RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

SEP 16 1998

IN THE MATTER OF: [redacted]

DOCKET NUMBER: 96-01176

COUNSEL: NONE

HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

It appears that applicant is requesting his retirement for length of service be changed to a disability retirement.

He also requests changes be made to entries in his medical records with respect to times and locations of medical treatments.

APPLICANT CONTENDS THAT:

The Chronological Record of Medical Care and Summary Translation contain errors with respect to times and places of medical treatments. He believes the errors were caused by the fact that the attending physician could not speak English and the interpreter was trying to assist in relating the incidents of the previous month and a half, while he (applicant) was on duty at Task Force Builder.

In support of his request, applicant provided his personal statement and copies of the contested chronological record of medical care and summary translation. Also provided were copies of correspondences between the applicant and his Congressman, which included documentation pertaining to his periods of active duty and extracts of his medical records. (Exhibit A)

STATEMENT OF FACTS:

Prior to enlisting in the Air Force Reserve, applicant had prior periods of service in the US Navy Reserve, US Navy, and Army National Guard.

He contracted his initial enlistment in the Air Force Reserve on 23 December 1985 for a period of six years. Upon completion of his contract, he reenlisted on 14 September 1991 for another six years.

Documents provided by the applicant reflect that on 17 March 1995, the Chief, Aerospace Medicine Division., determined applicant was medically disqualified for military duty in accordance with AFI 48-123, by reason of Idiopathic Myocardiopathy - Symptomatic; that

special assignment imitations were not appropriate; his medical condition was incompatible with continued military service in the Air Force Reserve; and that disability processing in accordance with AFI 36-3212 was not authorized.

On that same date, the Assistant Director, Health Services recommended applicant be administratively discharged for physical disqualification for continued military duty. On 28 March 1995, the JA Member, Physical Disqualification Review Board, stated that appropriate medical authority correctly determined that the applicant was physically disqualified for further service and should be processed for discharge. On 3 April 1995, applicant was notified that discharge action had been initiated to discharge him from the Air Force Reserve by reason of physical disqualification. At that time, he was also notified that he was eligible for retirement and was provided an application for transfer to the Retired Reserve. He was further advised that should he elect to retire, he would be transferred to the Retired Reserve and no further processing of the discharge action would occur.

The pertinent medical facts surrounding the applicant's physical disqualification for worldwide duty and continued service in the Air Force Reserve are contained in the discussion section of the evaluation prepared by the BCMR Medical Consultant attached at Exhibit G.

Effective 21 April 1995, applicant was relieved from his assignment and assigned to the USAF Reserve Retired List (retired awaiting pay at age 60). At the time of his assignment to the USAF Reserve Retired List, he was credited with 20 years, 11 months, and 19 days of satisfactory Federal service for retirement.

The DVA rating of 29 January 1997, diagnosed applicant's condition as service-connected for residuals right (major) rotator cuff tear with acromioplasty repair rotator cuff tear and resection of distal clavicle, rated at 10% from 3 April 1995. He was denied service-connection for discogenic and facet joint degenerative changes of lumbosacral spine; scoliosis lumbar area; passive-aggressive personality; athlete's foot right; residuals pharyngitis, lung mass, possibly due to histoplasmosis; and congestive heart failure.

AIR FORCE EVALUATION:

The BCMR Medical Consultant, noting that the entire medical record and service record were not available for review, stated applicant's medical claims center around a cardiac condition and a shoulder injury.

The cardiac condition is first mentioned in the portions of the records submitted in September 1993 when the applicant was returned early from a deployment in El Salvador because he had experienced

chest pain. He was seen by a local doctor who noted that the applicant had deployed with a supply of nitroglycerin medication. The unconfirmed diagnosis of angina was made. Following return to the states, applicant had further medical studies including an exercise electrocardiogram which was considered normal and the interpretation stated "No evidence of cardiac source of symptoms." This evaluation resulted in a normal physical profile and a worldwide qualified status. The applicant was again evaluated for chest pain when he reported to the Emergency Department on 11 April 1994. This led to a Stress Thallium Myocardial Perfusion Study which was interpreted as showing "no significant change compatible with ischemia" and "He may assume normal duties." During a subsequent deployment to Antigua, applicant was evaluated by a Navy physician for chest pain and palpitations who clinically diagnosed "stable angina and possible symptomatic arrythmias" and recommended early return to CONUS because of the limited medical facilities in the Antigua medical clinic.

