RECORD **OF** PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: [redacted]

DOCKET NUMBER: 96-00521

[redacted]

OCT 2 8 1997

HEARING DESIRED: Yes

APPLICANT REQUESTS THAT:

He be reinstated to active duty and given the proper medical treatment he was denied;

OR,

He be given an honorable discharge with full retirement.

APPLICANT CONTENDS THAT:

After 20 years of signs of a problem that stemmed not from allergies but from anxiety and stress, the Air Force chose to focus upon the results of stress rather than the cause. There were abundantly clear and evident signs that should have been recognized, probably were recognized, but were deliberately ignored as it was easier to contend with alleged misconduct than to deal with a mental aberration. Throughout his career, his pain and suffering were dismissed as the results of sinus troubles when, in fact, these were the simple answers to complex problems. No one was ever interested enough to correlate these physical ailments to stress. He could not go voluntarily to the Wilford Hall Medical Center (WHMC) for a 10-day evaluation because of his wife's mental state and back injury. He was never ordered to undergo a mental health examination and treatment. If he had, the results may have been quite different. Instead, he was ordered to see a psychologist who gave him a series of three preliminary tests and the results were essentially that he had a problem with authority but it could not be determined what the problem was without further testing. It was at this point that his military appointed attorney told him to discontinue testing because anything he said during these sessions would be used against him in a court-martial proceeding. He was advised to not to admit to anything and to resist any type of treatment offered.

He also points out that he was only 29 days short of a 20-year retirement when he was discharged. He had accumulated 55 days of leave which was taken away from him upon discharge. This time would have easily put him over his 20-year mark for retirement purposes. He asks for forgiveness and help in getting the treatment he needs.

In support of his appeal, he provides a personal statement, extensive medical records, supporting statements, and documents presented during his Board of Inquiry (BOI). He also provides a 1996 examination by a civilian psychologist, who diagnosed him as having latent or borderline schizophrenia (personality disorder, not otherwise specified) which appears to have been exacerbated by severe job-related stress.

Applicant's complete submission is attached at Exhibit **A.**

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 9 April 1974. He received a direct commission into the Biomedical Service Corps (BSC) in the grade of 2nd lieutenant on 21 January 1978 and entered extended active duty on 22 January 1978. He was progressively promoted to the grade of major. He performed duties in the medical administration, medical support, and medical readiness fields at McChord AFB, Travis AFB, RAF Little Rissington, Bolling AFB, and [redacted] AFB.

An Air Force Office of Special Investigations (AFOSI) Report *of* Inquiry (ROI) dated 10 December 1990 indicates that applicant was investigated for appearing very intoxicated and for stealing items of personal property belonging to various attendees at a conference of the Association of Military Surgeons at the [redacted] on [redacted]. Applicant received a Letter of Reprimand (LOR) on 4 April 1991.

An AFOSI ROI dated 17 September 1991 relates that an investigation was initiated on 12 August 1991 based on information that the applicant attempted to obstruct justice by telling a enlisted subordinate, who was under investisation. how to beat a polygraph examination.

On 17 January 1992, applicant received a Letter of Admonishment for public intoxication, thefts, and advising an enlisted subordinate how to manipulate the results of a polygraph examination.

An Incident/Complaint Report dated 6 April 1992 indicated that on 5 April 1992 applicant allegedly took a belt from the Exchange at [redacted] AFB, TX, and placed it into his left front trouser pocket. The video tape was inconclusive in showing the applicant actually putting the belt into his trousers. The suspected stolen item was found in applicant's house. Applicant was advised of his rights and he requested a lawyer.

On 23 April 1992, applicant was notified of his commander's intent to impose nonjudicial punishment upon him for stealing a belt on 5 April 1992 and a candy bar on 17 April 1992 from the

[redacted] AFB Exchange, in violation of Article 121. On 28 April 1992, after consulting with counsel, applicant waived **his** right to a trial by court-martial, and requested a personal appearance. He and his counsel submitted written matters for consideration. On 14 May 1992, he was found guilty by his commander who imposed punishment of forfeiture of $1,869 per month for two months. Applicant appealed the punishment, but the appeal was denied on 13 August 1992. However, on 14 September 1992, the punishment was suspended and would be remitted without further action if not vacated before 14 December 1992. The suspension also indicated that the commander intended to initiate discharge action against the applicant. The Article **15** was filed in his Unfavorable Information File **(UIF)** and in his Officer Selection Record. Applicant rebutted this action.

