

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

AUG 17 1998

IN THE MATTER OF:

DOCKET NUMBER: 91-02977

COUNSEL: [REDACTED]

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His records be corrected to reflect that he received an honorable medical discharge, with a minimum of 30% disability, rather than a general discharge for misconduct.

APPLICANT CONTENDS THAT:

His records should be changed so as to reflect the fact that he suffered from major depression and post-traumatic stress disorder while in the service. Applicant states that he should have been separated according to this medical disability and granted full disability retirement.

Applicant's counsel states that the applicant has a confirmed diagnosis of Post Traumatic Stress Disorder (PTSD) which explains the bizarre activity that led to his involuntary separation after 17 years of active service. The alcohol abuse is only a symptom of the underlying psychosis diagnosis. He states that the medical information from the Veterans Administration, Social Security and Georgia Regional Hospital demonstrates that the applicant was unsuccessful in overcoming his alcohol abuse, even after participating in the VA program, as well as the year long Alcohol Abuse Program with the Air Force. Consideration should have been given to the fact that there might have been an underlying psychiatric problem. Further evaluation at the time of his involuntary separation would have shown symptoms of depression and PTSD.

The evidence that supports PTSD at the time of discharge includes the reference to a sleeping disorder on the separation physical and the history of inappropriate behavior documented in his separation board. More consideration should have been given to determine why applicant drank heavily and why his performance deteriorated.

In support of his request, applicant submits a brief of counsel and Department of Veterans Affairs (DVA) medical records.

Applicant's submission is attached at Exhibit A.

STATEMENT OF FACTS:

On 20 June 1974, applicant reenlisted in the Regular Air Force in the grade of staff sergeant (E-5) for a period of four (4) years. He was honorably discharged on 11 July 1979 for appointment as an Officer Training School (OTS) trainee. He served 8 years, 9 months and 24 days of active duty.

Applicant was appointed a second lieutenant in the Reserve of the Air Force on 12 July 1979 and ordered to extended active duty. He was subsequently appointed a first lieutenant in the Regular Air Force on 22 April 1983.

A Disposition Form to the applicant's ~~superior commander~~, from the ~~Abuse Division~~ dated 14 November 1986, indicates that the applicant was initially referred to ~~on 30 August 1985~~ after he reported for duty smelling of alcohol. During evaluation, he admitted drinking numerous mixed drinks the previous night. He reported an alcohol history of at least eight years of abusive drinking with increased tolerance, daily drinking, marital discord, some memory loss and a family history of alcoholism. He was diagnosed as alcohol dependent, transferred to ~~Air Force Base~~ for detoxification prior to inpatient rehabilitation at the Alcohol Rehabilitation Center (ARC), ~~that was completed 23 October 1985.~~

Applicant returned to ~~and~~ and was involved in aftercare outpatient follow-up treatment. He complied with his plan of group attendance, but did not really participate openly in group until his last four months of enrollment. Prior to this time, he exhibited a defeated, depressed attitude and was unwilling to take positive responsibility for his recovery. His marital relationship, financial stresses and job interactions contributed somewhat to this behavior.

He was released from Track III 10 September 1986 with a fair progress of maintaining sobriety. On 1 October 1986, his commander reported that applicant was again drinking alcohol. He was enrolled in Track II rehabilitation on 8 October 1986 with a diagnosis of alcohol dependence continuous and a treatment plan of abstinence, group therapy weekly and daily, and AA attendance. Applicant was informed that his case would be evaluated in 30 days to determine if adequate progress was on-going. It was stated that although it appears applicant has maintained abstinence for 30 days, the prognosis for his long term sobriety and productive duty performance is doubtful. It was recommended he be declared a rehabilitation failure and processed for separation from the service. It was further recommended he be

granted a discharge that would allow further treatment through the Veterans Administration Drug and Alcohol Program if he should desire to continue treatment.

