

JUN 25 1998

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-03344

[REDACTED]

[REDACTED]

[REDACTED]

HEARING DESIRED: NO

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APPLICANT REQUESTS THAT:

1. Her dismissal from the Air Force be changed to a general or honorable discharge.
2. The narrative reason for separation be changed from "court-martial" to medical conditions.

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APPLICANT CONTENDS THAT:

She was pregnant prior to discharge and was not given a physical examination 30 days prior to discharge. She was not given medical or psychiatric treatment for her illnesses while she was on leave with depression and fibroid tumor, which resulted in an abdominal pregnancy, colostomy, increased depression and a hysterectomy.

Applicant's submission is attached at Exhibit A.

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STATEMENT OF FACTS:

Applicant was appointed a first lieutenant (Nurse Corps) in the Reserve of the Air Force on 26 May 1993. She was ordered to active duty on 9 June 1993 in the grade of captain for a period of 48 months.

On 8 December 1993, applicant was placed in pre-trial confinement, for drug abuse, pending court-martial for infraction of Article 112a of the Uniform Code of Military Justice (UCMJ). Per General Court-Martial Order No. 38, dated 13 June 1994, applicant, at a court-martial convened at Keesler Air Force Base (AFB), Mississippi, was arraigned on 31 March 1994 at Sheppard AFB, Texas, on the following offenses:

CHARGE: Article 112a. Specification: Did, in the U. S., between on or about 28 June 1993 and 4 September 1993, wrongfully use cocaine. Plea: Not Guilty (Withdrawn after arraignment).

ADDITIONAL, CHARGE I: Article 112a. Specification: Did, in the U. S., between on or about 2 December 1993 and 7 December 1993, wrongfully use cocaine. Plea: Guilty. Finding: Guilty.

ADDITIONAL CHARGE 11: Article 89. Specification: Did at [REDACTED] on or about 10 September 1993, behave with disrespect toward her superior commissioned officer, by calling her, a "blonde bitch with a fat ass" or words to that effect. Plea: Guilty. Finding: Guilty.

ADDITIONAL CHARGE 111: Article 133. Specification 1: Did, at [REDACTED], on or about 7 December 1993, spit on the interior of an Air Force Office of Special Investigation Vehicle, while being transported to the Security Police Squadron, which conduct under the circumstances was unbecoming an officer and gentleman. Plea: Guilty. Finding: Guilty. Specification 2: Did, at [REDACTED] on or about 8 December 1993, throw a chair and say, "I don't give a f---," "G--Dammit, I'm tired of this s---," "I'm tired of this M---F--- s---," "I don't give a damn," "I don't need this G--damn Air Force," "I'm going to p--- on the G--damn floor," or words to that effect while confined at the [REDACTED] Security Police Squadron, which conduct under the circumstances was unbecoming an officer and a gentleman. Plea: Guilty. Finding: Guilty. Specification 3: Did, at [REDACTED], on or about 10 September 1993, say to Major (Dr) H---, "you will have to look over your shoulder and watch your back for the rest of your life to make sure no one ever stabs you in the back," "I wish no harm ever comes to you or your family," or words to that effect which conduct under the circumstances was unbecoming an officer and gentleman. Plea: Guilty. Finding: Guilty.

ADDITIONAL CHARGE IV: Article 123a. Two specifications: On or about 19 August and 12 November 1993, with intent to defraud and for the procurement of lawful currency, wrongfully make and utter four insufficient funds checks totaling \$550.00 to Officers' Open Mess; and, On or about 19 August 1993, with intent to defraud and for the procurement of lawful currency, wrongfully make and utter a check in the amount of \$387.00 to the [REDACTED] [REDACTED] (Both specifications and Additional Charge IV withdrawn after arraignment).

ADDITIONAL CHARGE V: Article 134. Specification 1: Did, at [REDACTED] between on or about 19 August 1993 and 12 November 1993, make and utter to the Officers' Open Mess four checks totaling \$550 00 for the purpose of procuring lawful currency and did thereafter dishonorably fail to maintain sufficient funds in the Sheppard Bank for payment of such checks in full upon their presentment for payment. Plea: Guilty. Finding: Guilty. Specification 2: Did, at [REDACTED], on or about 19 August 1993, make and utter to the [REDACTED] a check in the amount of \$387.00, for the purpose of payment of a past due obligation and did thereafter dishonorably fail to maintain sufficient funds in the [REDACTED] Bank for payment of

such check in full upon its presentment for payment. Plea: Guilty. Finding: Guilty.

Applicant was sentenced to Dismissal, confinement for 9 months, and forfeiture of \$1000.00 pay per month for 9 months. The sentence was adjudged on 31 March 1994. The convening authority approved the sentence and, except for the dismissal, the sentence was executed. On 14 April 1994, applicant was placed in confinement for infraction of Article 112a of the UCMJ.

Applicant received an in-processing medical examination in April 1994 at the time of her confinement at the U. S. Disciplinary Barracks (USDB). Records reflect she continued to receive medical treatment while in confinement. A DA Form 4700, Medical Screening of Inmates, dated 12 July 1994 reflects an out-processing medical examination. A Referral for Civilian Medical Care form, dated 13 July 1994, reflects that applicant was leaving the USDB on 20 July 1994 and was referred to the VA for gynecology.

On 19 July 1994, applicant completed the court-martial sentence, was released from confinement and placed on appellate review leave. She was administratively assigned to Kirtland AFB, New Mexico pending subsequent appellate review completion.