According to a 27 Augus 1992 medical entry, applicant was referred by the [redacted] Hospital Commander for psychiatric evaluation. The Chief, Mental Health, stated he discussed applicant's current legal status and the Miranda warning. Applicant indicated his legal counsel had told him to tell everything, to be truthful, and to cooperate. The Chief told applicant that the information provided would not be considered confidential. Applicant denied having had any psychiatric involvement in the past. The Chief stated that applicant did not come across as being depressed or present evidence of any underlying thought disorder. Diagnosis was deferred pending completion of this evaluation. In a follow-up evaluation dated 31 August 1992, the Mental Health Chief indicated that Applicant denied the charges against him and having any current psychological problems. No evidence of any psychiatric disorder was found. ***An*** evaluation dated 4 September 1992 came to essentially the same conclusion. Applicant was referred for further evaluation.

In a medical entry dated 8 September 1992, a neuropsychologist at [redacted] Hospital indicated that applicant was referred by the Psychiatry Department for psychological testing in conjunction with an investigation connected to the Article 15. Applicant was advised of his rights. The doctor found that, although personality disorders were not determined on the basis of psychological testing, applicant was showing some signs of passive-aggressive and anti-social traits. Diagnosis was deferred pending further evaluation on the possibility of a personality problem. The doctor indicated applicant was not interested in further treatment at this clinic and was resistant to further psychological testing until he had talked to his lawyer.

During a follow-up visit on 11 September 1992, applicant indicated he had no tendency toward biological problems under stress and wished to talk to his lawyer before he would take further tests. The neuropsychologist stated that the determination of a personality disorder was only done by extensive review of history and record and not by testing alone. However, a medical entry dated 13 September 1992 reflects that

the applicant never completed the recommended tests; consequently, diagnosis was deferred.

Legal review on 23 September 1992 found the case legally sufficient to support initiation of discharge action. On 28 September 1992, the group commander recommended discharge action be initiated. On 5 October 1992, the applicant was notified that discharge action was being initiating against him under AFR 36-2, Chapter 3, ,paragraph 3-7d, for shoplifting, other acts of theft, conduct unbecoming, and counseling an enlisted subordinate on methods to achieve a false polygraph result. Applicant responded to the Notification on 20 November 1992.

In a Report **of** Medical History dated 6 October 1992, applicant stated he was in "excellent health" and was on medication for allergies. He denied personal or family neurosis or psychosis.

On 29 December 1992, the Vice Commander of Air Training Command (ATC) determined that there was sufficient evidence for the applicant to show cause for retention on active duty.

On 27 and 28 April 1993, a BOI convened at Sheppard AFB for the following statement of reasons:

1. On or about 14 November 1990, he was drunk in public in the [redacted]

2. On or about 14 November 1990, he stole items ***of*** personal property belonging to various attendees of a conferende of the Association **of** Military Surgeons at the [redacted].

3. Between, on or about 3 July and 29 August 1991, at [redacted] AFB, he advised and counseled an airman, a subordinate he knew to be the subject of an AFOSI investigation, on methods and means to effect a false polygraph examination which would contravene evidence in an official investigation.

4. On or about 5 April 1992, the applicant stole a belt valued at $25.

5. On or about 17 April 1992, he stole a candy bar valued at 45 cents.

The BOI found the applicant guilty of the above reasons, except for Reason #4; determined that he should not be retained; and recommended that he be discharged with a character of discharge of Under Other Than Honorable Conditions (UOTHC).

A 13 May 1993 medical entry reflects that applicant was seen for further psychological testing. The neuropsychologist indicates that applicant denied the charges. Applicant's entering therapy to help with his mood, which was described as mildly dysphoric, was discussed. Diagnosis was again deferred pending further tests.

On 15 May 1993, the Officer Performance Report (OPR) for the period 16 April 1991 through 15 April 1992 was referred to the applicant. The OPR reflects "Does Not Meet Standards" in the

categories of Leadership Skills, Professional Qualities, and Judgment and Decisions. Comments were not received by the applicant with n the required period.

On 24 June 1993, applicant was seen for follow-up psychological testing. The neuropsychologist indicated that applicant had a tendency to have problems dealing with stress. Diagnosis was adjustment disorder with mixed emotional features. Applicant was offered supportive therapy but declined. No follow-up was planned.

