

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02695 JAN 23 1999

COUNSEL: None

HEARING DESIRED: No

APPLICANT REQUESTS THAT:

His administrative discharge be changed to a medical retirement or early retirement.

APPLICANT CONTENDS THAT:

He honestly feels that he was given an unfair chance to retire with honors. While he was stationed at Shaw AFB he has witnessed dishonest and unfair situations that have gone unnoticed or have been so called "swept under the carpet." He was entered into the weight management program (WMP) because he failed to meet the Air Force weight standards. He was then sent to the hospital where it was determined that he had a non-functioning thyroid gland which the doctor's say caused him to gain the weight. He was given medication to control the disease which he has to take for the rest of his life. He gained more than 70 pounds in 3 months and it was due to the thyroid problem. He was being treated but the medication does not assist you in weight loss. It only brings your metabolism levels to normal. He has battled this problem since July 1994 and feels more steps should have been taken to help him with the problem. His unit is and was filled with individuals with weight problems and to his knowledge he is the first to be discharged for it. He was put on a control roster by his previous commander who has since retired. He was denied testing for two years under his command, but when the new commander was assigned to the unit his file was not reviewed and he again was denied testing for a total of three years. He was under the impression that his file should have been reviewed yearly but that was not the case. If his records are reviewed, you will see that the weight management is the only blemish on his records in 18 years of service. All he wanted to do was

retire with honors after serving his country proudly for 20 years of dedicated service, but, he fell short because of an illness that he had no control over.

In support of the appeal, applicant submits six letters of support and character references.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant enlisted in the Regular Air Force on 13 December 1978 in the grade of airman basic for a period of 4 years.

On 27 December 1993, applicant was found to have an underactive thyroid gland in the course of evaluating his chronic obesity and was started on hormone replacement, reaching therapeutic levels by March 1994.

On 27 July 1994, applicant was entered into Weight Management Program (WMP). He weighed 236 pounds, with a body fat measurement (BFM) of 35 percent. His maximum allowable weight (MAW) was 174 pounds and maximum body fat was 24 percent. He was 66 inches in height.

On 8 December 1994, applicant was reentered into Phase I of the WMP. He weighed 235 pounds and had a body fat determined to be 34 percent.

On 5 January 1995, applicant's commander nonrecommended applicant for promotion testing.

On 7 February 1996, applicant was notified of his commander's intent to initiate discharge action against him for failure in the WMP and exceeding body fat standards. Reasons for this action were:

8 December 1994, Letter of Reprimand (LOR): He gained 3 pounds and his body fat increased 3 percent over his previous month's measurements. He was reentered into Phase I of the WMP.

20 March 1995, LOR: He gained 2 pounds and his body fat remained at 34 percent. The LOR was entered into an unfavorable information file (UIF).

17 April 1995, Placement on the Control Roster: He gained 1 pound and had 1 percent body fat.

18 August 1995, LOR: Gained 5 pounds and had 6 percent body fat. The LOR was entered into his existing UIF.

10 January 1996, LOR: Gained 9 pounds and had 1 percent body fat. The LOR was entered into his existing UIF.

7 February 1996, LOR: Failing to lose the required five pounds and gaining 1 percent body fat. He weighed 233 pounds and had a body fat of 33 percent.

On 9 February 1996, applicant acknowledged he had been notified he had been recommended for discharge for failure in the weight control program - exceeding body fat standards. He did not waive his right to a hearing before an administrative discharge board or his right to military counsel.

On 26 March 1996, an administrative discharge board convened and found applicant failed to satisfactorily progress in the WMP by not losing either 1 percent body fat or 5 pounds following his previous monthly evaluation on six separate occasions: 1 December 1994, 7 March 1995, 7 April 1995, 7 August 1995, 8 January 1996, and 7 February 1996. The board recommended applicant be separated from the Air Force with an honorable discharge, without probation and rehabilitation. Because of the length of the respondent's service, he was entitled to special consideration for probation upon his request.

On 29 March 1996, applicant requested special consideration for probation based on his lengthy service.

On 17 September 1996, applicant acknowledged receipt of letter of notification notifying him of approval of probation and rehabilitation. He also acknowledged his understanding that his failure in the P&R program would result in his receiving an honorable discharge. Applicant indicated he accepted the offer of P&R.

(EXAMINER'SNOTE: Records pertaining to final discharge action is not available.)

Applicant was honorably discharged from the Regular Air Force on 26 July 1997, in the grade of staff sergeant, under the provisions of AFI 36-3208 (Weight Control Failure). He had completed 18 years, 7 months, and 14 days of total active military service. He received \$19,304.00 in separation pay.

A resume of the applicant's performance reports since 1990 follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
16 Jan 90	5
16 Jan 91	5
16 Jan 92	5
16 Jan 93	5
16 Jan 94	4
31 Oct 94	5
31 Oct 95	3 (Referral)
16 Dec 96	3 (Referral)
06 Feb 96	3

AIR FORCE EVALUATION:

The Chief Medical Consultant, AFBCMR, reviewed this application and states that all efforts were expended in trying to help the applicant reach and maintain his MAW and BFM over the course of at least 10 years before he was administratively discharged. He exhibited the ability to lose weight when his determination ruled, but he simply failed to assure continual vigilance. While the thyroid condition may have initially contributed to his overweight/overfat condition, its control with proper medication paved the way for him to succeed in his efforts, and he did not do so. Proper diet and exercise counseling were provided along with medical management. The fact that he had a medical condition requiring treatment did not, in and of itself, render him unfit for duty nor eligible for consideration under the provisions of AFI 36-3212 for disability evaluation. The fact that he may have to continue medication for the rest of his life, again, while unfortunate at the late stage of his career, was proper, and no error or injustice is found in the course of events leading to his separation. The BCMR Medical Consultant is of the opinion that no change in the records is warranted and the application should be denied.

