

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

DEC 09 1998

IN THE MATTER OF:

DOCKET NUMBER: 97-01104

COUNSEL: [REDACTED]

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

1. The Certificate of Release or Discharge From Active Duty, DD Form 214, dated 17 February 1995, be corrected as follows:

a. Item 23: Type of Separation: Change "Involuntary Disenrollment" to Voluntary Honorable Discharge."

b. Item 25: Separation Authority: Remove "AFI 36-2020 and OL-C MEMO, 17 Feb 95."

c. Item 28: Narrative Reason for Separation: Change "Involuntary Disenrollment" to Voluntary Honorable Discharge."

2. Remove all medical references in her records, in lieu of pertinent events.

3. She be qualified for commissioning and worldwide service.

APPLICANT CONTENDS THAT:

Her discharge was a result of sexual harassment incidents outlined in the attached affidavit. Discharge was retaliatory based on inaccurate medical conclusions.

In support of her request, applicant submits a copy of an affidavit pertaining to civil action in the [REDACTED] District Court.

Applicant's submission is attached at Exhibit A.

STATEMENT OF FACTS:

Available records reflect that applicant entered the U. S. Air Force Academy on 30 June 1994 as a Cadet Fourth Class and was assigned to Cadet Squadron 15 (CS-15).

The Headquarters U. S. Air Force Academy Staff Judge Advocate, HQ USAFA/JA, states that during the period 2 November 1994 through 30 November 1994, applicant received medical treatment/counseling for two incidents of intentional overdosing on medication. She was twice admitted to the USAFA hospital and following the second admission, transferred to the Fitzsimons Army Medical Center Inpatient Psychiatric Ward. Following evaluation/treatment from 21 through 30 November 1994, applicant was discharged from Fitzsimons with a recommendation that she be disenrolled from USAFA at the end of the semester. On 2 December 1994, applicant reported to the USAFA hospital emergency room complaining of depression and despondency. She was admitted to the Psychiatry Service.

On 8 December 1994, a Cadet Medical Evaluation Board (CMEB) convened and recommended that applicant be medically disenrolled from USAFA. [The Medical Board Report indicated a diagnosis of: (1) Axis I - Adjustment disorder with mixed disturbance of emotions and conduct. (2) Axis II - Deferred. (3) Axis III - None. (4) Axis IV - Psychosocial/environmental and Occupational problems. (5) Axis V - Global assessment of functioning].

Following a legal review of the proposed disenrollment, on 26 January 1995, the USAFA Superintendent forwarded a recommendation to the Secretary of the Air Force (AFPC) recommending applicant be medically discharged from cadet status, as provided by AFI 36-2020, paragraph 7.

On 17 February 1995, the Secretary of the Air Force approved the recommendation of the CMEB as concurred in by the Superintendent, Air Force Academy, to disenroll applicant and directed that she be honorably discharged.

Applicant was honorably discharged on 17 February 1995, as an Air Force Cadet, under the provisions of AFI 36-2020 and OL-C Memo, 17 February 1995 (Involuntary Disenrollment). She served 7 months and 18 days of active military service.

AIR FORCE EVALUATION:

The Staff Judge Advocate, HQ USAFA/JA, states that on 12 November 1996, applicant filed a lawsuit in the U. S. District Court for equitable relief and damages against the U. S. Air Force and eight individually named cadets. On 18 November 1996, she also filed a 15 million dollar personal injury administrative claim with the U. S. Air Force. Both the lawsuit and the administrative claim are based, in essence, on the incidents recited in applicant's affidavit attached to her AFBCMR application.

With regard to applicant's correction requests numbers 1 and 2, some errors on her DD Form 214 were discovered. Items 23, 25 and

28 should be corrected. Additionally, Items 26 and 27, on the DD Form 214, should also be corrected.