Applicant appealed the BOI findings and recommendations and submitted extensive rebuttals, dated 7 and 24 September 1993. On 4 October 1993, the Air Education and Training Command (AETC) Judge Advocate addressed applicant's assignment of errors regarding the BOI. On 1 December 1993, HQ USAF/JAG also reviewed the BOI and found it legally sufficient to support its recommendation.

The applicant was considered but not selected for promotion to the grade of lieutenant colonel by the CY93A Lieutenant Colonel (LAF/JAG/BSC/MSC/NC) Selection Board, which convened on 12 October 1993. The Promotion Recommendation Form reflected an Overall Recommendation of "Do Not Promote This Board."

On 7 February 1994, his appeal was duly considered by the Air Force Board of Review (AFBR), which determined the applicant should not be retained on active duty and recommended khat the Secretary of the Air Force remove the applicant with a UOTHC discharge. On 14 February 1994, the Secretary of the Air Force removed him from active duty and directed a UOTHC discharge effective 18 February 1994.

On 18 February 1994, he was discharged with a UOTHC characterization of service under the provisions of AFR 36-12, Involuntary Discharge/Pattern of Misconduct. He had 19 years and 11 months of active duty.

On the same day, applicant filed a lawsuit in the Federal District Court for the Northern District of Texas asking for a Temporary Restraining Order (TRO) to prevent his impending discharge from the Air Force. He alleged he was denied due process by the Air Force in the processing of his case by its failure to adequately consider and develop relevant facts relating to "latent or borderline paranoid schizophrenia," which he stated caused his bizarre behavior beginning in 1990. He alleged that discharging him without a medical retirement or any retirement would cause him irreparable harm. The US District Judge issued a TRO, restraining the Air Force from separating him.

On 23 February 1994, the Air Force filed a Motion to Dismiss the lawsuit for lack of jurisdiction based on the applicant's failure to exhaust his administrative remedies. At an oral hearing on

10 March 1994, the judge issued an order vacating the TRO and dismissing the case for lack of jurisdiction.

On **10** March 1994, following discussions with HQ USAF/JACL and the Department of Justice, HQ AFMPC/JA determined that the 21 days served by the applicant from **18** February to 10 March 1994 were served solely for the purpose of complying with the TRO actions and count for no purpose other than to have satisfied the temporary order of the court. However, he would be permitted to keep the pay and allowances he received as a matter of equity.

On **14** February 1996, the applicant filed this appeal for relief with the AFBCMR.

Documents pertinent to the above facts can be found at Exhibits A and B.

AIR FORCE EVALUATION:

The AFBCMR Medical Consultant states that evidence of record and medical examinations prior to separation indicate the applicant did not have any medical problem which would have warranted medical retirement under the provisions of AFR 35-4 (Physical Evaluation for Retention, Retirement & Separation). Although the applicant may have been having some mental health problems, he stopped the prescribed Mental Health Evaluation (MHE) by refusing to continue with it, and refusing any therapies. He also refused an appointment at WHMC for a thorough MHE. He was being evaluated by a psychiatrist who was well known throughout the Air Force as thorough and experienced, but he was advised to refuse further evaluation or treatment. The diagnosis from the limited evaluation was adjustment disorder with mixed emotional features (not a diagnosis which should be reviewed by a Medical Evaluation Board). He submits a civilian psychiatrist's report from January 1996 which states that he had latent or borderline schizophrenia. Although an experienced psychiatrist was evaluating him, the diagnosis of schizophrenia was not made. This was probably due to the fact that a thorough evaluation was not accomplished, but it could be due to the fact that the diagnosis was not able to be made because of the stage of the disease being too early. The incomplete evaluation appears to be the answer in this case. It is to be noted that applicant's discharge was two years prior to the civilian evaluation and the time factor is extremely important in determining a diagnosis as this could change with time. There is nothing of record which indicates applicant's misconduct was related to a mental health problem. Had this been presented to the SAF Personnel Council as a dual action disability/administrative discharge case, it is without doubt that the administrative discharge would have been directed. The record establishes beyond all reasonable doubt that the applicant was medically qualified for continued active duty, that the reason for his separation was proper and that no error or injustice occurred. Action and disposition are proper and reflect

compliance with Air Force directives which implement the law. The Consultant recommends denial.