On 4 February 1987, applicant was notified by his commander that he (commander) was initiating discharge action against the applicant under AFR 36-2 for the following reasons:

a. Applicant had engaged in serious or recurring misconduct punishable by military or civilian authorities. Specifically, (1) He received a Letter of Reprimand on 5 September 1985 for reporting for duty intoxicated, on or about 30 August 1985, at [REDACTED] (2) He received a Letter of Reprimand on 31 October 1986 for violating a lawful order, on or about 16 October 1986, not to drive a motor vehicle outside the immediate area of [REDACTED]

b. Applicant demonstrated a downward trend in duty performance resulting in an unacceptable record of effectiveness. Specifically, the most recent Officer Effectiveness Report (OER), dated 28 Feb 86, contains an overall rating of "3", with ratings below standard in three areas.

c. Applicant demonstrated apathy and a defective attitude and the inability to expend effort constructively. Specifically, on 14 November 1986 he was declared a failure in a formal alcohol rehabilitation program because of minimal compliance with his treatment plan and a poor attitude towards the rehabilitation program.

d. He failed to properly discharge his duties equal to his grade and experience. Specifically, (1) On 28 October 1985 and 9 January 1986, he was counseled for failing to perform his duties in an acceptable manner. (2) A self-inspection conducted on 27-31 January 1986 revealed numerous deficiencies in his area of responsibility, for which he was counseled on 25 February 1986. (3) A HQ ATC staff assistance visit on 19-20 March 1986 revealed multiple deficiencies in his areas of responsibility, for which he was counseled on 22 April 1986. (4) On 1 October 1986, he was specifically instructed to perform certain tasks. As of 31 October 1986, he had failed to perform these tasks, for which he was counseled on 31 October 1986.

On 4 February 1987, applicant acknowledged receipt of the Letter of Notification of Action Under AFR 36-2. He elected to utilize the military justice system and also indicated he would seek independent counsel.

The Staff Judge Advocate (SJA), on 4 February 1987, reviewed the proposed discharge action involving the applicant in accordance with AFR 36-2. Applicant clearly meets the standards for discharge. The SJA concurred with the recommendation to initiate action under AFR 36-2.

On 18 March 1987, applicant made the following response: He does not intend to tender his resignation; does not choose to submit documents at this time; denies the material allegations stated in the letter of notification; desires an Administrative Discharge Board hearing; and, has been counseled by the civilian and military counsels.

On 7 April 1987, at Headquarters Air Training Command, [REDACTED] a Board of Officers convened under AFR 36-2, to determine whether or not applicant should be required to show cause for retention in the Air Force. They found the allegations were creditable and serious as substantiated by the documented case file. The Board found that applicant should be required to show cause for retention in the Air Force.

On 6 and 7 August, 1987, a Board of Inquiry (BOI) convened under AFR 36-2 at [REDACTED] and found that applicant failed to show acceptable qualities of leadership required of an officer of his grade. They determined that applicant should not be retained in the Air Force and was not eligible for voluntary retirement. The BOI recommended that the applicant be removed from active duty, and that he be issued a general discharge under honorable conditions. The Legal Advisor certified that the BOI record accurately depicts the administrative discharge proceedings of the applicant. He further certified that a majority of the voting members of the Board of Officers concurred in the findings and recommendations.

On 2 July 1987, the Air Force Board of Review met at Washington, DC to consider the case of applicant. They determined that applicant not be retained on active duty. They recommended that applicant be removed from active duty pursuant to AFR 36-12, paragraph 3-15, and that he be discharged with a general discharge (under honorable conditions).

On 3 November 1987, the Secretary of the Air Force ordered that applicant be removed from active duty in the U. S. Air Force under AFR 36-12, paragraph 3-15, and that he be discharged with a general discharge.

Applicant, while serving in the grade of captain, was discharged from the Regular Air Force on 19 November 1987 under the provisions of AFR 36-12 (Misconduct, Moral or Professional Dereliction: Serious or Recurring Misconduct) with a General discharge. He served 8 years 4 months and 8 days of active commissioned service. Applicant had a total of 17 years 2 months and 3 days active military service.

AIR FORCE EVALUATION:

The BCMR Consultant, Directorate of Medical Service Officer Management, AFMPC/DPMMR (26 Sep 91). states that a review of

medical records does not disclose any evidence to support correction of records from administrative discharge to medical disability. Evidence of record and medical examinations prior to separation indicate the applicant was fit and medically qualified for continued military service or appropriate separation and did not have any physical or mental condition which would have warranted consideration under the provisions of AFR 35-4. Action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law. They are of the opinion that no change in the records is warranted and the application should be denied.

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

The [REDACTED] (15 Nov 91), states that they requested the record be reviewed by the Formal Physical Evaluation Board (FPEB). The medical member of the FPEB, who is a board certified psychiatrist, advised: "There is no evidence or symptoms of a major depression or post traumatic stress disorder as alleged by the member. In addition, there is no evidence of any other type of medical disability that would warrant processing through medical channels or disability processing under AFR 35-4. Prior to his separation, the member had a diagnosis of alcohol abuse, continuous, and failed the rehabilitation program. Individuals with such a diagnosis may seem depressed, but this is not stated in the records. Under these conditions, the depression is related to the amount of alcohol consumed and the accompanying administrative/legal difficulties incurred. Administrative channels are available of disposition and the resulting action under AFR 36-12 was appropriate." [REDACTED] concurs with the [REDACTED] advisory and recommends denial of the application.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant and his counsel on 21 November 1991 for review and response. On 26 December 1991, counsel requested, and was granted, a 30 day extension in which to furnish additional medical information.

