



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

JUN 25 1998

Office of the Assistant Secretary

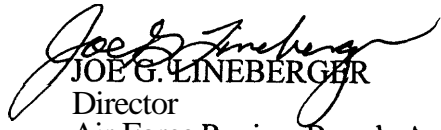
AFBCMR 97-00922

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the ~~Air~~ Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that invitational orders be issued authorizing travel via aeromedical airlift to Wilford Hall USAF Medical Center, Texas within 120 days of this decision for the purpose of evaluation of her medical condition, and that the results of the evaluation be forwarded to the Air Force Board for Correction of Military Records at the earliest practicable date so that all necessary and appropriate actions may be completed.

It is further directed that the charges for the physical examination be, and hereby are, waived.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

JUN 25 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-00922

COUNSEL: [REDACTED]

HEARING DESIRED: YES

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~~APPLICANT REQUESTS THAT:~~

The decision of the Formal Physical Evaluation Board (FPEB) be reversed and she be returned to active duty, with back pay and allowances, and all other benefits to which she is entitled.

~~APPLICANT CONTENDS THAT:~~

Counsel contends that the decision of the Formal PEB was unjust for the following reasons: the incorrect psychiatric diagnoses by the Wright-Patterson Air Force Base and Wilford Hall Medical Centers; the unwillingness of the 21 June 1996 Formal PEB to grant applicant a two-week extension to obtain a psychiatric evaluation at Wilford Hall Medical Center; and the arbitrary and capricious decision of the 21 June 1996 FPEB that applicant was unfit for service.

The FPEB's decision not to return applicant to active duty was arbitrary and capricious because they chose to disregard her civilian work as an aircraft dispatcher, her written statements from friends and co-workers, her military record, and her sense of responsibility to her civilian employer.

In support of applicant's request, counsel provided her expanded comments, with documentation associated applicant's military service history and her disability separation. (Exhibit A)

~~STATEMENT OF FACTS:~~

Applicant contracted her initial enlistment in the Regular Air Force on 1 September 1982. She served on continuous active duty, entering her last enlistment on 20 March 1988. Prior to the events under review, she attained the grade of staff sergeant, with a date of rank of 1 January 1987 and an effective date of 1 March 1987.

Documentation in the record reflects applicant had ten (10) days of lost time due to three periods of absence without leave (AWOL), on 13 May 1993, 17 May 1993, and 27 May - 3 June 1993.

A resume of applicant's APRs/EPRs follows:

PERIOD CLOSINGOVERALL EVALUATION

31 Aug 83	9
15 Jul 84	9
15 Jul 85	9
15 Jul 86	9
15 Jul 87	9
15 Jul 88	9
15 Jul 89	9
15 Jul 90 (EPR)	4
30 Mar 91	4
30 Mar 92	5
30 Nov 92	4

The following is a chronology of events leading up to applicant's discharge:

On 11 August 1993, a Medical Evaluation Board (MEB) convened and after consideration of clinical records, laboratory findings, and physical examination, established the diagnosis of psychotic disorder, NOS (atypical psychosis) provisional, chronic. Degree of impairment for military service: marked. Degree of impairment for civilian social and industrial adaptability: severe. The approximate date of origin was August 1992. The MEB recommended referral to the Physical Evaluation Board (PEB). --

The Informal PEB (IPEB) convened on 2 September 1993, and found the applicant unfit for continued military service for a diagnosis of psychotic disorder, not otherwise specified (atypical psychosis) provisional, chronic, with severe impairment of social and industrial adaptability. Another diagnosis considered but not rateable was personality disorder, not otherwise specified, presumptive. The IPEB recommended temporary retirement, with a 70 percent compensable disability rating. Applicant refused to agree or disagree with the IPEB findings. On 8 October 1993, she requested to waive appearance before the formal board and allow the staff military attorney to represent her case on her behalf.

The FPEB convened on 27 October 1993 and concurred with the findings and recommendations of the IPEB. On 29 October 1993, applicant disagreed with the findings and recommended disposition of the FPEB and submitted a rebuttal. On 16 December 1993, the Secretary of the Air Force directed applicant be placed on the Temporary Disability Retired List (TDRL) with a disability rating of 70 percent.