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

The Senior Attorney-Advisor, HQ AFPC/JA also reviewed this appeal and indicates that applicant has not shown there was any legal error in the manner in which this case was processed. Applicant states that at the time of his discharge he had accumulated 55 days of leave, which was taken away from him. He implies that taking his accrued leave from him was wrongful and suggests that crediting him with that number of days service would easily put him over 20 years of service, thereby entitling him to retirement. Military leave is governed by federal statute. Title 37, USC, 501 permits payment for accrued leave only when the member is separated under honorable conditions, and a member who is discharged UOTHC, like the applicant, forfeits all accrued leave to his credit at the time of his discharge. Even assuming the applicant had been discharged with an honorable or general discharge, he still could not credit that leave as service time. Title 37, USC, 501 provides that unused accrued leave for which payment is made is not considered as service for any purpose. By statute, the applicant cannot apply any unused accrued leave as additional time in service for the purpose of computing retirement eligibility. Applicant claims he suffered from a mental condition or defect at the time he committed the offenses for which he was ultimately discharged, but that the military medical community failed to correctly diagnose or provide him with the necessary medical care he required. He contends that had he been provided with timely medical treatment for his condition, the misconduct would not have occurred. The Senior Attorney-Advisor defers to the Medical Consultant's excellent advisory, which concluded that applicant did not have any medical condition warranting a medical retirement under the regulations then in effect. Denial is recommend.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Complete copies of the Air Force evaluations were forwarded to counsel on 8 October 1996 for review and response within 30 days. 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. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough and careful review of the evidence of record and applicant's extensive submission, we are not persuaded that he should **be** reinstated or retired. Applicant's contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. After the applicant repeatedly refused further evaluation and treatment, the military psychiatrist made a diagnosis, based on limited examination, of adjustment disorder with mixed emotional features. The applicant had refused to continue the prescribed Mental Health Evaluation and any therapies, as well as an appointment at Wilford Hall Medical Center for a thorough evaluation. Adjustment disorder is not a diagnosis which warrants review by a Medical Evaluation Board. The applicant has provided insufficient evidence to indicate he should have been processed under the provisions of AFR 35-4. The civilian psychologist's diagnosis of latent or borderline schizophrenia was noted; however, this evaluation was made two years after the applicant's discharge. As indicated by the Medical Consultant, the time factor is extremely important in determining a diagnosis as this could change with time. The evidence of record does not indicate that applicant's misconduct was related to a mental health problem. In fact, in October 1992, the applicant himself denied any personal or family neurosis or psychosis. Even if he may have been having some mental health problems while in the service, at the time of his discharge, it appears he was medically qualified for continued active duty. As for his forfeiture of accrued leave, statute precludes payment for accrued leave if a member is not separated under honorable conditions, and we find no basis for changing the characterization of applicant's discharge. Even if the applicant had been honorably discharged, statute also precludes applying any unused, accrued leave as additional time in service for the purpose of computing retirement eligibility. The applicant has not shown there was any error in the manner in which his case was processed or that separation was not in compliance with appropriate directives. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either a legal or medical error or injustice warranting reinstatement or retirement. In view of the above and absent evidence to the contrary, we find no compelling basis to recommend granting the relief sought.

4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without legal counsel, would not have materially added to that understanding. 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 18 September 1997, under the provisions of AFI 36-2603:

Ms. Charlene M. Bradley, Panel Chairman
Mr. Robert W. Zook, Member
Mr. Jackson A. Hauslein, Member
Ms. D. E. Hankey, Examiner (without vote)

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 14 Feb 96, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFBCMR Consultant, dated 13 May 96.
Exhibit D. Letter, HQ AFPC/JA, dated 25 Sep 96.
Exhibit E. Letter, AFBCMR, dated 8 Oct 96.

Charlene M. Bradley
CHARLENE M. BRADLEY
Panel Chairman

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

25 September 1996

MEMORANDUM FOR AFBCMR

FROM: 'HQ AFPC/JA (Lt Col Clark)
550 C Street West Suite 44
Randolph AFB TX 78150-4746

SUBJECT: Application for Correction of Military Records – [redacted]

REQUESTED ACTION: The applicant is asking the AFBCMR to reinstate him to active duty and provide him with the medical treatment he was previously denied. If that request is denied then he alternatively asks the AFBCMR to restore him to active duty and provide him an honorable discharge with full retirement so that he can seek his medical care through the civilian medical community.