Although the applicant requests numerous minor changes to the medical records for perceived or actual inaccuracies none of these changes will have an impact on the administrative action requested. None of the changes requested by the applicant are germane to arriving at the correct diagnosis or establishing a disability basis.

It is apparent from documents submitted from the VA evaluation for disability rating that the applicant now has a significant cardiac condition. There are many chronic conditions which may arise during the active duty years and may worsen after retirement to the point of being disabling but it is the status of these conditions at the time of retirement that determines whether a member received disability processing. The BCMR Medical Consultant noted that applicant did have medical conditions requiring treatment while on active duty; however, none of them were of the degree to warrant disability processing.

The complete evaluation is at Exhibit C.

The Physical Disability Division, AFPC/DPPD, reviewed this application and recommended denial. DPPD verified that the applicant had never been referred to or considered by the Air Force Disability System.

DPPD provided an explanation of the differences between Title 10, USC, which charges the Service Secretaries with maintaining a fit and vital force, and Title 38, USC, which governs the DVA compensation system to allow awarding compensation for conditions that are not unfitting for military service. DPPD stated the applicant has not submitted any material or documentation to show he was unfit for continued military service as a result of a physical disability at the time of his retirement for years of service. (Exhibit D)

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In his response to the evaluations, applicant stated the evidence shows there was a cardiac problem and he was unable to perform the duties of his office, grade and rank.

In support of his request, he provided additional medical records associated with his physical disqualification for continued service. His complete response is at Exhibit F.

ADDITIONAL AIR FORCE EVALUATION:

The BCMR Medical Consultant noted that the previous review Exhibit C) was conducted in late 1996 without full service medical records being available. This review has been done with these voluminous records on hand.

Service medical records reflect that as early as 1977, applicant was seen for episodes of chest pain which were found to be non-cardiac in nature and was continued on duty. A periodic medical examination in February 1990 comments on his having an irregular heart beat with "angina" treated since 1983, and cardiac evaluation in 1990 showed frequent extra heart beats with a negative echocardiogram. He was found qualified for worldwide duty. Previously, in 1985, he had undergone cardiac evaluation finding no evidence of heart disease other than an irregular beat. At that time he noted a history of lung disease from 1983 that was felt to be histoplasmosis (a fungal-like infection) and which had apparently cleared without treatment. A firm diagnosis was never made in spite of biopsies done at the time of bronchoscopy. In 1987, there are a couple of notes relating to him having chest pain which was felt to be unrelated to cardiac disease. In April 1990, he was hospitalized for erythema nodosum, and cellulitis in a civilian hospital. Applicant was deployed to El Salvador in Aug-Sep 93, and it is this period when he feels his cardimyopathy developed. He was seen on sick call there with chest pains, shortness of breath and fatigue on 23 September 1993 and was returned to the States where he underwent another exercise treadmill test finding no abnormality after which he was returned to duty on 6 October 1993. In April 1994, he was seen in the emergency room at [redacted]FB with chest pain and started on nitroglycerin (NTG) for suspected angina and given a referral for follow-up. An exercise test with thallium administration showed a myocardial perfusion defect of the anterior wall of the left ventricle plus a reversible defect of other areas of heart muscle. He saw a civilian cardiologist who reviewed the thallium test, declared "no significant change compatible with ischemia" and returned him to duty on 10 May 1994. As no duty limitation was imposed after 6 October 1993, applicant deployed to Antigua W.I. in August 1994, and almost immediately was seen for chest pain and palpitations (feeling of heart pounding), noted to still be on the

NTG, and was shipped stateside immediately for evaluatio . He was declared not qualified for duty and subsequent cardiac workup done at [redacted] Medical Center showed dilated heart chambers with normal coronary arteries found on cardiac catheterization. The diagnosis of idopathic (cause undetermined) cardiomyopathy (malfunction of heart muscles) was made, applicant was determined permanently unsuitable for military duty due to a condition that existed prior to active duty, and discharged without possibility of disability processing after the case was reviewed by HQ AFRES Discharge Review Board on 17 March 1995.