On 1 February 1994, applicant was honorably relieved from active duty under the provisions of AFR 35-4. Effective 2 February 1994, her name was placed on the TDRL, with a compensable disability rating of 70 percent. She was credited with 11 years, 4 months and 21 days of active Federal service (excludes 10 days of lost time).

On 26 May 1995, applicant was advised that as a temporary retired Air Force member, she was required by law to undergo periodic physical evaluations. She was directed to go to Scott AFB on 27 June 1995 for the purpose of a TDRL periodic examination. However, she failed to show.

On 13 July 1995, she was directed to appear at Scott AFB for a TDRL periodic examination on 31 July 1995; however, she did not keep the appointment.

On 13 July 1995, she was also advised that if she failed to report and complete her TDRL periodic examination on 31 July 1995, the Air Force had no other alternative but to terminate her eligibility to receive Air Force retired pay.

Effective 6 September 1995, applicant's eligibility to receive Air Force retired pay was terminated for her failure to report for a scheduled medical examination.

Subsequently, applicant requested reinstatement of her pay. Although she refused to attend a TDRL examination by a USAF psychiatrist, she agreed to submit documentation provided by her attending civilian physician. On 12 January 1996, TDRL processing procedures were resumed and applicant's pay was reinstated.

On 27 March 1996, the IPEB reviewed applicant's case file and the updated medical documentation. Based on the diagnosis of "Psychotic disorder, not otherwise specified, in remission. Psychosis in full remission" the board found applicant unfit for duty and recommended she be discharged with severance pay, with a zero percent disability rating. On 25 April 1996, applicant nonconcurred with the recommended findings and requested appearance before the formal PEB.

During the 21 June 1996 formal hearing, the FPEB requested a consultation from the Department of Psychiatry at Wilford Hall Medical Center in order to clarify applicant's psychiatric diagnosis and status. The applicant chose not to report for this directed examination, but rather requested she be given a two-week delay to take care of personal matters prior to any further psychiatric evaluation. The FPEB denied her request for an extension. The FPEB believed that the preponderance of evidence strongly supported both the original diagnosis and applicant's complete remission. In the opinion of the FPEB the nature and extent of the applicant's medical condition while on active duty argued that she was unfit for the rigors of military service. The FPEB recommended discharge with severance pay with a compensable rating of zero percent. On 21 June 1996, applicant disagreed with the findings and recommended disposition of the PEB formal hearing and submitted a rebuttal for review.

On 31 July 1996, the Secretary of the Air Force directed applicant be discharged with severance pay with a disability rating of zero percent.

Effective 31 August 1996, applicant was removed from the TDRL and discharged in the grade of staff sergeant by reason of physical disability per AFI 36-3212 with entitlement to severance pay, with a disability rating of zero (0) percent.

AIR FORCE EVALUATION:

The BCMR Medical Consultant reviewed this application and opined that the applicant should receive a complete psychiatric evaluation at Wilford Hall Medical Center as proposed by the FPEB in June 1996 with a view to return to duty if she is found mentally capable of enduring the rigors of military life.

After citing the events leading up to the applicant's discharge, the BCMR Medical Consultant stated there does not appear to be any question that applicant suffered from some derangement of her mental health starting on or about November 1992. She was evaluated in teaching hospitals primarily by resident physicians and placed on TDRL status when she was found unfit. In the ensuing 21 months until the next FPEB evaluated her status, she proved to society and an examining psychiatrist that she was capable of normal functioning. If she was not afforded the opportunity to prove herself through military consultation because she was not granted a two-week extension to arrange to be away from her home and job, then it would seem that a disservice was done in this case. If the purpose of the TDRL is to evaluate a person's residual disability in a period of observation, and if that person then comes back with all indications being that recovery had occurred, that person should then be afforded the chance to prove 'this. She should have been allowed her request for extension and reevaluated as the FPEB suggested.

