



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03349

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His DD Form 214, *Certificate of Release or Discharge from Active Duty*, block 28, narrative reason for separation, be changed from "Exceeding Air Force Weight Standards" to "Medical Discharge."

APPLICANT'S CONTENTIONS

He did not exceed his weight limit when required, but as his medical condition degraded, he was afraid he would not be able to keep physically fit enough to maintain his weight. He should have been offered a Medical Discharge due to all of his medical issues resulting from chemical exposure during active duty and surgeries performed by the Air Force to correct his ailments. He petitioned the Department of Veterans Affairs (DVA) for 100 percent disability.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force staff sergeant (E-5).

On 20 Jan 87, the applicant's commander recommended the applicant be discharged from the Air Force for exceeding weight standards, according to AFR 39-10, *Administrative Separation of Airmen*, under the provisions of paragraph 5-26f. The specific reasons for the action were:

- a. On 8 Dec 81, the applicant received a weight condition evaluation. As a result, it was determined that he was physically fit to participate in a Weight Management Program (WMP).
- b. On 18 Jan 83, the applicant received a Record of Individual Counseling for weight increase while on the WMP.
- c. On 20 Jul 84, the applicant received a Record of Individual Counseling for failing to maintain the goals of the one year observation period on the WMP.
- d. On 5 Oct 84, the applicant received a Letter of Reprimand for failing to lose the required amount of weight on the WMP.
- e. On 20 Nov 85, the applicant received a Letter of Reprimand for failing to maintain his maximum allowable weight. As a result, the applicant reentered in the WMP Phase I.

AFBCMR Docket Number BC-2021-03349
CUI//SP-MIL/SP-PRVCY

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- f. On 27 Oct 26, the applicant reentered the WMP for not maintaining his weight at or below the appropriate Air Force standard.

On 20 Jan 87, the applicant submitted a conditional waiver of his board entitlement contingent upon receiving no less than an honorable discharge.

On 27 Jan 87, the staff judge advocate found the discharge action legally sufficient.

On 27 Jan 87, the discharge authority accepted the applicant's conditional waiver and directed he be discharged under the provisions of AFR 39-10, paragraph 5-26f, with an honorable discharge without the offer of probation and rehabilitation.

On 4 Feb 87, the applicant received an honorable discharge. His narrative reason for separation is "Exceeding Air Force Weight Standards." The applicant served on active duty this period for four years, two months, and two days.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C and Exhibit D.

AIR FORCE EVALUATION

The AFBCMR Medical Advisor finds no substantial error or implied injustice as to the administrative process of the applicant's discharge. The evidence brought forth a plethora of documentation regarding the applicant exceeding military weight standards and the ample opportunities provided to him for rehabilitation and counseling as to get to and maintain proper weight standards. His medical examinations did not provide a medically indicated diagnosis to explain excessive weight and there was no evidence of any degree to adverse chemical exposures. This, in addition to him being found fit to participate in a WMP, directly correlates with any possible future adverse action to be strictly administrative, not medical, in nature. Therefore, no potential medical board was considered nor appropriate.

The military disability evaluation system (DES) established to maintain a fit and vital fighting force, can by law under Title 10, United States Code (U.S.C.), only offer compensation for those service incurred diseases or injuries which specifically rendered a member unfit for continued active service and were the cause of career termination; and then only for the degree of impairment present at the "snapshot" time of separation and not based on future progression of injury or illness. On the other hand, operating under a different set of laws (Title 38, U.S.C.), with a different purpose, the DVA is authorized to offer compensation for any medical condition determined service incurred, without regard to and independent of its demonstrated or proven impact upon a service member's retainability, fitness to serve, or the length of time since date of discharge.

The Medical Advisor recommends a denial of the applicant's petition that his discharge separation documents reflect a medical discharge. Should the Board concur with this finding, the medical advisor recommends changing block 28 of his DD-214 from "Exceeding Air Force Weight Standards" to "Failed Medical Procurement Standards."

The complete advisory opinion is at Exhibit C.

AIR FORCE EVALUATION

AFBCMR Docket Number BC-2021-03349

CUI//SP-MIL/SP-PRVCY

AFPC/DP2SSR recommends denying the application. Review of the applicant's records revealed that the commander provided the Base Discharge Authority ample evidence to support discharge and the character of service. The discharge was consistent with the procedural and substantive required of the discharge regulation and the applicant was provided due process. DP2SSR finds no error or injustice with the discharge processing, however, they do not serve as the OPR for any discussions surrounding the feasibility of the applicant receiving a medical related discharge.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinions to the applicant on 19 Sep 22 for comment (Exhibit E), and the applicant's widow replied on 27 Sep 22. In her response, she contends the applicant was assigned to work in a cleaning room where he was exposed to toxic gas/fumes which resulted in breathing problems. In addition, she contends the applicant's diagnosis of Charcot Marie-Tooth Disease impaired his control over the mobility of his feet and legs. She contends there were no tests performed to examine the extent of scarring and damage done to the applicant's lungs that caused respiratory and lung issues. The damage greatly impaired the applicant's ability to completely participate in the recommended weight loss programs.

The applicant's complete response is at Exhibit F.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. With the exception of Medical Advisor's recommendation to change block 28 of his DD-214, the Board concurs with the rationale and recommendations of the AFBCMR Medical Advisor and AFPC/DP2SSR and finds a preponderance of the evidence does not substantiate the applicant's contentions for a medical discharge. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-03349 in Executive Session on 26 Oct 22:

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Work-Product [Redacted] Panel Chair
Work-Product [Redacted] Panel Member
Work-Product [Redacted] Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 4 Oct 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 8 Sep 22.
- Exhibit D: Advisory Opinion, AFPC/DP2SSR, dated 9 Sep 22.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 19 Sep 22.
- Exhibit F: Applicant's Response, w/atchs, dated 27 Sep 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

8/28/2023

Work-Product [Redacted]

Board Operations Manager, AFBCMR
Signed by: USAF