By General Court-Martial Order, Number 26, dated 21 September 1995, the sentence to dismissal from the service, confinement for nine months and forfeiture of \$1000.00 pay per month for nine months, as promulgated in General Court-Martial Order Number 38, dated 13 June 1994, was finally affirmed. On 21 September 1995, the Secretary of the Air Force approved the sentence and ordered the dismissal to be executed.

Applicant was dismissed by Court-Martial, DAF, GCMO #26 on 19 October 1995 and received an uncharacterized character of service.

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AIR FORCE EVALUATION:

The Associate Chief, Military Justice Division, AFLSA/JAJM, states that they have reviewed the military justice issues involved and find no errors in the processing of applicant's court-martial, confinement or dismissal. However, since her complaint arises from her dismissal from appellate leave status, they have investigated applicant's claim.

Applicant's petition suggests that Air Force authorities were indifferent to her medical condition prior to her dismissal, but her medical records support a contrary finding. She received an extraordinary amount of medical care throughout the course of her military service. She received extensive in-and out-processing physicals at the USDB prior to her placement on appellate leave.

The Air Force does not require that a physical examination take place 30 days prior to separation. They do require, however, that a medical "interview" be accomplished on a DD Form 2697 prior to a member's separation. The purpose of a pre-separation interview is to identify medical findings requiring attention and to document current medical status (not to determine eligibility for physical separation or retirement). Although this form was not accomplished in the applicant's case, the omission was harmless error for several reasons.

First, the applicant's medical status was well-known to military authorities because she received extensive medical care prior to her release on appellate leave. At that time, she was referred to the Department of Veterans Affairs (DVA) for further medical treatment. She continued to possess a military identification card and was entitled to medical treatment at military and DVA medical facilities while she was on appellate leave. Therefore, if she did not obtain medical treatment from those sources, it was by her own choice.

Second, the applicant was not denied any disability entitlements because members sentenced to dismissal are not eligible for disability processing. The same is true for members on appellate leave. Therefore, the applicant lost no substantive entitlements by the omission of the DD Form 2697. Finally, a technical omission in pre-separation processing does not warrant an upgraded service characterization. The applicant's military career was marred by substantial misconduct from the very beginning. She served less than two months on active duty before she was found to have wrongfully used drugs. Her court-martial conviction was based on a range of misconduct, not merely drug abuse. Her dismissal from the service was assessed by a panel of officers, approved by the convening authority and affirmed by the courts of appeal. Nothing suggests a dismissal was excessive in this case. They recommend the applicant's request be denied.

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

The Chief, Medical Consultant, BCMR, Medical Advisor SAF Personnel Council, states that review of available medical records does not reveal any medical problems during applicant's period of active duty that would have warranted evaluation under provisions of AFI 36-3212. Her contention that she was not given a physical examination at the time of her release from the service is of no significance, as no requirement existed for such examination. She was given an out-processing medical review upon leaving confinement in July 1994 to begin appellate leave and had been treated during confinement with antidepressant medications. She was eligible for military care during the period of her appellate leave up to the point of her dismissal 15 months later, but furnished no evidence that she took advantage of such care. She does state that she had an abdominal pregnancy, hysterectomy and colostomy performed at some point after her dismissal and

that she was dismissed with the pregnancy undiagnosed. The failure to seek military care that was available prior to her dismissal voids any argument she might have about not receiving proper medical care.

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 AFI 36-4212. Reasons for discharge and discharge proceedings are well documented in the records. Action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law.

While the applicant was treated for some ordinary medical problems while on active duty, as will occur in most service members, none of these problems singly, nor any combination of them, were of sufficient severity to justify a finding of unfit. There is no evidence to suggest that the applicant deserved consideration for separation through the Medical Disability Evaluation System. The 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 D.

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant states, in her response to the Air Force evaluations, that the facts of military justice action omitted a very important fact about her wrongfully using cocaine on active duty. First of all, she overdosed on cocaine and was hospitalized for one month after her initial use. She suffered from a sudden onset of depression when she was stationed at Sheppard AFB and consumed a lethal dose of cocaine and, as a result was put in ICU. She asks is this wrongful use or overdose? Applicant contends she asked her authorities to get her some help or let her be discharged because she couldn't adjust to the military. When she was discharged from the USDB, she was mentally ill and couldn't make rational decisions and as a result, she lost her career in nursing and practically lost her life. She contends no one told her she could seek outpatient treatment from the VA and no one made referrals for her.

A copy of the applicant's response is attached at Exhibit F.

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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 her dismissal from the Air Force should be changed to a general or honorable discharge or, that the narrative reason for separation be changed to reflect medical conditions. Her 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. 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 her burden that she has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.

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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.

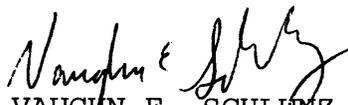
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The following members of the Board considered this application in Executive Session on 13 May 1998, under the provisions of AFI 36-2603.

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 3 Dec 96, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLSA/JAJM, dated 10 Mar 97.
- Exhibit D. Letter, BCMR Medical Consultant, dated 13 Jun 97.
- Exhibit E. Letter, AFBCMR, dated 14 Jul 97.
- Exhibit F. Applicant's Letter, undated.

  
VAUGHN E. SCHLUNZ  
Panel Chair