 180, **MAW** 172; gained one pound and lost 2% body fat.

9 Aug 95, weighed 181½, gained 1½ pounds.

16 Aug 95, weighed 177½, body fat 23%; lost 2½ pounds.

22 Aug 95, weighed 182½, body fat 25%; gained 5 pounds and 2% body fat.

28 Aug 95, weighed 177, body fat 22%; lost 5 pounds and 3% body fat.

12 Sep 95, weighed 176.

19 Sep 95, weighed 176, remained the same as previous visit.

Applicant was honorably discharged on 4 October 1995, under the provisions of AFI 36-3208 (weight control failure). He was credited with 14 years, 4 months and 4 days of active Federal service.

AIR FORCE EVALUATION:

The Quality Force Programs Branch, AFPC/DPSFC3, reviewed this application and recommended denial. DPSFC3 noted that the applicant does not deny that his unsatisfactory periods were inappropriate, only that there were extenuating circumstances. Commanders may consider special circumstances when administering the program, however, that does not always translate into more lenient administering of the WMP.

DPSFC3 stated that when the applicant was placed in the WMP in September 1993, the requirement at that time and currently is to lose five pounds or one percent body fat per month for satisfactory progress. Applicant's body fat standard was 24 percent. The applicant had five total unsatisfactory periods: Dec 93, Mar 94, May 94, Aug 94 and May 95. He received an authorized administrative action for each unsatisfactory period. Although AFR 35-11, The Air Force Weight Program, dated 5 February 1991, changed to AF Instruction 40-502, effective 31 August 1994, the requirements for weight and body fat loss imposed on the member did not change. There was an interim message change to AFR 35-11, effective 30 June 1993, and it changed the weight loss requirement from a two percent body fat loss per month to one percent or five pounds. The applicant entered the program in September 1993 under the new requirement. The WMP was administered appropriately in the applicant's case. (Exhibit C)

The Programs and Procedures Branch, AFPC/DPPRP, reviewed this case for separation processing and found no errors or irregularities causing an injustice to the applicant. The discharge complies with directives in effect at the time of his discharge. The records indicate applicant's military service was reviewed and appropriate action was taken. Accordingly, DPPRP recommended applicant's request for reinstatement be denied. (Exhibit D)

The Programs and Procedures Branch, AFPC/DPPRP, provided comments addressing applicant's alternate request for some form of retirement compensation. DPPRP recommended his request be denied, stating the applicant did not and does not meet the provisions for a regular service retirement - that is, must have served 20 years of active federal military service. Further, he does not and did not meet the basic criteria in law for a retirement under the Temporary Early Retirement Authority (TERA). It would be inappropriate to allow the applicant to receive retirement benefits without him having met retirement eligibility. (Exhibit E)

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant reiterated his contentions that his work performance, judgment and appearance were never affected by the extra weight he had not realized he had gained. He had gone eight months without a failure when he failed in May 1995. He had done nothing different to gain weight or body fat. He was still following his exercise routine and very low fat diet. It is not fair to destroy a person's otherwise outstanding career because of a weight program that has time and again been proven to be inconsistent and unfair.

Applicant's response is 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. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After reviewing the evidence of record, we believe that the recommendation of the administration discharge board should have been approved. In this respect, we note the president of the discharge board and two other members felt so strongly that the applicant should be offered probation and rehabilitation that they wrote statements on behalf of the applicant. In addition, applicant appears to have followed the Weight Management Program (WMP) procedures and at one time had gone eight months without a failure. Applicant's overall record of performance does not appear to have been affected and in view of

the statements submitted and his 14 years of service, we find the denial in providing the applicant one more opportunity to complete his career was unduly harsh. Therefore, we recommend his 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. He was not discharged on 4 October 1995, but on that date he was continued on active duty and was ordered Permanent Change of Station (PCS) to his home of record (home of selection) pending further orders.

b. Upon his return to active duty he be enrolled into the Weight Management Program.

c. An AF Form 77, Supplemental Evaluation Sheet, be prepared and inserted in the record in its proper sequence indicating that no performance report is available for the period when member was not serving on active duty and containing the statement, "Report for this period not available for administrative reasons which were not the fault of the member."

The following members of the Board considered this application in Executive Session on 13 March 1997, under the provisions of AFI 36-2603:

Mr. David C. Van Gasbeck, Panel Chair
Mr. Joseph G. Diamond, Member
Mr. Gary Appleton, Member

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

- Exhibit A. DD Form 149, dated 10 December 1995, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, HQ AFPC/DPSFC3, dated 12 April 1996.
- Exhibit D. Letter, HQ AFPC/DPPRP, dated 23 April 1996.
- Exhibit E. Letter, HQ AFPC/DPPRP, dated 6 May 1996, w/atrch.
- Exhibit F. Letter, SAF/MIBR, dated 20 May 1996.
- Exhibit G. Letter, Applicant, dated 17 June 1996.


DAVID C. VAN GASBECK
Panel Chair