The complete evaluation is at Exhibit C.

The USAF Physical Disability Division, AFPC/DPPD, reviewed this application and recommended denial, stating the applicant has not submitted any material or documentation to show she was inappropriately rated or processed under the military disability evaluation system. She was granted all rights to which she was entitled under disability law and departmental policy in effect at the time of her disability discharge.

After providing a synopsis of the processing of applicant's disability case, DPPD stated they did not agree with the BCMR Medical Consultant's opinion (Exhibit C) that there was an error in the PEB process (i.e., denied of further delay in the board process). The applicant had clearly demonstrated a history of reluctance to submit to an appropriate military psychiatric examination and the FPEB acted appropriately in denying her request for a further delay. Additionally, based on the applicant's medical history, she suffered some derangement of her mental health

while on active duty. It is highly unlikely she would be found fit to return to the rigors of military life, even if she continues to show no impairment of social and industrial adaptability. As such, a subsequent psychiatric exam at Wilford Hall would serve little practical purpose.

The complete evaluation is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In response to the AFPC/DPPD evaluation, counsel contends the applicant has been cast in an unfavorable light due to the fact that the AFBCMR has not been provided with all of the facts surrounding the two TDRL medical evaluation appointments scheduled for applicant. Between April and August 1995, applicant received two telephone calls from an individual at Scott AFB Hospital informing her that she was scheduled for an appointment for a periodic medical evaluation. She was also told that the medical evaluation would be performed by the same doctor who initially "evaluated" her at Scott AFB. She chose not to be evaluated by this doctor because he was the cause of her eventually being sent to Wright-Patterson Medical Center.

As a result of her desire for a fair and accurate medical evaluation, she requested to either be evaluated at another military hospital or to be evaluated by a private doctor. She was eventually evaluated by a civilian doctor.

Counsel further stated it is true applicant requested a two-week delay of the Wilford Hall Medical Center evaluation. Her request for a delay was not indicative of "a history of reluctance to submit to an appropriate military psychiatric examination," but merely a desire to get her personal affairs in order.

The applicant has proved by more than a preponderance of the evidence that she was not "severely impaired for civilian, social and industrial adaptability" and thus fit for duty in the US Air Force. She has worked at her civilian job since 1995, performing the same job that she performed while on active duty in the Air Force - aircraft dispatching.

Counsel's response is 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. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice warranting reevaluation of applicant's medical condition. After reviewing the evidence of record, we believe that the applicant was denied the chance to be evaluated to determine if she was fit to return to active duty. In this respect, we note the comments from the Chief, Medical Consultant, BCMR, in which he states that if the purpose of the Temporary Disability Retired List (TDRL) is to evaluate a person's residual disability in a period of observation, and if that person then comes back with all indications that recovery had occurred, that person should then be afforded the chance to prove this. We agree with the above comments and recommend applicant's records be corrected to the extent indicated below.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that invitational orders be issued authorizing travel via aeromedical airlift to Wilford Hall USAF Medical Center, Texas within 120 days of this decision for the purpose of evaluation of her medical condition, and that the results of the evaluation be forwarded to the Air Force Board for Correction of Military Records at the earliest practicable date so that all necessary and appropriate actions may be completed.

It is further recommended that the charges for the physical examination be, and hereby are, waived.

The following members of the Board considered this application in Executive Session on 15 January 1998, under the provisions of AFI 36-2603:

Ms. Patricia J. Zarodkiewicz, Panel Chair
Mr. Patrick R. Wheeler, Member
Mr. Edward H. Parker, Member

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

Exhibit A. DD Form 149, dated 19 March 1997, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, SAF/PC, dated 19 June 1997.

Exhibit D. Letter, HQ AFPC/DPPD, dated 29 August 1997.
Exhibit E. Letter, SAF/MIBR, dated 15 September 1997.
Exhibit F. Letter, Counsel, dated 27 September 1997.

A handwritten signature in cursive script, appearing to read "Patricia J. Zarodkiewicz".

PATRICIA J. ZARODKIEWICZ
Panel Chair