

FEB 09 1998

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00801

COUNSEL:

HEARING DESIRED: NO

Applicant requests that his 15 April 1991 administrative discharge be changed to a medical discharge. Applicant's submission is at Exhibit A.

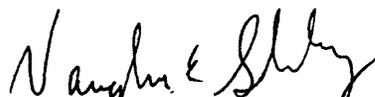
The appropriate Air Force offices evaluated applicant's request and provided advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant/counsel for review and response (Exhibit D). Counsel's/applicant's responses to the advisory opinions are at Exhibit E.

After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinions appear to be based on the evidence of record and have not been adequately rebutted by counsel/applicant. Absent persuasive evidence applicant was denied rights to which entitled, appropriate regulations were not followed, or appropriate standards were not applied, we find no basis to disturb the existing record.

Accordingly, applicant's request is denied.

The Board staff is directed to inform applicant of this decision. Applicant should also be informed that this decision is final and will only be reconsidered upon the presentation of new relevant evidence which was not reasonably available at the time the application was filed.

Members of the Board Mr. Vaughn E. Schlunz, Ms. Dorothy P. Loeb, and Mr. David W. Mulgrew considered this application on 5 February 1998 in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C. 1552.


VAUGHN E. SCHLUNZ
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinions
- D. SAF/MIBR Ltr Forwarding Advisory Opinions
- E. Counsel's/Applicant's Responses

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE, TEXAS

9 Sep 97

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPD
550 C Street West Ste 06
Randolph AFB TX 78150-4708

SUBJECT: Application for Correction of Military Record [REDACTED]

REQUESTED ACTION: Applicant requests that **his** involuntary administrative discharge under the provisions of AFR 39-10 be changed to **a** disability retirement.

FACTS: Member was involuntarily discharged from the Air Force on 15 Apr 91 for conditions that interfere with military service, not disability, character and behavior disorder after serving seven years, six months, and twenty days on active duty.

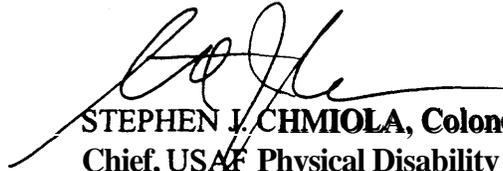
DISCUSSION: We reviewed the AFBCMR application and verify the applicant was never referred to or considered by the **Air** Force Disability Evaluation System under the provisions of AFR 35-4. The purpose of the military disability system is to maintain a fit and vital force by separating or retiring members who are unable to perform the duties of their grade, office, rank or rating. Those members who are separated or retired by reason of physical disability may be eligible, if otherwise qualified, for certain disability compensations. Eligibility for disability processing is established by a Medical Evaluation Board (MEB) when that board finds that the member may not be qualified for continued military service. The decision to conduct **an** MEB is made by the medical treatment facility providing health care to the member

On 2 Apr 91 member's commander initiated action under the provisions of AFR 39-10 to discharge **him** due to **his** inability to adapt in a military environment based on a personality disorder.

During the period 7-19 Mar 91, member was admitted to the [REDACTED] Hospital for a psychiatric evaluation. A review of the psychiatric evaluation revealed that member was diagnosed with **an** adjustment disorder with depressed mood. Based on the Sheppard Hospital psychiatric evaluation dated 29 Mar 91, it is reasonable to find that the member could have been recommended and processed through the Air Force disability evaluation system under the provisions of AFR 35-4 and referred to the Physical Evaluation Board (**PEB**). Had the case been forwarded to the Informal Physical Evaluation Board (IPEB), the board would have noted the mild nature of **his** adjustment disorder and would have found **him** "not unfit under the provisions of disability law and policy" and returned him to duty for appropriate administrative action.

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RECOMMENDATION: We recommend denial of the applicant's request. The applicant has not submitted any material or documentation to show he was unfit for continued military service as a result of a physical disability at the time of his administrative discharge.



STEPHEN J. CHMIOLA, Colonel, USAF
Chief, USAF Physical Disability Division
Directorate of Pers Prog Management

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20 Jun 97
97-00801

MEMORANDUM FOR AFBCMR

FROM: BCMR Medical Consultant
1535 Command Drive, EE Wing, 3rd Floor
Andrews AFB MD 20762-7002

SUBJECT: **Application for Correction of -Military Records**
[REDACTED]

Applicant's entire case file has been reviewed and is forwarded with the following findings, conclusions and recommendations.

REQUESTED ACTION: The applicant was administratively discharged under the provisions of AFR 39-10, Para 6-16, for conditions that interfere with military service-not disability, on 15 Apr 91 after 7 years, 6 months, 20 days on active duty. He now applies requesting the records be changed to show a medical discharge.

FACTS: While assigned to the Gulf War Theater of Operations from 21 Aug 90 to 8 Feb 91, applicant's interactions with military superiors was noted to deteriorate to the point of receiving a **referral performance** report on 1 Apr 91. **He was hospitalized** at the Veterans' Administration Hospital at [REDACTED] AFB and transferred to [REDACTED] AFB Hospital 7-19 March 1991. On **discharge he was diagnosed** with Adjustment Disorder with depressed mood and Personality Disorder, not otherwise specified. The narrative report from this admission states: "He really never showed any signs of major depression." There was obviously not found any indication of such a diagnosis, and after applicant's administrative discharge, the initial DVA evaluation again failed to find evidence of a major depression, the examiner concluding that "the veteran currently had no real impairment." This was in May 1991, the month following applicant's separation. Further, in July 1992, a repeat psychiatric examination through the DVA found only an adjustment disorder with depressed mood. Not until 22 Oct 96 do we find a diagnosis of major depression on a DVA rating examination for which applicant is now rated at 30% disability. 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 AFM 35-4. 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.

The applicant had a separation physical exam on 12 Apr 91 during which applicant stated his health was "good". He had no unfitting condition and was found fit for worldwide duty. His separation related to the personality disorder was IAW proper administrative directives.

DISCUSSION: The reason why the applicant could be declared fit for duty by the Air Force and later be granted 30% **service-connected** disability by the Department of Veterans Affairs (DVA) 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 considered unfit for military service, there must be a

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medical condition so severe that it prevents performance of any work commensurate with rank and experience. Once this determination is made, namely that the individual is unfit, disability rating percentage is based upon the member's condition at the time of permanent disposition, and not upon possible future events. Congress, very wisely, recognized that a person can acquire physical or mental conditions which, although not unfitting at the time of separation, may later progress in severity and alter the individual's lifestyle and future employability. With this in mind, Title 38, **USC** which governs the DVA compensation system was written to allow awarding compensation ratings for conditions that are not unfitting for military service. This is the reason why an individual can be considered fit for military duty up to the day of separation or retirement, and yet soon thereafter receive a compensation rating from the DVA for service-connected, but militarily non-unfitting condition. Evidence of record establishes beyond all reasonable doubt that the applicant was medically qualified for continued active duty, that the reason for his separation was proper, and that no error or injustice occurred in this case.

RECOMMENDATION: The Medical Consultant for the BCMR recommends that the application be denied.

A handwritten signature in black ink, reading "Frederick W. Hornick". The signature is written in a cursive style with a large, looping initial "F".

FREDERICK W. HORNICK, Col., USAF, MC, FS
Chief, Medical Consultant, BCMR
Medical Advisor SAF Personnel Council

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