

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-01345

COUNSEL: None

HEARING DESIRED: Yes **AUG 14 1998**

APPLICANT REQUESTS THAT:

The error committed by the Physical Evaluation Board (PEB) and the Physical Review Council (PRC) in 1963 be corrected and, instead of being separated with severance pay, his records show he had length of service of 20 years and was retired in the grade of master sergeant.

APPLICANT CONTENDS THAT:

The PEB records show that the vision in his left eye was 20/20. The lack of vision in his right eye had been waived in May 1947. He remained on active duty without a break in service until placed on the TDRL by the PEB in 1961. Nowhere in the proceedings is this waiver mentioned, although it is a matter of record. Evidently his complete medical records were not in evidence. He should have been returned to duty, not severed. He had been told by his counsel that there was no higher board to appeal to. He thought the AFBCMR was for dishonorable, general or bad conduct discharges and did not realize its parameters included medical discharges.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Relevant facts pertaining to this application, extracted from the applicant's military records (Exhibit B), are contained in the letters prepared by the appropriate offices of the Air Force (Exhibits C and D). Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

The AFBCMR Medical Consultant reviewed this appeal and provides a thorough background concerning the applicant's medical history based on the available medical/military records. The Consultant states that when the applicant first entered the military in

1943, it was noted and recorded that he had had his right eye surgically removed in 1940. His only limitation then was restriction from overseas duties. He reentered the military in 1947, with a waiver for his missing right eye (anophthalmos). The narrative summary for the 26 July 1961 Medical Evaluation Board (MEB) erred in its discussion and recommendation where it was stated that the "anophthalmos was ignored" at the time of his initial service. The problem was not ignored. He received a waiver on his 1947 reenlistment for the missing eye. The reason for his TDRL recommendation, however, was not the missing eye, but rather the disease in the left eye (chorioretinitis, central, involving macula) which was interfering with his duties. Unfortunately, the written report of the PEB that put him on the TDRL is missing from the records available for review. At the third PEB review in July 1963, he was removed from the TDRL and separated with no disability rating and \$8400.00 in severance pay. The examination he had in April 1963 showed the disease in the left eye was "stable and not progressive," but because of the "slightly distorted visual acuity in his only eye" it was recommended he be permanently retired [sic] in spite of the stability of his disease over the previous two years. Although by his own admission he was somewhat affected by this disorder, the applicant had been able to continue his duties from the onset of his disease in 1958 through his placement on the TDRL in 1961. The Consultant opines that the applicant should have been returned to duty from the TDRL in 1963 by the PEB with what was a stable, only mildly symptomatic condition that would have allowed him to complete a 20-year career and be retired for length of service (LOS). This retirement date should be computed and the applicant should receive appropriate compensation. Nothing is found in the records that indicates he was unable to carry out any duties commensurate with his rank and experience and the stability of his disease should have prompted such a decision. Correction is warranted to overcome a long-standing injustice.

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

The Chief, USAF Physical Disability Division, HQ AFPC/DPPD, also reviewed this case and counters the AFBCMR Medical Consultant's arguments for relief. Applicant contends that during the processing of his disability case, the PRC did not take into account that the lack of vision in his right eye had been waived in June 1944. A review of the medical board documents within his medical records make mention of the applicant's preexisting disability throughout. He was not found unfit for the loss of his right eye (which had been waived) but rather his overall visual impairment resulting from the scarring of his remaining eye and history of recurrent chorioretinitis. The author finds no errors or irregularities. The case was correctly processed, applicant's condition was appropriately rated and found unfitting, and he was afforded all rights to which entitled. Further, this case is extremely untimely, i.e., 34 years since the applicant was discharged. While the unfit decision by the

PEB appears appropriate and justified, any reasonable doubt concerning the applicant's fitness for duty could have been resolved by the AFBCMR in his favor three decades ago by allowing him to return to duty and demonstrate his fitness. Such an option is no longer available. Denial is recommended.

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

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant reviewed the Air Force evaluations and provided two responses. He explains why he waited so long. He agrees with the AFBCMR Medical Consultant's recommendation and disagrees with HQ AFPC/DPPD's. It is easy for HQ AFPC/DPPD to say in 1997 that "he wasn't found unfit for the loss of his right eye (which was waived)" What that author fails to say, and what the records show, is that the MEB, the doctor, and the PEB, in 1961-1963, never did know that his right eye was waived. Further, the records show that the chorioretinitis was inactive, stable, and not progressive. He argues that he was fit for duty. Neither his left eye nor his right eye fell under the disqualifying parameters of AFM 160-1. The loss of his right eye was a pivotal factor, if not the predominate factor, in the final deliberations. If his right eye had not been considered, and it shouldn't have been because of the waiver, he would have been returned to duty. His left eye was fine. He asks to appear before the Board.

Applicant's complete responses, with attachments, are at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After thoroughly considering the evidence, including the conflicting opinions of the Air Force, we are inclined to agree with the AFBCMR Medical Consultant that the applicant should have been returned to duty in 1963 rather than discharged for what was a stable, only mildly symptomatic condition. He had been able to continue his duties from the onset of his disease in his left eye in 1958 through his placement on the TDRL in 1961. The condition was stable, not progressive, and not resistive to treatment. As for the right eye, which was surgically removed in 1940, he was allowed to enter the military in 1943. He received a waiver fo

that condition in 1947 and had been found fit for duty each time he reenlisted during his years of service. We therefore believe he should have been returned to duty on 1 August 1963 rather than discharged. The applicant had 17 years, 1 month and 26 days when he was placed on the TDRL in 11 September 1961. Since he needed an additional 2 years, 10 months and five days to qualify for length of service retirement, and a member must be retired on the first of the month, we recommend applicant's records be corrected to reflect that he was returned to duty on 1 August 1963 and retired on 1 July 1966.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that he was not discharged on 1 August 1963 for physical disability but on that date was found fit and returned to duty, and he continued on active duty until 1 July 1966, when he was retired in the grade of master sergeant for length of service.

The following members of the Board considered this application in Executive Session on 14 July 1998, under the provisions of AFI 36-2603 :

Ms. Patricia J. Zarodkiewicz, Panel Chair
Mr. Loren S. Perlstein, Member
Mr. Dana J. Gilmour, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 25 Apr 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFBCMR Medical Consultant, dated 17 Jul 97.
- Exhibit D. Letter, HQ AFPC/DPPD, dated 9 Dec 97.
- Exhibit E. Letter, AFBCMR, dated 22 Dec 97.
- Exhibit F. Letter, Applicant, dated 29 Dec 97.


PATRICIA J. ZARODKIEWICZ
Panel Chair



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

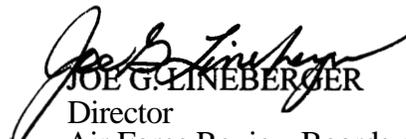
AFBCMR 97-01345

AUG 14 1998

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 to show that he was not discharged on 1 August 1963 for physical disability but on that date was found fit and returned to duty, and he continued on active duty until 1 July 1966, when he was retired in the grade of master sergeant for length of service.


JOE G. LINEBERGER
Director
Air Force Review Boards Agency