

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NO: 96-02129

COUNSEL: [REDACTED]

OCT 28 1997

HEARING DESIRED: No

Applicant requests that his records be corrected to show that he received a medical discharge. Applicant's submission is at Exhibit A.

The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant for review and response (Exhibit D). Applicant's response is attached at Exhibit E.

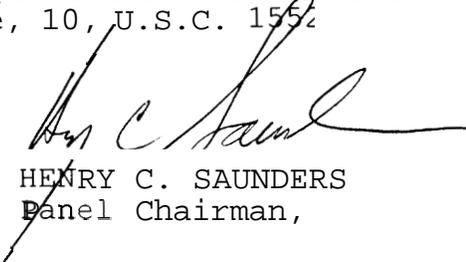
The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinions appear to be based on the evidence of record and have not been adequately rebutted by applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Mr. Henry C. Saunders, Mr. Joseph T. Wagner, and Mr. Richard A. Peterson, considered this application on 16 October 1997, in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


HENRY C. SAUNDERS
Panel Chairman,

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinions
- D. AFBCMR Ltr Forwarding Advisory Opinions
- E. Applicant's Response

10 Apr 97


Memorandum for the AFBCMR

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

Subject: Application for Correction of Military Records

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

REQUESTED ACTION: The applicant was administratively discharged under the provisions of AFM 39-12, Sec A, Para 2-4b on 14 Apr 82 after 2y 10m 00d on active duty. He now applies requesting the records be changed to show a "medical discharge"

FACTS: The records indicate the applicant has a personality disorder which interfered with his military duties/training for which he was administratively discharged. Applicant's military record contains numerous disciplinary actions from statements of derelict duty on TAC Form 27's, to Letters of Reprimand (3), to denial of Good Conduct Medal from Oct 80 to Jul 81 along with mental health evaluation by competent medical authority in Jan 82 in which the personality disorder was delineated. Applicant's contention that a blow to the head by a falling aircraft canopy in Nov 81 was proximate cause to his difficulties is not substantiated in the record. Indeed, all of the disciplinary infractions occurred prior to that time. Applicant's "Letter of Evidence" dated 22 Jul 96 fails to include any information that would alter the facts as found in his record.

DISCUSSION: This case was properly evaluated by the evidence of record. There is no evidence of error or irregularity in the processing of this case. Action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law.

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



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

23 May 97

MEMORANDUM FOR AFBCMR

FROM: AFPC/DPPD
550 C Street West Ste 06
Randolph AFB TX 78150-4708

SUBJECT: Application for Correction of Military Records [REDACTED]

REQUESTED ACTION: Applicant requests his involuntary administrative discharge be changed to a disability discharge.

FACTS: Applicant was administratively separated on 14 Apr 82 after serving two years, and ten months on active duty. He was separated for unsuitability under the provisions of AFM 39-12, due to his personality disorder.

DISCUSSION: We carefully reviewed the AFBCMR application and verify that the applicant was never referred to or considered by the Air Force Disability System under the provisions of AFR 35-4. 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.

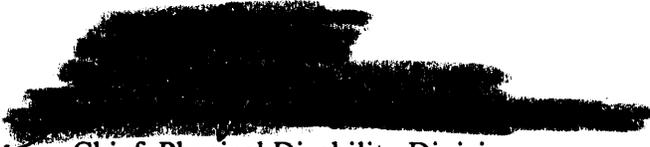
The medical aspects of this case are fully explained by the Medical Consultant. We agree with his advisory. There is no evidence of any physical disability which would have justified an **MEB** or Physical Evaluation Board prior to his discharge.

The reason why an applicant could be found fit by the military and subsequently granted a disability rating by the Department of Veteran's Affairs (DVA) lies in understanding the differences between Title 10, USC, and Title 38, USC. Title 10, USC chapter 61 is the federal statute that charges the Service Secretaries with maintaining a fit and vital force. For an individual to be considered unfit, there must be a medical condition so severe that it prevents performance of work commensurate with an individual's rank and experience. Once this determination is made, namely that an individual is unfit, the degree of disability is based on the member's condition at the time of permanent disposition and not upon future events. Congress, very wisely, recognized that a person can acquire physical conditions which, although not

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unfitting, alter the individual's lifestyle and future employability. With this in mind, Title 38, USC which governs the DVA compensation system was written to allow awarding compensation ratings for conditions not unfitting for military service. This is the reason why an individual can be considered fit for military duty to the day of separation or retirement and yet receive a compensation rating from the DVA for service-connected non-unfitting conditions.

RECOMMENDATION: We 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 separation.



Chief, Physical Disability Division
Directorate of Pers Prog Management



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