RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: [redacted]

DOCKET NUMBER: **97-01083**

COUNSEL: NONE

HEARING DESIRED: NO

AUG 14 1998

APPLICANT REQUESTS THAT:

1. The Board ensure that responsible authorities governing the processes within the Disability Evaluation System (DES), are contacted so they may review the problems and correct them.

2. Justice be served, or pass to an authority that can.

3. If the Board finds in his favor, he receive any and all options he would have been offered, had the DES functioned as written.

APPLICANT CONTENDS THAT:

He was unfairly represented, miscounseled, and his rights were violated during his evaluation through the Air Force Disability System. In addition, he received poor overall medical treatment.

The applicant states that on **6** September **1995,** he made a decision to separate from the military, and is curious if this had any bearing on the Medical Evaluation Board's (MEB's) decision.

The applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

On **18** October 1990, the applicant enlisted in the Regular Air Force for a period of 4 years. The applicant extended the enlistment for a period of 20 months on **9** October **1992** to qualify for an overseas assignment.

On 5 March **1996,** the applicant indicated his desire for a medical examination in conjunction with his voluntary separation.

AFPC/DPPD states that had the applicant's medical condition been slightly worse and he had not been found fit, to receive a disability separation, he would have had to overcome the presumption of fitness. This doctrine holds that a member's continued.performance of duty until their scheduled separation or retirement creates a presumption that the member is fit for continued active service. As outlined in DoD Directive **1332.18, "Separation** from the Military Service by Reason of Physical Disability", one overcomes this presumption (1) only when the member, because of their disability, was physically unable to perform adequately the duties of their office, grade, rank or rating or that **(2)** acute, grave illness or injury or other deterioration of the member's physical condition occurs immediately prior to or coincident with their processing for a non-disability retirement Or separation. Neither of these conditions were present at the time of his voluntary separation from active duty in September **1996.**

AFPC/DPPD states that the reason why an applicant could receive noticeably different disability ratings from the Air Force and the VA lies in understanding the differences between Title 10, USC, and Title **38,** USC. Title **10,** USC, Chapter **61,** is the federal statute that charges the Service Secretaries with maintaining a fit and vital force. For an individual to be unfit there must be a medical condition so severe that it prevents performance of work commensurate with rank and experience. Once this determination is made, namely that the individual is unfit, the degree of disability is based upon the members condition at the time of permanent disposition and not upon possible future events. Congress very wisely recognized that a person can acquire physical conditions which, although not unfitting, alter the individual's life style and future employability. with this in mind, Tide **38,** USC, which governs the Department of Veterans Affairs (DVA) compensation system, Was Written to allow awarding compensation for conditions that are not unfitting for military service. This is the reason why an individual can be found fit for military duty and later receive a compensation rating from the DVA for a service-connected, non-unfitting condition. Therefore, they recommend denial of the applicant's request for a disability discharge.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant reviewed the Air Force evaluation and states that the Air Force recommendation is completely unacceptable. The applicant contends the issues he has raised are nothing

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less than pure injustices. The Air Force functions most successfully, as a team, by following a standard set of guidelines. These being AFI'S. When they are not correctly applied to tasks, it is wrong and eventually will create problems. In his case, he has proven many instances of this, as well as, times where an applicable AFI went totally ignored. This is not limited to straying from AFI'S, but upward to the Department of Defense (DOD) Directives and Instructions. In this, they are violations of his rights.

The applicant states that the issues he has brought to attention, have only been ignored and left untouched. Be it true, maybe, particular incidents cannot be addressed by this Board; then why is it that they must never be acknowledged? Or better yet, turned over to the appropriate office that can handle them? For example;

a. Being denied a mandatory separation physical - solely due to ignorance and laziness.

b. Having a Senate Inquiry response to include; the CAT SCAN findings were normal - there was never a CAT SCAN performed.

c. Being verbally communicated a diagnosis of Degenerative Disc Disease, only to find it was written as Mechanical Lower Back Pain, for the MEB and IPEB.

d. Receiving advise from a Medical Doctor that he should simply lie to future civilian employers about his condition - this is recognized as professional medical procedures?

The applicant believes that for a member of the Armed Services to go through an inattentive system, in addition to attempting to cope with their illnesses or injuries, is traumatic in itself. Simply put, the DES system is just that; a system. It maintains proficiency not fully through written instruction, but how an individual interprets and applies them to his/her duties. In his case, he clearly showed through evidence, blatant neglect by several key personnel. There is no one office above the PEBLO where a military member can seek assistance, when its the PEBLO faltering. Simply put, he did not receive optimal treatment for this condition. He has been living unnecessarily in pain since, and holds the entire DES accountable and responsible.

The applicant's complete response is attached at Exhibit F.

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ADDITIONAL AIR FORCE EVALUATION:

The Chief, Medical Consultant, AFBCMR, reviewed this application and states that the applicant is concerned that DoD Directives and Air Force Instructions were ignored in his disability processing, a contention that is clearly not the case. They note that the applicant met the IPEB on **29** May 1996, rather than **1997.** The IPEB convened while the applicant was on active duty, the memorandum from AFPC/DPPD inadvertently stated a wrong date for its convening. All actions taken in regard to his evaluation and processing under the Disability Evaluation System were in accordance with directives and instructions, and no error is seen in this. The memorandum prepared by AFPC/DPPD on **9** September **1997** fully covers the nature of the applicant's processing, and further comment is not required or needed. The BCMR Medical Consultant is of the opinion that no error or irregularity occurred in the applicant's disability evaluation. A decision to return a member to duty is not contestable under the governing instruction, even though a later decision by the DVA might award a disability rating not granted by the Air Force as explained by AFPC/DPPD.

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

The Chief, USAF Physical Disability Division, AFPC/DPPD, reviewed this application and acknowledge a typographical error in their original advisory. The IPEB had reviewed the applicant's MEB and recommended his return to duty on **19** May **1996,** not **29** May **1997** as they indicated in their **9** September **1997** advisory. They regret the confusion they may have caused; however, all other facts in the advisory are accurate. Therefore, they recommend denial of the applicant's request.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Complete copies of the Air Force evaluations were forwarded to the applicant on 27 April **1998** for review and response. However, as of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

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

2. The application was timely filed.

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3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We took notice of the applicant's complete submission in judging the merits of the case; however, we agree with the opinions and recommendations of the Air Force and adopt their rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. Therefore, in the absence of evidence to the contrary, we find no compelling basis to recommend granting the relief sought in this application.

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 10 June 1998, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chair
Mr. Michael P. Higgins, Member
Mr. Gregory H. Petkoff, Member
[redacted])

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 27 Mar 97, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, BCMR Medical Consultant, dated 1 Jul 97.
Exhibit D. Letter, AFPC/DPPD, dated 9 Sep 97.
Exhibit E. Letter, AFBCMR, dated 6 Oct 97.
Exhibit F. Letter, Applicant, dated 27 Oct 97.
Exhibit G. Letter, BCMR Medical Consultant, dated 3 Feb 98.
Exhibit H. Letter, AFPC/DPPD, dated 17 Mar 98.
Exhibit I. Letter, AFBCMR, dated 27 Apr 98.

/Martha Maust/
MARTHA MAUST
Panel Chair

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