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

AUG 25 1998

IN THE MATTER OF: [redacted]

DOCKET NUMBER: **95-02296**

COUNSEL: None

HEARING DESIRED: Yes

RESUME OF CASE:

In **1995**, subject applicant requested that recoupment action for approximately **$17,**000 in ROTC scholarship benefits cease or, in the alternative, the validity of her honorable discharge be reviewed because her physical disability (epilepsy) occurred while she was under contract with the Air Force. The AFBCMR denied her request on August 8, **1996.** In her original appeal, no documentation was provided to indicate an existing medical problem either prior to or during the disenrollment investigation; therefore, the Board found no evidence that a medical evaluation was required prior to her disenrollment.

A copy of the Record of Proceedings is at Exhibit I.

In a letter dated April **27, 1997,** subject applicant contends, in part, that her discharge order was not lawful, that she was not discharged until the order was received by her, and she had no knowledge of her impending discharge. She cites Uniform Code of Military Justice (UCMJ) Articles **90** and **92.** In order to be discharged, she had to be legally and properly discharged. She argues that military orders cannot be given retroactively. Her discharge order may have been signed on June 11, **1993,** but she did not receive it until June **27, 1993.** Since she was aware at this time of her illness, and now knew that she was no longer physically qualified for military service, that should be the real reason for her discharge from the Air Force. She therefore requests that the effective date of discharge be changed to June **27, 1993** and the discharge reason changed to medical ineligibility. She provides medical documentation which she believes substantiates her contention that a pre-existing condition physically disqualified her for AFROTC. She also argues that the AFROTC detachment was poorly managed and offered a nursing program which did not have a realistic chance of success, and that she suffered from sexual harassment.

Applicant's complete reconsideration request is at Exhibit J.

AIR FORCE EVALUATION:

The AFBCMR Medical Consultant reviewed this appeal and states that applicant's neurologist discovered that she had probably had four complex partial seizures since March 1993 up to the time of the generalized seizure. Complex seizures can vary in effects from momentary loss of contact with one's surroundings up to and including full-blown convulsions. Her history indicated she had suffered some type of irregularity in neurologic status over the period of time mentioned. Her symptoms did not lead her to seek medical attention and, therefore, her condition was unknown and subsequently not one that was considered for medical discharge from the service. Had the condition been reported when these events occurred, it is likely that she would have been diagnosed and medically boarded for separation for a seizure. The author states one cannot speculate on the eventuality of such events happening in any individual unless presented evidence on which to draw a conclusion, and without applicant bringing her problem to medical attention, there would be no way to diagnose such a disorder. It is a moot question, then, whether or not she had a seizure disorder which predicated her discharge unless her discharge is not legally binding until her receipt of the notification, the question which legal counsel must determine. The issue in question revolves around the legal determination of when her discharge was valid. If this date is after the date of her generalized seizure on 20 June 1993 (which date would have made her diagnosis known to military authority), then the author's recommendation would be to separate her medically with severance pay under VASRD Code 8910, Epilepsy, Grand Mal, with disability rating of 20% (at least one major seizure in the last two years, or at least two minor seizures in the last six months).

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

The Chief, General Law Division, HQ USAF/JAG, also reviewed the case and indicates applicant's contention that the discharge order was not effective until 27 June 1993 should be rejected because she had sufficient constructive knowledge of her discharge to make it effective 11 June 1993. Because the statute is silent on when a discharge is effective, one must look to AFR 35-41, Volume III, paragraph 5-13B---the Air Force regulation governing discharge of Reservists in 1993. There is no indication the applicant intentionally avoided receipt of the discharge order or that delivery could not be effected. The question is whether she had actual or constructive notice of the discharge on or before 11 June 1993. As to actual knowledge,

