

ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 95-02912

COUNSEL: [REDACTED]

OCT 30 1997

HEARING DESIRED: YES

RESUME OF CASE:

In an application dated 8 September 1995, applicant requested that his records be forwarded to Lackland AFB Physical Evaluation Board (PEB) for an informal determination of disability as of the date of his retirement; and he be given the right to appeal to a formal PEB if the informal result is unsatisfactory to him.

On 12 December 1996, the Board considered and recommended that applicant be evaluated by a Medical Evaluation Board (MEB), PEB, and Formal PEB, if necessary, to determine his medical condition as of 30 September 1994; and that the results of the evaluation be forwarded to the AFBCMR. The Board concluded that applicant had significant neurological problems for several years prior to his retirement. This finding was supported by the fact that applicant was scheduled in August 1994 for a Medical Evaluation Board (MEB) prior to his retirement because his medical qualification for worldwide duty was questionable. However, there was no evidence in the record to indicate that an MEB ever reviewed applicant's qualifications; or, if an MEB did review the records, what criteria was utilized to indicate that he overcame the presumption of fitness. A complete copy of the Record of Proceedings is attached at Exhibit G.

Currently, the Department of Veterans Affairs (DVA) has awarded applicant a service-connected disability rating of 30% for Meniere's Disease, d.c. 6205. In addition, the DVA has awarded service-connection, but no disability percentage for the following conditions: perforated ear drum, irritable colon, varicose veins, skeletal condition, and a skin condition.

AIR FORCE EVALUATION:

The Chief, Physical Disability Division, AFPC/DPPD, states that on [REDACTED] applicant was evaluated by the Departments of Audiology and Otolaryngology, Division of Surgery, Wilford Hall Medical Center (WHMC). As a result of these medical findings, and a thorough review of his medical records, the attending specialists determined that the applicant does not currently have

Meniere's Disease, nor was it present at the time of his retirement from active duty. Further, as the applicant demonstrated no diagnosis disqualifying for consideration by an MEB, the WHMC Chairman, Department of Boards and Exams, did not convene an MEB but rather forwarded the examination results to the AFPC Disability Division for review and further processing. The WHMC medical examinations were provided to the Informal PEB (IPEB) to document how they would have determined applicant's fitness for continued duty had an MEB been forwarded to them with a diagnosis of Meniere's-like syndrome (VASRD Code 6299-6205). After a full review, the IPEB determined that they would have found applicant fit for continued military service and recommended his return to duty. The board remarks indicated, "[Applicant] has symptomatology suggestive of Meniere's Disease or partial seizures. These conditions were not confirmed at the time of retirement. No specific diagnosis was found. In spite of [Applicant's] symptomatology, a preponderance of the evidence shows that he was able to perform the duties of his office, grade, rank and rating. Inability to perform special skills (e.g., flying) is not a sole criterion for an unfitness determination. The IPEB finds [Applicant] fit for military service. Further, even had his fitness been questionable, [Applicant] would not have overcome the presumption of fitness." Therefore, DPPD concludes that had applicant received an MEB in September 1994 and had it been forwarded to the PEB, the IPEB would have recommended he be found fit and returned to duty. The Chief states that as a Special Assistant to the Director Secretary of the Air Force Personnel Council, he would have approved the IPEB recommendation and directed his return to active duty. This would have closed the disability case. Appeals/appearances before a Formal PEB are reserved for those members being involuntarily separated or retired by reason of physical disability.

A complete copy of the evaluation, with attachments, is attached at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant reviewed the Air Force evaluation and states that he has never claimed to have Meniere's Disease. The only pertinent statement in the "Facts" in the letter is, "[Applicant] had symptomatology suggestive of Meniere's Disease or partial seizures." Since July 1993, it has been the undiagnosed cause of those seizures that has been debilitating. He includes a memo to his attorney informing him that his trip to WHMC was waste of the USAF's time and money. A simple hearing test is not going to reveal the underlying cause. Extensive testing has been accomplished by Wright-Patterson Medical Center (WPMC), Miami Valley Medical Center, Southern Illinois School of Medicine, and numerous physicians. They all confirm that there is a balance abnormality of some unknown origin. The VA could not determine

the cause but confirmed that the problem was debilitating and awarded compensation. The WHMC examining physician's assessment is that his symptoms are not consistent with Meniere's Disease, yet he mentions that he has read the WPMC's ENT notes that ruled out Meniere's. He states that he has a problem, but it is not Meniere's. It is his desire to have his records reflect a medical discharge even though there is no monetary change (besides taxes) to his retirement.

Applicant's complete response, with attachment, is attached at Exhibit J.

THE BOARD CONCLUDES THAT:

1. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice warranting applicant's retirement for physical disability. After thoroughly reviewing the results of the Informal Physical Evaluation Board (IPEB), we are in agreement with the comments and recommendation of the Air Force that applicant should not be permanently retired by reason of physical disability. We note that the IPEB concluded that had a Medical Evaluation Board (MEB) been forwarded to them prior to applicant's retirement, they would have found that applicant was fit for continued military service and would have recommended his return to duty. Although applicant had symptomatology suggestive of Meniere's Disease, these conditions were not confirmed at the time of retirement. A preponderance of the evidence shows that applicant was able to perform the duties of his office, grade, rank, and rating; therefore, he would not have overcome the presumption of fitness. Applicant has received a disability rating from the VA for Meniere's Disease, and we believe that the VA is the appropriate agency for awarding compensation for his condition. In this respect, it must be noted that the Air Force and the VA are separate federal agencies and operate under different laws and policies. The Air Force assesses a service member's disability with respect to fitness for duty, while the VA rates for any and all service connected conditions, to the degree they interfere with future employability, without consideration of fitness. Lastly, applicant's request to be given the right to appeal the IPEB's decision was considered; however, in accordance with Title 10, United States Code (10 USC), Section 1214, appearances before a formal PEB are reserved for individuals who are being involuntarily separated or retired by reason of physical disability. Therefore, in view of the decision by the IPEB and without a basis to question the integrity of the members of the IPEB, we find no compelling basis to recommend granting the relief sought in this application.

2. 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 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 9 September 1997, under the provisions of AFI 36-2603:

[REDACTED]

Member

The following documentary evidence was considered:

- Exhibit G. ROP, dated 30 Jan 97, w/atchs.
- Exhibit H. Letter, AFPC/DPPD, dated 27 Mar 97, w/atchs.
- Exhibit I. Letters, AFBCMR, dated 10 Apr & 27 May 97.
- Exhibit J. Letter, Applicant, dated 10 Jun 97.

[REDACTED]

Panel Chairman