RELEVANT FACTS: Applicant received a direct commission into the Biomedical Service *Corps* in January 1978. He served on active duty for 16 years active commissioned service. In addition, he had three years, nine months prior active duty as an enlisted member. He would have been eligible to retire in April 1994. Applicant performed duties in the medical administration, medical support, and medical readiness fields at McChord Air Force Base, Washington; Travis Air Force Base, California; RAF Little Rissington, United Kingdom; Bolling Air Force Base, District of Columbia; and [redacted] Air Force Base, [redacted] For the most part, applicant's OPRs reflect satisfactory to excellent duty performance; however, he does have a referral OPR for the period 16 April 1991 to 15 April 1992 based upon some shoplifting incidents. His awards and decorations include the Meritorious service Medal, the Air Force Commendation Medal (with two Oak Leaf Clusters), and the Air Force Achievement Medal.

On 27 and 28 April 1993, a Board of Inquiry (BOI) was convened at [redacted] Air Force Base, [redacted] and recommended that the applicant be removed from active duty and given an Under Other than Honorable Conditions (UOTHC) discharge. The recommendation was based on findings that the applicant had committed serious or recurring misconduct punishable by civilian or military authorities, specifically shoplifting from the [redacted] Base Exchange (BX), other acts of theft, and counseling an enlisted subordinate on methods to achieve a false polygraph result.

Applicant appealed the BOI findings and recommendations and submitted extensive rebuttals, dated 7 and 24 September 1993. In addition to numerous unspecified errors, he claimed insufficiency of the evidence, ineffective assistance of counsel, and bias on the part of the board president. On 7 February 1994, the applicant's appeal was duly considered by the Air

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Force Board of Review (AFBR), which determined the applicant should not be retained on active duty. The AFBR recommended that the Secretary of the Air Force remove the applicant from active duty and discharge him under other than honorable conditions. On 14 February 1994, the Secretary of the Air Force removed the applicant from active duty in the United States Air Force and directed a UOTHC discharge effective 18 February 1994.

On 18 February 1994, the applicant filed a lawsuit in the Federal District Court for the Northern District of Texas asking for a Temporary Restraining Order (TRO) to prevent his impending discharge from the Air Force. The applicant alleged he was denied due process by the Air Force in the processing of his case by its failure to adequately consider and develop relevant facts relating to "latent or borderline paranoid schizophrenia" which he stated caused his bizarre behavior beginning in 1990. He alleged that discharging him without a medical retirement or any retirement would cause him irreparable harm.

On 18 February 1994, the United States District Judge issued a TRO, restraining the Air Force from separating the applicant from the Air Force. On 23 February 1994, the Air Force filed a Motion to Dismiss the lawsuit for lack of jurisdiction based on the applicant's failure to exhaust his administrative remedies. At an oral hearing on 10 March 1994, the judge issued an Order Vacating the TRO and Dismissing the case for lack of jurisdiction. On 14 February 1996, the applicant filed this application for relief with the AFBCMR.

RECOMMENDATION: We recommend the AFBCMR deny the relief sought by applicant because there is no error or injustice to correct.

DISCUSSION: This application for relief is timely. The Air Force Board for Correction of Military Records is mandated by statute. Its charter is set forth at 10 U.S.C. 1552(a)(1), and states that:

> The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary **to correct an error or remove an injustice.** ...[S]uch corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department (emphasis added).

It is clear Congress intended the service secretaries, acting through their respective correction boards, to have broad powers to "correct an error or remove an injustice." In order to prevail, an applicant must present substantial evidence that an error or injustice exists. In this application for relief, the applicant has shown neither an error nor an injustice.

1. THERE WAS NO LEGAL ERROR. Applicant has not shown there was any legal error in the manner in which this case was processed.

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In his application for relief, the applicant states that at the time of his discharge he had accumulated 55 days of leave, which was taken away from him. He implies that taking his accrued leave from him was wrongful and suggests that crediting him with that number of days service would easily put him over 20 years of service, thereby entitling him to retirement.

Military leave is governed by federal statute. 37 U.S.C. 501(a)(2) permits payment for accrued leave only when the military member is separated under honorable conditions. 37 U.S.C. 501(e)(1) states that a member of the Air Force who is discharged under other than honorable conditions **forfeits all accrued leave** to his credit at the time of his discharge. The applicant lost his accrued leave in this case because he was discharged from the service with an Under Other Than Honorable Conditions Discharge.