Correction requests numbers 3 and 4, which refer to the removal of all medical references and qualification for commissioning and worldwide duty, of the AFBCMR application and, the allegations contained in her contentions, in essence, dispute the grounds for her medical disqualification and discharge. It is the opinion of USAFA/JA that the Cadet Medical Evaluation Board (CMEB) recommendation for applicant's medical discharge was properly processed and, based upon the medical opinions provided, resulted in an appropriate decision by the Secretary to medically discharge the applicant. However, consultation with medical personnel indicated that the medical documentation concerning applicant's care was inadequate to independently confirm the diagnosis that applicant was medically disqualified. Accordingly, the Academy is willing to convene a new CMEB to reevaluate applicant's past and present fitness for military service in necessary to determine the correctness of her military records.

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

Based on the USAFA/JA's willingness to recommend that a new CMEB be convened, the Executive Director, AFBCMR, forwarded the case to HQ USAF/JAG requesting comments concerning the practicality of the applicant being evaluated by a CMEB to determine her fitness for military service at this late date.

A copy of the AFBCMR Memorandum is attached at Exhibit D.

ADDITIONAL AIR FORCE EVALUATION:

The Chief, General Law Division, AF/JAG, states that the USAFA/JA advisory indicates that the processing of applicant's separation was in accordance with proper procedures. There is nothing in the file to indicate otherwise. Nevertheless, review of her separation paperwork disclosed errors in certain entries on her DD Form 214 that should be corrected to accurately reflect the reason for her separation. The changes recommended by the USAFA/JA advisory to the DD Form 214 are consistent with the position that the medical diagnosis at the time was accurate and properly formed the basis for the separation.

with regard to reconvening a CMEB, over three years have passed since that evaluation and the passage of time makes it unlikely, in the opinion of AF/JAG, that a CMEB can accurately and reliably determine whether or not the 1995 diagnosis of a personality disorder was correct.

Given the inadequacy of the medical documentation underlying applicant's separation and the improbability of being able to currently and accurately diagnose applicant's mental condition as it existed in 1995, AF/JAG believes that it would not be inappropriate for the AFBCMR to favorably consider applicant's request.

A complete copy of the AFBCMR Memorandum is attached at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Copies of the Air Force evaluations and AFBCMR Memorandum, were forwarded to the applicant on 27 May 1998 for review and response within 30 days. 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.
3. We note that the HQ USAFA/JA advisory opinion indicates that the underlying medical documentation was inadequate for medical authorities now to independently confirm the diagnosis of a personality disorder that was made in early 1995; and that to correct this deficiency, the USAFA has offered to reconvene a cadet medical evaluation board (CMEB) to determine the correctness of the medical diagnosis of a personality disorder that formed the basis for applicant's separation. However, because of the elapse of time, HQ USAF/JAG believes that it is highly unlikely that such a board could accurately and reliably determine whether or not the 1995 diagnosis of a personality disorder was correct. Since there is no way of accurately determining the applicant's mental condition in 1995 at this late date, HQ USAF/JAG believes that it would not be inappropriate to favorably consider the applicant's requests. On the other hand, the indisputable fact remains that the applicant was hospitalized because of two incidents of intentional overdosing on medication and was admitted to the Psychiatry Service because of her complaint of depression and despondency. Absent more clear-cut evidence in this regard, we do not believe it appropriate to eradicate factual documentation from a military record which may be of vital importance in the future. Therefore, we can not recommend the removal of her medical records nor recommend she be qualified for commissioning and world-wide service.