there is no evidence in the file showing when she received the hard copy of the discharge order other than the applicant's assertion that occurred on 27 June 1993. The order itself is dated 10 June 1993 and addressed to her at [redacted], so it is safe to conclude she could not have received it on or before 11 June 1993, although she could have received it, even in [redacted] before 20 June 1993. Constructive knowledge, on the other hand, existed shortly after 23 April 1993, the date she submitted her response to the disenrollment investigation. The documents she signed unequivocally demonstrate her desire to completely terminate her relationship with the Air Force. Indeed, according to the detachment commander's counseling record, the applicant expressly rejected the option of continuing in AFROTC but changing her major to biology. Furthermore, the letter she submits from the former detachment commander does not corroborate her current assertion; it merely confirms the detachment was disappointed to see her leave and would have been pleased to have her continue, had that been her desire. Given this information, the applicant knew or reasonably should have known in late April 1993 she would be disenrolled from AFROTC and discharged from the Air Force shortly thereafter. She misunderstands the difference between "orders," the violation of which is punishable under the UCMJ and "administrative orders," which are merely formally published records of various administrative actions. An administrative order can have an effective date prior to the date a copy of it is actually delivered to an individual to whom it pertains. The author addresses applicant's assertion that the debt is unfair. The Board cannot forgive a debt under the guise of "correcting a record." Nor has the applicant exhausted her administrative remedies, a precondition for Board action. The Secretary of the Air Force has the discretion to release the applicant from her indebtedness, but there is no indication the applicant has made such a request. This is a case of a student hoping and honestly trying, but ultimately failing, to gain acceptance into a particular college after receiving two years of AFROTC scholarship. She wants to retain the benefits of scholarship (two years of free education) but wants the Air Force to bear the entire burden of her rejection by the school. The record indicates she knew the risk of rejection and the results that could flow from it. Note that in May 1992---prior to receiving her second year of AFROTC scholarship benefits---she could have withdrawn from AFROTC with no obligation to pay the first year's scholarship benefits. In her 1991 AFROTC contract, she understood failure to complete the education and training requirements of the contract may require reimbursement of scholarship monies or service on active duty, at the Air Force's election. She argues that the Air Force erred by being overly optimistic about her chances of acceptance (i.e., her counselor failed to persuade her to drop out at the end of the first year) and by not forcing the school to guarantee acceptance of all AFROTC scholarship students at the university. Neither the

applicant nor the Air Force is "at fault" for her rejection. AFROTC could not dictate the school's admissions policies any more than it 'could control the applicant's grades. AFROTC did not force her to attend the University of [redacted]. There is nothing to suggest she could not have applied to transfer to a different nursing school after being rejected by the school. Her allegation that she is a victim of sexual harassment is without merit. She alleges that she is entitled to the requested relief even though her counselor did absolutely nothing improper toward her and she still does not know what he did to warrant an investigation. Discharge due to disenrollment from AFROTC was appropriate. There is no justification to change the basis of the discharge to medical reasons. The author recommends denial.

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

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATIONS:

Applicant reviewed the Air Force evaluations and contends the situation is not as black and white as the JAG makes it to be. Her knowledge of the Air Force consisted of what was told to her by the officers running the detachment. No one made [her] read all the regulations; they told her what she needed to know to be a successful student at the university. She was not a specialist on military law. She was told she would never be asked to repay the money. She had no constructive knowledge of this discharge. She was offered another program and with this offer believed all of the other proceedings had been stopped. The discharge was a total surprise. She thought she would undergo a physical if she was to be discharged. She doesn't understand why she is being held solely responsible for something that is clearly not her fault. She requests that the details of the proceedings surrounding [her counselor's] disappearance from the detachment be brought to her attention. This information has enormous bearing to her case. The Air Force was too busy covering up the situation to worry about one cadet. She has filed a request for an investigation into her case by the Secretary of the Air Force. She requests a personal interview with the Board.

Applicant's complete response is at Exhibit N.

THE BOARD CONCLUDES THAT:

1. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that her disenrollment action and resultant separation should be changed to a medical discharge or that recoupment of her scholarship funds should cease. 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. The documentation presented raises the possibility that she may have suffered some type of irregularity in neurologic status beginning in March 1993. However, because she reported no symptoms prior to 20 June **1993,** the Air Force had no reason to suspect a neurological disorder prior to effecting the administrative discharge process. Based on the available evidence, we cannot speculate whether or not applicant would in fact have been medically discharged had she made her symptoms known to the Air Force. As for the various legal issues and allegations of sexual harassment she raises, we believe these contentions have been fully addressed by the Office of the Judge Advocate General. As for her demand that the Board provide details regarding the "disappearance" of her AFROTC counselor, we would remind the applicant that, as indicated in AFI **36-2603** and AFPAM **36-2607,** the Board does not contact witnesses in behalf of an applicant, nor is it an investigative body. The burden of providing sufficient evidence of probable material error or injustice rests with the applicant. In the instant appeal, we 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 her burden that she has suffered either an error or an injustice. In view of the above and absent persuasive evidence to the contrary, we find no compelling basis to recommend granting the relief sought.

2. 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 16 June 1998, under the provisions of AFI **36-2603**:

Mr. Vaughn E. Schlunz, Panel Chair
Mr. Michael P. Higgins, Member
Mr. Gary Appleton, Member

The following documentary evidence was considered:

Exhibit I. Record of Proceedings, dated 27 Aug 96, w/atchs.
Exhibit J. Applicant's Letter, dated 27 Apr 97, w/atchs.
Exhibit K. AFBCMR Medical Consultant Letter, dated 13 Aug 97.
Exhibit L. HQ USAF/JAG Letter, dated 29 Aug 97, w/atch.
Exhibit M. AFBCMR Letter, dated 10 Sep 97.
Exhibit N. Applicant's Letter, dated 4 Oct 97.

VAUGHN E. SCHLUNZ
Panel Chair