Even assuming the applicant had been discharged with an Honorable or a General (Under Honorable Conditions) Discharge, he still could not credit that leave as service time. 37 U.S.C. 501(c) provides that unused accrued leave for which payment is made, is not considered as service for any purpose. By statute, the applicant can not apply any unused, accrued leave as additional time in service for the purpose of computing retirement eligibility (See also **40 Comp Gen 545 [1961]**—holding that a member about to retire, who is entitled to lump-sum leave payment, may not elect to take leave, in lieu of receiving the lump-sum leave payment, and thus accumulate additional service).

2. **THERE WAS NO INJUSTICE.** The applicant says he has suffered a medical injustice. He claims he suffered from a mental condition or defect at the time he committed the offenses for which he was ultimately discharged, but that the military medical community failed to correctly diagnose or provide him with the necessary medical care he required. Applicant claims that had he been provided with timely medical treatment for his condition, the misconduct would not have occurred.

The Medical Consultant to the AFBCMR has provided an excellent advisory regarding this claim and has concluded that all evidence of record and medical examinations prior to separation indicate the applicant did not have any medical condition warranting a medical retirement under the regulations then in effect. He also states there was no causal connection between the applicant's misconduct and his current mental condition. We are not experts in medicine and as such we will defer to that advisory and adopt its findings and conclusions as our own.

For the reasons cited herein, we recommend the application for relief be denied.

WILLARD K. LOCKWOOD
Senior Attorney-Advisor

[redacted]

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DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

OFFICE OF THE ASSISTANT SECRETARY

13 May 19%

MEMORANDUM FOR THE AFBCMR

From: Medical Consultant to the Air Force BCMR
1535 Command Drive
EE Wing, 3rd Floor
Andrews AFB, MD., 20762-7002

Subject: Application for Correction of Military Records

[redacted]

Applicant's entire case file has been reviewed and is forwarded with the following findings, conclusions and recommendations.

The applicant was separated on 18 February 1994 with an Under Other than Honorable Conditions Discharge under the authority of AFR 36-12, with the reason for discharge being Involuntary Discharge: Pattern of Misconduct. He now requests he be granted a medical retirement, intimating that he should have been given a thorough Mental Health Evaluation.

Review of medical records does not disclose any evidence to support correction of records from administrative separation to medical retirement.

Evidence of record and medical examinations prior to separation indicate the applicant did not have any medical problem which would have warranted medical retirement under the provisions of AFR 35-4 (Physical Evaluation for Retention, Retirement and Separation). Reasons for discharge and discharge proceedings are well documented in the records. Action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law.

Evidence of record shows that although the applicant may have been having some mental health problems, he stopped the prescribed Mental Health Evaluation (MHE) by refusal to continue with it, also refusing any therapies. He also refused an appointment at Wilford Hall Medical Center for a thorough MHE. He was being evaluated by a psychiatrist who was well known throughout the Air Force as thorough and experienced, but he was advised to refuse further evaluation or treatment. The diagnosis from the limited evaluation was adjustment disorder with mixed emotional features (not a diagnosis which should be reviewed by a Medical Evaluation Board). He submits a civilian psychiatrist's report from January 19% which states that he had latent or borderline schizophrenia. Although an experienced psychiatrist was evaluating him, the diagnosis of schizophrenia was not made. This was probably due to the fact that a thorough evaluation was not accomplished, but it could be due to the fact that the diagnosis was not able to be made because of the stage of the disease being too early. The incomplete evaluation appears to be the answer in this case. It is to be noted that applicant's discharge was two years prior to the civilian evaluation and the time factor is extremely important in determining a diagnosis as this could change with time (as symptoms and conditions worsen). There is nothing of record which indicates that applicant's misconduct was related to a mental health problem. Had this been presented to the SAF Personnel Council as a dual action disability/administrative discharge case, it is without doubt that the administrative discharge would have been directed. The record establishes beyond all reasonable doubt that the applicant was medically qualified for continued active duty, that the reason for his separation was proper and that no error or injustice occurred in this case. Action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law.

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The Medical Consultant is of the opinion that no change in the records is warranted and the application should be denied.

Darvin K. Suter, Colonel, USAF, MC
Medical Consultant to the Air Force BCMR

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