On 13 February 1992, counsel requested that the application be withdrawn and stated evidence would be resubmitted as soon as possible. (Exhibit F). The AFBCMR withdrew the application, without prejudice, on 24 February 1992.

REINSTATEMENT OF CASE:

The AFBCMR received counsel's letter, with attachments, dated 29 November 1994, stating that this letter is a formal request for the reinstatement of applicant's case. (Exhibit G).

ADDITIONAL AIR FORCE EVALUATION:

The [REDACTED] (7 May 1996) states that they verify the applicant has never been referred to or considered by the Air Force Disability System under the provisions of AFI 36-3212. The purpose of the military disability system is to maintain a fit and vital force by separating or retiring members who are unable to perform the duties of the grade, office, rank or rating. Those members who are separated or retired by 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 health care to the member.

According to the medical evidence submitted in support of applicant's contention, the applicant's initial endorsement of symptomatology consistent with a diagnosis of major depression occurred during a hospitalization on or about 7 April 1992 at a Department of Veterans' Administration (DVA) medical facility. At this time, the applicant indicated that his depression started two (2) years prior to admission. Since the applicant was discharged in November 1987, the depressive symptoms clearly manifested themselves subsequent to his military service. Although he had a long history of alcohol use, there is no indication in the record that the applicant had any type of physical or psychiatric disorder that warranted presentation to an MEB and referral to a Physical Evaluation Board (PEB).

After careful review of the case file, the PEB has stated that even if the case had been presented to an MEB and referred to a PEB, the applicant would have been returned to duty prior to his discharge. They concur with the previous advisories submitted by the Medical Consultant (26 Sep 91) and the [REDACTED] (15 Nov 91) regarding this case. They, [REDACTED] do not believe the material or documentation submitted [REDACTED] as unfit for continued military service at the time of his separation.

A copy of the Air Staff evaluation is attached at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations were forwarded to the applicant's counsel on 20 May 1996 and to applicant on 21 June 1996 which were both returned. Copies of the evaluations were again forwarded to applicant's counsel on 6 August 1997. As of this date, no response has been received by this office. (Exhibit I).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that the applicant's records should be corrected to reflect an honorable medical discharge with a minimum of 30% disability. His and counsel's contentions are duly noted; however, we do not find these uncorroborated assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. As stated by AFPC/DPPD, according to the medical evidence submitted, the applicant's initial endorsement of symptomatology consistent with a diagnosis of major depression occurred during a hospitalization on or about 7 April 1992 at a DVA medical facility. Applicant indicated his depression started two years prior to admission. He was discharged from the Air Force in November 1987 and the depressive symptoms clearly manifested themselves subsequent to his military service. Although there is no documentation submitted to indicate the monetary amount of disability compensation the applicant is receiving from the DVA, the DVA medical records do reflect that applicant was receiving medical care between April 1988 and August 1993 mainly for alcohol abuse. We believe the DVA is the appropriate agency for awarding compensation for applicant's alcohol abuse. It must be noted that the Air Force and the DVA are separate federal agencies and operate under different laws and policies. The Air Force assesses a service member's disability with respect to fitness for duty, while the DVA rates for any and all service-connected conditions to the degree they interfere with future employability, without consideration of fitness. 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 an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.

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 14 April 1998, under the provisions of AFI 36-2603.

Mr. Benedict A. Kausal IV, Panel Chair
Mr. Richard A. Peterson, Member
Mr. Terry A. Yonkers, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 24 Jul 91, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, DPMMR, dated 26 Sep 91.
- Exhibit D. Letter, DPMAD, dated 15 Nov 91.
- Exhibit E. Letter, AFBCMR, dated 21 Nov 91.
- Exhibit F. Counsel's Letter, dated 13 Feb 92.
- Exhibit G. Counsel's Letter, dated 29 Nov 94.
- Exhibit H. Letter, AFPC/DPPD, dated 7 May 96.
- Exhibit I. Letters, AFBCMR, dated 20 May 96, 21 Jun 96, and 6 Aug 97.


BENEDICT A. KAUSAL IV
Panel Chair