

SECOND ADDENDUM TO  
RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 95-00238

COUNSEL: None

NOV 27 1998

HEARING DESIRED: No

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APPLICANT REQUESTS THAT:

His records be corrected to show he completed his contract with the Air Force (4 years of active duty service and 2 years of inactive reserve service), he was awarded the Good Conduct Medal (GCM), he be awarded all monies due as a result of the foregoing corrections, and, he be entitled to a service (disability) pension.

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RESUME OF THE CASE:

The applicant was discharged **from** the Regular Air Force because of misconduct with a general discharge on 1 December 1992. He had served 1 year, 10 months and 28 days on active duty. On 27 August 1996, the Board considered the applicant's request that his discharge be upgraded **to** honorable. After reviewing the evidence provided, the Board determined that the reason for the applicant's separation would be more properly defined as unsatisfactory performance rather than misconduct, and recommended that the record be corrected to show he was honorably discharged for that reason. A Memorandum for the Chief of Staff directing the corrections to the record be accomplished was issued on 20 December 1996 (see AFBCMR 95-00238, with Exhibits A through G).

On 6 March 1997, the applicant submitted an application requesting additional relief. His requests were considered and denied by the Board on 21 July 1997 (see the Addendum to the Record of Proceedings, with Exhibit H).

In the Record of Proceedings pertaining to the Board's initial consideration of this appeal, it was reported that in December 1993 and May 1994, the DVA denied service-connection for the applicant's "nervous condition" which had been diagnosed as a "Dysthymic Disorder." Upon appeal, on 24 March 1997, the applicant was granted service-connection for his condition, with a compensable rating of 30% from 2 December 1992. The applicant appealed this decision, contending that his condition was of such a severity to warrant a higher rating. On 24 October 1997, his appeal was denied by the Board of Veterans' Appeals.

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APPLICANT CONTENDS THAT:

He disagrees with the Board's decision to deny his request for further relief. He does not believe that the record supports the actions which were taken against him and he was misled by his area defense counsel.

He has been granted a 30% disability rating by the Department of Veterans Affairs (DVA) based on the diagnosis of "Dysthymic Disorder." For over one year before his separation, he was seen by an Air Force psychiatrist because of insomnia, depression and anxiety. The best the Air Force's psychiatrists could come up with was "occupational problems." Yet, two DVA psychiatrists who saw him had no problem diagnosing his condition. He believes it is possible that the Air Force did not properly diagnose and label his condition because, had they done so, he would have been treated while he did his job or retired for disability with a pension for the rest of his life. He also believes he was separated because this course of action was seen as more cost efficient.

He is now in therapy and taking prozac daily and will continue to do so for the rest of his life. Because of everything the Air Force put him through, he believes approval of the requested relief would be appropriate. In addition, he should be entitled to a service pension because the Air Force willfully and intentionally failed to diagnose his condition to prevent him from receiving treatment.

The applicant's amended requests for correction of records, and the documents submitted in support of the appeal, including selected service and DVA medical records, are at Exhibit I.

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ADDITIONAL AIR FORCE EVALUATION:

The BCMR Medical Consultant reviewed the application and is of the opinion that no change to the records is warranted.

The Medical Consultant stated that DSM-IV, the Diagnostic and Statistical Manual of Mental Health Disorders, is specific in the requirement for having a 2-year period of qualifying symptoms prior to making a diagnosis of dysthymic disorder, and the period of time the applicant served (less than 2 years) precluded making the diagnosis from the symptoms he presented. Indeed, the fact that his initial DVA encounters also failed to result in such a diagnosis adds weight to the appropriateness of his previous treatment. Only after his symptoms had continued for over 2 years was the diagnosis evident and finally established in September 1993.

After reviewing the evidence, the BCMR Consultant is of the opinion that there was no willful or intentional failure to diagnose a condition that, technically, was not diagnosable given the time

frame of his service time. Clairvoyance is not a medical skill that can be utilized to predict future diagnoses. However, the DVA is tasked with compensation of conditions that arise in the course of a person's military service or which are service-aggravated, and it is appropriate that the applicant is receiving their services for this problem that was finally diagnosable 9 months after completion of his active duty service.

A complete copy of this evaluation is at Exhibit J.

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APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION:

The applicant reviewed the advisory opinion and reiterated his contentions that he was not properly treated by military medical authorities and his condition was not properly diagnosed while he was in the service. Noting the Medical Consultant's statement concerning the responsibilities of the DVA, the applicant stated that the service he receives from the DVA does not relieve the Air Force of responsibility or liability. The DVA did not breach a contract with him, the Air Force did. If the Air Force had not breached its contract with him 25 months prematurely, his disorder would have manifested itself while he was still in the Air Force.

After summarizing the medications he was/is taking and their affects, he stated that a careful study of all the records and evidence will show that his claim is well-grounded. The evidence will also show that everything he has written to the Air Force over the years is true and accurate. Granting his requests would be fair, just and equitable, and would bring mental closure to that part of his life.

The applicant's review is at L.

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THE BOARD CONCLUDES THAT:

1. In a previous review of this application, we determined that insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice with respect to the decision by Air Force authorities to effect the applicant's separation in 1992 or to favorably consider his request for award of the GCM. It was our opinion that the available record provided proper support for a finding that the termination of the applicant's service in 1992 was in the best interests of both the applicant and the Air Force. There is nothing in the applicant's most recent submission which would cause us to believe the contrary was the case. In his most recent submission, the applicant's arguments are centered around a diagnosis rendered in September 1993. He alleges he was improperly treated by Air Force health care providers and, had his condition been diagnosed while he was in the Air Force, he would have been retired because of physical

disability. We do not agree with the applicant's reasoning based on the following discussion.

2. Contrary to the applicant's belief, even though the DVA rendered a diagnosis of "Dysthymic Disorder" 9 months after the his separation and ultimately awarded him a compensable rating of 30%, these facts, in and of themselves, do not establish that the applicant was improperly treated while he was in the Air Force nor do they support his asserted entitlement to a retroactive correction of the record **to** show he was retired from the Air Force because of disability. We have noted the assessment of the applicant's assertions by the Medical Consultant, who indicated that a definitive diagnosis of the applicant's condition is technically not possible until a 2-year period of observation has elapsed. Based on this information and in the absence of any evidence by the applicant which successfully refutes the Medical Consultant's assessment of the case, we have no basis to conclude that the applicant's treatment while in the Air Force was based on anything other than accepted medical principles or that the administrative termination of his service was, from a medical standpoint, improper. By law, the responsibility for treating and compensating eligible veterans for service-connected conditions which become diagnosable after separation rests with the DVA. In view of the above and our finding that there is no evidence in the available record which establishes to our satisfaction that the applicant's separation from the Air Force in **1992, as** corrected by this Board, is erroneous or unjust, we have no basis to favorably consider the applicant's requests for additional relief.

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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.

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The following members of the Board considered this application in Executive Session on November 12, 1998, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chairman  
Mr. Douglas J. Heady, Member  
Mr. Kenneth L. Reinertson, Member

The following additional documentary evidence was considered:

Exhibit I. Letter from the applicant, dated August 13, 1997, with attachments.

- Exhibit J. Letter, BCMR Medical Consultant, dated February 9, 1998.  
Exhibit K. Letter, AFBCMR, dated February 9, 1998.  
Exhibit L. Letter from the applicant, dated February 16, 1998.

*Martha Maust*  
MARTHA MAUST  
Panel Chair