

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-03095

COUNSEL: NONE

JUN 25 1998

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. His honorable military retirement be changed to a medical retirement at 100% disability.
2. He receive competent civilian psychiatric care and transsexual evaluations and that all costs of counseling and care be provided by the Federal government.
3. The Federal government cover the cost of moving to an apartment or housing rental in an area more easily amenable to transvestites.

APPLICANT CONTENDS THAT:

The Air Force is both liable and responsible for the problems related and brought on in refusing to accept responsibility for his medical treatment. The Air Force has never offered, or attempted in any manner to treat him for the problems and it can't be claimed it was not recognized or known that treatment was needed. Applicant alleges that it can't be considered as normal to know or be aware that an individual is a transvestite dressing in women's clothes to be allowed to function as he was permitted and it must be assumed that known behavior was accepted thereof. Applicant wishes a change in the status from his honorable retirement to a medical retirement at 100% benefits effective from June 30, 1995. Applicant also alleges that his medical records were changed in the sense of rewritten and re-dated.

In support of his request, applicant submits a document (handwritten) which he filed with the U. S. District Court of California on 19 September 1996. He also submits portions of medical records and documentation from his military personnel record.

Applicant's submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant reenlisted in the Regular Air Force on 25 August 1989 for a period of six (6) years in the grade of staff sergeant (E-5).

Available documentation reflects that on 22 April 1985 the Staff Psychologist U. S. Air Force Hospital, [REDACTED] Force Base (AFB), [REDACTED] stated that "It is recommended that sergeant --- (applicant) not be placed in a PRP or SCI position. He does show potential for further military service." On 29 May 1985, applicant was notified by his Group Commander that he (applicant) was being permanently decertified from the performance of duties under AFR 35-99, Nuclear Weapons Personnel Reliability Program, based on the recommendation of the USAF Hospital, [REDACTED] AFB, [REDACTED]. The recommendation was based on the report of evaluation received from [REDACTED] AFB, [REDACTED]. The evaluation resulted in a diagnosis of Borderline Personality Traits based on talking and answering questions while asleep. The Commander further stated that this evaluation has no affect upon further military service.

On 29 November 1985, the Air Force Security Clearance Office (AFSCO) advised the applicant that they intended to revoke his security clearance. The action was based on the following: A Background Investigation (BI) conducted by the Defense Investigative Service (DIS) reflects applicant's instructor at the Cruise Missile Communication Maintenance Course at [REDACTED] AFB, [REDACTED] reported on 9 April 1985 that his (applicant's) roommate advised him he talked in his sleep at night to the extent he would respond to questions asked although he was still asleep.

On 3 May 1991, applicant was referred to mental health by his commander for evaluation after making statements consistent with transvestite fetishism, suicidality, and marital problems while under the influence of alcohol. The Chief, Mental Health Services, 51st Medical Group (PACAF) found the formal DSM-III-R diagnostic impression of applicant at this time is: Axis I - Transvestite Fetishism Problem Drinker; Axis II - Personality Disorder, NOS with Dependent, Avoidant, and Schizotypal Features; and, Axis III - by History. On 24 May 1991, applicant submitted a rebuttal to the Mental Health Evaluation.

On 17 August 1992, the Air Force Intelligence Support Agency (AFISA) notified applicant of their intent to revoke his (applicant's) Top Secret security clearance eligibility in accordance with AFR 205-32. This action was based upon a diagnosed mental disorder which may affect applicant's judgment and reliability. It was stated that the Chief, Mental Health Services noted that applicant had had twenty documented mental health visits since August 1979 for a variety of reasons.

On 19 October 1992, applicant was referred for a Commander-Directed Evaluation to Mental Health Services. The diagnostic impression was dependent, histrionic and narcissistic features. Recommendations: There is no evidence of mental defect, emotional illness, or psychiatric disorder as defined by Air Force Regulation 160-43 of sufficient severity to warrant disposition through military medical channels; close observation of future duty performance is recommended. Disposition should be based primarily upon duty performed.

On 22 October 1992, AFISA determined that the Top Secret security clearance eligibility of applicant should be revoked. Applicant submitted a rebuttal to the AFISA stating, in part, that none of the visits to mental health had anything to do with "transvestite fetishism", and he cannot understand why such a fuss is being made out of them. Three of the visits were commander directed because he talked in his sleep, eight were for smoking cessation classes and nine were for marital counseling. He further stated that he is not a homosexual, he is not a transvestite, he is a heterosexual and he doesn't have any intentions of changing his sexual inclinations in the future. Applicant's appeal regarding the revocation of Top Secret security clearance eligibility was denied on 9 June 1993.

On 3 November 1992, applicant's Group Commander submitted a letter to AFISA stating that there is clear evidence that applicant's security clearance revocation was an error, based upon invalid factors. A current mental health evaluation indicates no mental illness and concludes that there is no substantial reason for security clearance revocation. His (applicant's) three intermediate supervisors as well as his primary supervisor recommend reinstatement based upon his (applicant's) outstanding work performance and the new health evaluation.