The real question of this often confusing and convoluted case is whether applicant suffered a debilitating illness while on active duty or during a time he was not in uniform. Certainly there is a very prolonged history of chest pain dating back into the late 1970s with intermittent visits for this over almost the next two decades. Applicant's claim that the myopathy began in El Salvador in 1993 is impossible to confirm, or to deny. It was this episode that seems to have been the most severe as far as symptoms, and his course thereafter was steadily downhill. It is unequivocal that he had severe cardiac disease when evaluated at Wilford Hall Medical Center in October 1994.

It seems rather arbitrary to conclude that applicant's condition existed prior to a period of active duty looking at the facts as outlined above and to exclude him from consideration under the disability evaluation system. The very meaning of idiopathic makes determination of the onset of his disease uncertain, and it is just as likely to have occurred while on active duty as not. Even the narrative summary prepared by an Air Force physician notes that the onset of his significant pain began while on active duty and, therefore, "in the line of duty."

The BCMR Medical Consultant opines that applicant should have been presented to a Medical Evaluation Board with referral to the Informal Physical Evaluation Board and the determination should have been Idiopathic Cardimyopathy, severe, compensable at 60% disability (VASRD Code 7099-7000) for a medical retirement.

The complete evaluation is at Exhibit G.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION:

Applicant concurred with the recommendation contained in the additional evaluation provided by the BCMR Medical Consultant. (Exhibit I)

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Sufficient relevant evidence has been presented to demonstrate the existence of probable injustice warranting corrective action. In this respect, we note the findings of the BCMR Medical Consultant (Exhibit G) that the applicant was diagnosed with severe cardiac disease when he was evaluated at Wilford Hall Medical Center in October 1994. He was subsequently found medically disqualified for worldwide duty and continued service in the Air Force Reserve; however, he was never referred to or considered by the Air Force Disability System. We agree with the BCMR Medical Consultant that it is rather arbitrary to conclude that applicant's condition existed prior to a period of active duty and to exclude him from consideration under the disability evaluation system. While it is not certain when his condition began, it is just as likely to have occurred while he was on a period of active duty as not. Therefore, we believe any doubt should be resolved in favor of the applicant. Accordingly, we recommend that the records be corrected as indicated below.

4. Applicant's contentions regarding inaccuracies on the Chronological Record of Medical Care and Summary Translation are duly noted. However, we agree with the opinion expressed by the BCMR Medical Consultant (Exhibit C) that the changes requested by the applicant are not germane to arriving at the correct diagnosis or establishing a basis for a disability. Therefore, we find no compelling basis to disturb these documents.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that:

a. He was not relieved from his Reserve assignment on 21 April 1995 and transferred to the Retired Reserve Section awaiting pay under the provisions of AFR 35-7 but, on 20 April 1995, he was found unfit to perform the duties of his office, rank, grade, or rating by reason of physical disability, incurred while he was entitled to receive basic pay; that the diagnosis in his case was Idiopathic Cardiomyopathy, severe; VA Diagnostic Code 7099-7000, rated at 60%; that the compensable rating was 60%; and that the disability was permanent.

b. On 21 April 1995, he was relieved from his Reserve assignment and was permanently retired by reason of physical disability under the provisions of AFI 36-3212, effective 22 April 1995.

The following members of the Board considered this application in Executive Session on 21 July 1998, under the provisions of AFI 36-2603:

Mr. David W. Mulgrew, Panel Chair
Mr. Joseph G. Diamond, Member
Mr. Terry A. Yonkers, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 18 Apr 96, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, BCMR Medical Consultant, undated.
Exhibit D. Letter, AFPC/DPPD, dated 9 Dec 96.
Exhibit E. Letter, SAF/MIBR, dated 23 Dec 96.
Exhibit F. Letter, Applicant, dated 21 Feb 97, w/atchs.
Exhibit G. Letter, BCMR Medical Consultant, dated 2 Jul 97.
Exhibit H. Letter, AFBCMR, dated 8 Jul 97.
Exhibit I. Letter, Applicant, dated 16 Jul 97.

DAVID W. MULGREW
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Panel Chair