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

The Chief, Physical Disability Division, AFPC/DPPD, also reviewed this application and states that the purpose of the military disability system is to maintain a fit and vital force by separating members who are unable to perform the duties of their grade, office, rank or rating. Members who are separated or retired for reason of physical disability may be eligible, if otherwise qualified, for certain disability compensations. 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 care to the member. They carefully reviewed the AFBCMR application and verified the applicant was never referred to or considered by the Air Force Disability Evaluation System under the provisions of AFI 36-3212. A review of the applicant's case file revealed no mental or physical defects to show he was unfit for continued military service due to a physical disability at the time of his involuntary discharge. The medical aspects of this case are fully explained by the Medical Consultant and they agree with his advisory. They recommend denial of the applicant's request. The applicant has not submitted any material or documentation to show that he was unfit due to a physical disability under the provisions of Title 10 USC at the time of his involuntary administrative discharge from active duty.

A complete copy of their evaluation is attached at Exhibit D.

The Chief, Retirements Branch, AFPC/DPPRR, also reviewed this application and states they recommend disapproval of applicant's request for a Temporary Early Retirement Authority (TERA) retirement. The TERA program was enacted by Congress and the Secretary of Defense approved the use of some of the provisions to retire members from the active military. The temporary legislation is a force shaping drawdown tool and not an entitlement, i.e., all members meeting minimum eligibility criteria may not necessarily apply. The legislation clearly permits each service to target segments of its eligible population where it would most need for losses to occur. The enlisted early retirement program was last available until 30 October 1996, when the program closed. Since this program has been successful over the fiscal years to meet enlisted end strengths, it has not been necessary over recent fiscal years and it is not projected for Fiscal Year 1999 to offer the program to enlisted members.

A complete copy of their evaluation is attached at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluations and states that he knew from the beginning that he did not have a chance of ever getting his application approved for two reasons: (1) black, and (2) 1.5 years away from retirement. Anytime the military gets over on an individual racially, it will do just that no matter what proof or evidence you may have against any wrong doing. You will never win because you hate to look bad. But he will not let this minor set back upset him. He has contacted the media in

hopes of having his story aired and speak of the wrong doings and how he feels that he was treated unfairly due to race. You have a black noncommissioned officer (NCO) that has served 18.5 years of faithful duty contract hypothyroidism, gain an unusual amount of weight in a 2-3 month time span, get some treatment, and is kicked out before having a chance to retire. He has seen chief master sergeants and other white NCOs get waivers or everyone just looked the other way in order for them to retire. But the military as a whole has been and always will be a divided entity and if you are a black male in a position of authority you are looked at under a microscope. They are waiting for a reason to get rid of you. He does realize the final decision has not been made yet, but he is already aware of what the final outcome will be. It is just a matter of formality.

Applicant's complete 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 reviewing the evidence submitted with this appeal, we are not persuaded that the applicant should be medically retired or retired under the Temporary Early Retirement Authority (TERA). The Air Force states the purpose of the military disability system is to maintain a fit and vital force by separating members who are unable to perform the duties of their grade, office, rank or rating. Members who are separated or retired for reason of physical disability may be eligible, if otherwise qualified, for certain disability compensations. 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 care to the member. We note that the applicant was never referred to or considered by the Air Force Disability Evaluation System under the provisions of AFI 36-3212. The Board is of the opinion that the applicant was informed he was overweight and that appropriate measures were taken. He was offered Probation and Rehabilitation due to his lengthy service. However, the applicant still failed to reach and maintain his maximum weight and body fat measurements. In regard to the applicant's request for early retirement, we note that the applicant was not eligible, based on the type of separation, to retire under the TERA. The applicant's contention that he was treated unfairly because of

his race is not substantiated and the applicant has not provided any evidence to the contrary. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

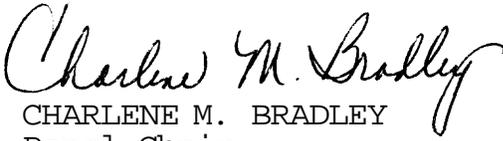
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

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

Ms. Charlene M. Bradley, Panel Chair
 Mr. Joseph G. Diamond, Member
 Mr. Terry A. Yonkers, Member
 Ms. Gloria J. Williams, Examiner (without vote)

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 18 Sept 98, w/atchs.
 Exhibit B. Applicant's Master Personnel Records.
 Exhibit C. Letter, BCMR Medical Consultant, dated 5 Jan 98.
 Exhibit D. Letter, AFPC/DPPD, dated 26 Jan 98.
 Exhibit E. Letter, AFPC/DPPRR, dated 9 Apr 98.
 Exhibit F. Letter, AFBCMR, dated 22 Apr 98.
 Exhibit G. Applicant's Response, dated 25 Apr 98, w/atchs.


 CHARLENE M. BRADLEY
 Panel Chair