

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-02125

COUNSEL: NONE

FEB 19 1998

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

1. The Enlisted Performance Report (EPR), closing 1 March 1997, be removed from his records.
2. His demotion from the grade of technical sergeant (E-6) to staff sergeant (E-5) be declared void and previous grade of E-6 reinstated.

APPLICANT CONTENDS THAT:

An injury to his knee while playing basketball in 1993 has prevented him from reaching and maintaining his weight within Air Force standards and resulted in his demotion and receipt of a referral EPR.

The applicant states that because of a biased distortion of judgment and what he strongly believes to be a violation of medical ethics and patient rights, he has been the victim of an error or injustice.

In support of the appeal, the applicant submits his personal statement and documentation regarding his knee problems.

The applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

On 19 July 1993, the applicant's maximum allowable weight was 181 ½ pounds and his maximum allowable body fat percentage was 24%. Since his weight was 205 pounds and his body fat 25%, he was entered into the Weight Management Program (WMP).

The applicant received a Record of Individual Counseling on 17 December 1993 for his first unsatisfactory WMP progress evaluation.

On 29 November 1994, the applicant received an LOR for his second unsatisfactory WMP progress evaluation and an Unfavorable Information File (UIF) was established.

On 2 March 1995, the applicant received an LOR for his third unsatisfactory WMP progress evaluation and a UIF was established.

On 2 May 1996, a Medical Evaluation Board (MEB) convened at the request of the First Sergeant to determine the effects of the applicant's knee problems on his progress in the Weight Management Program (WMP). Based on the diagnosis of chronic patellofemoral syndrome the MEB recommended the applicant be referred to an Informal Physical Evaluation Board (IPEB).

On 28 May 1996, an IPEB convened and found the applicant fit for duty and returned him to duty.

On 9 August 1996, the applicant received a Letter of Reprimand (LOR) for his fourth unsatisfactory WMP progress evaluation.

The applicant received an LOR on 6 December 1996 for failing to attend a 90-day Fitness Program at the base gym.

The applicant was ineligible for promotion consideration to the grade of master sergeant during cycle 9737 since his Weight Status Code indicated unsatisfactory progress in the WMP, on or after the Promotion Eligibility Cutoff Date (PECOD).

The applicant was demoted from technical sergeant to staff sergeant (E-5) with an effective date and DOR of 10 February 1997, for failure to maintain Air Force weight standards.

On 7 March 1997, the applicant received an LOR for his fifth unsatisfactory WMP progress evaluation.

On 1 December 1998, the applicant retired for length of service in the grade of staff sergeant.

A resume of applicant's performance, since 1990, follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
2 May 90	4
2 May 91	5
2 May 92	5
2 May 93	4
2 May 94	4
1 Mar 95	4
1 Mar 96	4
* 1 Mar 97 (Referral)	2 (6 of 7 marked down)
1 Mar 98	5

* Contested report

AIR FORCE EVALUATION:

The BCMR Medical Consultant reviewed this application and states that applicant's contention that his weight problem was a result of his 1993 injury and subsequent forced inactivity is not based on his record of almost 20 years of difficulties. The applicant was originally rejected for military service based on his being overweight in 1978, and was subsequently allowed into the Air Force when he managed to lose weight to enlistment standards. Furthermore, the applicant was able to lose weight during several periods in spite of his knee problems. With no underlying medical condition adding to his weight problem, he has no valid concern that he was unable to achieve his goals based solely on his knee problem. The evidence of record show that applicant was afforded adequate counseling and an opportunity to meet WMP standards and failed to do so. As a result, he was administratively demoted. The BCMR Medical Consultant finds no inequity or impropriety in the action upon which to base a recommendation to grant applicant's request.

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

The Chief, Inquiries/AFBCMR Section, AFPC/DPPPWB, reviewed this application and states that applicant is not contesting the procedural correctness of his demotion. Rather, he contests the basis for the demotion (i.e., failure to meet AF weight standards). The BCMR Medical Consultant has addressed this issued and they defer to that recommendation.

AFPC/DPPPWB states that applicant contends he was denied the opportunity to take the required promotion tests for cycle 9737, although he had two consecutive months when he had satisfactory progress on the WMP. However, in the applicant's case, even if he had not been demoted, the fact that he was making unsatisfactory progress on the WMP after the PECD for cycle 9737, (31 December 1996), rendered him ineligible for promotion. In addition, assuming he was not demoted and otherwise eligible, he received a referral EPR after the PECD which also rendered him ineligible for promotion. Therefore, they recommend denial of the application.

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

The Chief, BCMR and SSB Section, AFPC/DPPPA, reviewed this application and states that applicant has provided no statements from the evaluators of the contested report. In order to successfully challenge the validity of an evaluation report, it is important to hear from the evaluators. Although the applicant focuses on his lack of progression in the WMP as the basis for the referral EPR, it is apparent from verbiage in the report that there were other issues involved. In his comments, the indorser

states the applicant failed to keep his supervisors informed of his medical status and of medical appointments. The applicant implied that because the first sergeant knew about his status and appointments, it was not necessary to inform his supervisors. They feel it is imperative for a supervisor to know the medical status and whereabouts of his/her subordinates. Based on the evidence provided and the findings of the BCMR Medical Consultant, they recommend denial of applicant's requests,

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATIONS:

The applicant reviewed the Air Force evaluations and provided a copy of his WMP file which 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. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinions and recommendations of the Air Force and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. It appears the applicant was provided every opportunity to lose the required weight and he failed to take advantage of those opportunities. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.
4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

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 16 December 1998, under the provisions of AFI 36-2603:

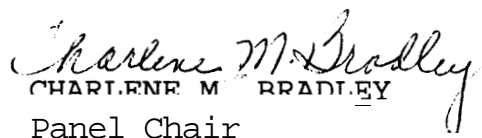
Ms. Charlene M. Bradley, Panel Chair

~~Ms. Peggy E. Gordon, Member~~
~~Mr. Terry A. Yonkers, Member~~

Mr. Phillip E. Horton, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 19 May 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records,
- Exhibit C. Letter, BCMR Medical Consultant, dated 16 Oct 97.
- Exhibit D. Letter, AFPC/DPPPWB, dated 4 Nov 97.
- Exhibit E. Letter, AFPC/DPPPA, dated 17 Nov 97, w/'atchs.
- Exhibit F. Letter, SAF/MIBR, dated 1 Dec 97-
- Exhibit G. Letter, Applicant, dated 31 Jul 98, w/atchs.


CHARLENE M. BRADLEY
Panel Chair