4. We believe sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice warranting some form of relief. After thoroughly reviewing the evidence of record, we are persuaded that applicant's involuntary disenrollment from the United States Air Force Academy (USAFA) should be changed to a voluntary resignation based upon a change of career goals and that all references to her medical condition be removed from her separation documents. As we have previously noted, the existing medical documentation is insufficient to reliably indicate whether the 1995 diagnosis was correct. Therefore we recommend that the benefit of the doubt be resolved in her favor by correcting her separation documents to the extent that removes all references to her disenrollment due to physical disqualification. With respect to the DD Form 785, the Board is persuaded that it should be corrected to reflect that applicant resigned due to a change of career goals. A majority of the Board is further persuaded that no recommendation be made with regard to future acceptance into officer training.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected by amending the Certificate of Release or Discharge From Active Duty, DD Form 214, dated 17 February 1995, as follows:

a. Item 23., "Type of Separation" be changed to read: "Discharge."

b. Item 25., "Separation Authority!" be changed to read: "AFI 36-2020, Section B."

c. Item 26., "Separation Code" be changed to read: "JFF."

d. Item 27., "Reentry Code" be changed to read: "4L."

e. Item 28., "Narrative Reason for Separation" be changed to read: "Secretarial Authority."

It is further recommended that the Record of Disenrollment From Officer Candidate - Type Training, DD Form 785, dated 17 February 1995, be amended as follows:

a. Section III - Reasons and Circumstances for Disenrollment, reflect that she resigned "due to a change in career goals", rather than being administratively separated due to "physical disqualification IAW AFR 160-43, para 4-26, a, b, and e."

b. Section IV - Evaluation to be Considered in the Future for Determining Acceptability for Other Officer Training, be

changed by deleting the "check" in block "5," "DEFINITEELY NOT RECOMMENDED;" and placing a check in block "6," "Other Remarks."

c. In the "REMARKS" Section, delete the first sentence "Cadet [REDACTED] was discharged from her cadet appointment due to medical [REDACTED] ification." After the second sentence, "Cadet did not [REDACTED] RECOMMENDATION." Active Duty Service Commitment; ADD: "NO

The following members of the Board considered this application in Executive Session on 4 August 1998, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chair
Mr. Richard A. Peterson, Member
Mr. Patrick R. Wheeler, Member

By a majority vote, the Board voted to correct the records by amending the DD Form 214 and DD Form 785 as recommended. Mr. Wheeler voted to deny the Board panel's recommendation to change the DD Form 785, Section IV, "Evaluation to be Considered in the Future for Determining Acceptability for Other Officer Training" and has submitted a minority report which is attached at Exhibit G. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 26 Mar 97, w/atchs.
- Exhibit B. Applicant's Available Master Personnel Records.
- Exhibit C. Letter, HQ USAFA/JA, dated 4 May 98.
- Exhibit D. Letter, AFBCMR, dated 26 May 98.
- Exhibit E. Letter, AF/JAG, dated 27 May 98.
- Exhibit F. Letter, AFBCMR, dated 27 May 98.
- Exhibit G. Minority Report.


MARTHA MAUST
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

DEC 0'9 1998

Office of the Assistant Secretary
AFBCMR 97-01104

MEMORANDUM FOR THE CHIEF OF STAFF

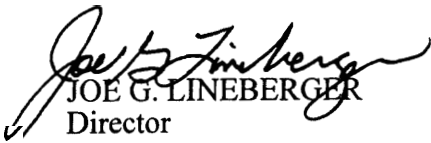
Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected by amending the Certificate of Release or Discharge From Active Duty, DD Form 214, dated 17 February 1995, as follows:

- a. Item 23., "Type of Separation" be changed to read: "Discharge."
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- a. Section III - Reasons and Circumstances for Disenrollment, reflect that she resigned "due to a change of career goals," rather than being administratively separated due to "physical disqualification IAW AFR 160-43, para 4-26, a, b, and e."
- b. Section IV - Evaluation to be Considered in the Future for Determining Acceptability for Other Officer Training, be changed by deleting the "check" in block "5" "DEFINITELY NOT RECOMMENDED;" and placing a check in block "6," "Other Remarks."
- c. In the "REMARKS" Section, delete the first sentence [REDACTED] was discharged from her cadet appointment due to medical disqualification." After the second sentence, "Cadet did not incur an Active Duty Service Commitment;" ADD: "NO RECOMMENDATION,"


JOE G. LINEBERGER
Director
Air Force Review Boards Agency