On 9 April 1993, the Chief, Psychological Services, Eglin AFB, Florida, conducted a mental health evaluation on applicant. The current situation exists for the various concerns cited in the Mental Health Evaluation in May 1991 and subsequently affirmed in October 1991. The diagnosis was Axis I: Transvestite Fetishism, and Axis 11: Personality Disorder Not Otherwise Specified. The prognosis for either of the diagnoses to resolve is poor. Even with a substantial therapeutic intervention, there is no certainty that either will resolve. The potential for future instances of poor judgment is great.

Applicant, on 28 February 1994 while assigned at Hurlburt Field, Florida, applied for voluntary retirement to be effective 30 June 1995.

Applicant, while serving in the grade of staff sergeant, was relieved from active duty on 30 June 1995 and honorably retired effective 1 July 1995 under the provisions of AFI 32-3203

(Temporary Early Retirement Authority). He served 16 years, 8 months and 15 days of active duty.

AIR FORCE EVALUATION:

The Medical Consultant, BCMR, Secretary of the Air Force Personnel Council, states that throughout this extensive record back to 1985, at least, can be found entries relating to mental health clinic (MHC) visits for a myriad of problems. Many of these entries are not available for review, having been appropriately retained within the mental health clinics and subsequently destroyed. An initial concern was identified about a security clearance in 1985 when it was recommended that this be revoked because of his habit of sleep talking. Diagnosis at that time was Life Circumstance Problem and Borderline Personality Traits. Subsequent MHC visits were recorded in the late 1980's mainly for marital problems and unspecified stress problems. Issues escalated in 1991 when he was assigned to Korea where, at a party, he confided to his supervisor that he had a long-standing fetish with women's feet and a propensity to dress in his wife's clothes with fantasies to be able to wear women's clothes to the work place. This was brought to the attention of the squadron commander who ordered a mental health evaluation (MHE) which was done in May 1991 when the diagnoses--of Transvestite Fetishism, Problem Drinker, and Personality Disorder (Not Otherwise Specified) with Dependent, Avoidant, and Schizotypal Features were made. This led to permanent revocation of his Top Security Clearance in October 1992 upheld on appeal in June 1993 following yet another MHE on 9 April 1993 which reiterated the diagnoses noted in May 1991 and which offered a poor prognosis for resolution. Because of limitations imposed by loss of the security clearance, applicant was assigned to less responsible duties in the course of his career, and when early retirement became an option, he elected this and received an honorable discharge. Physical examination for retirement, dated 12 April 1995, found him qualified for worldwide duty or separation. The diagnoses he carried for the last four years of his duty time were not disqualifying for duty nor unfitting for continued service.

Personality disorders are lifelong conditions which may be triggered in certain employment circumstances, but which may not interfere with success in the workplace as was noted in applicant's performance evaluations and the many letters of appreciation and support. It is because of this that the above record is noted: general work performance was satisfactory although limitations were mandated by his personality disorder. No significant mental health disorder was detected in this 16+ year career that would have qualified him for consideration of medical benefits under AFR 35-4.

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.

Evidence of record shows that while the applicant did have some medical problems while on active duty, none of them were of sufficient severity to justify a finding of unfit and that the reason for his separation was proper. No error or injustice occurred in this case.

A very thorough medical and mental health review has been accomplished by the Department of Veterans Affairs (DVA) and this summary confirms the non-unfitting conditions prior to the applicant's retirement. The BCMR Medical Consultant is 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 Chief, Physical Disability Division, AFPC/DPPD, states that they have carefully reviewed the applicant's application and verify that the applicant was never 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 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 AFBCMR Medical Consultant. They, AFPC/DPPD, agree with his advisory. There is no evidence of any physical disability which would have justified an MEB or Physical Evaluation Board prior to applicant's retirement under the Temporary Early Retirement Authority (TERA). They recommend the applicant's request be denied.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant submitted a rebuttal to motion of dismissal to the United States District Court, Central District of California. He forwarded a copy of this rebuttal to the AFBCMR.

A copy of the applicant's rebuttal to the court is attached at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
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 his military retirement should be changed to a medical retirement at 100% disability or, that he receive care, costs of counseling and moving by the Federal government. His 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 offices of the Air Force have adequately addressed the applicant's contentions. 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. With regard to applicant's requests that he receive costs for counseling, care and moving to another location, the Air Force has no authority to pay expenses of any kind. Therefore, the AFBCMR cannot act on this portion of applicant's request. 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 13 May 1998, under the provisions of AFI 36-2603.

Mr. Vaughn E. Schlunz, Panel Chair
Mr. Kenneth L. Reinertson, Member
Mr. Michael P. Higgins, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 15 Oct 96, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, BCMR Medical Consultant, dated 9 Apr 97.
- Exhibit D. Letter, AFPC/DPPD, dated 28 May 97.
- Exhibit E. Letter, AFBCMR, dated 23 Jun 97.
- Exhibit F. Applicant's Rebuttal to U. S. District Court, undated.



VAUGHN E. SCHLUNZ
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Panel Chair