

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-00790

COUNSEL: NONE

DEC 4 1998

HEARING: NO

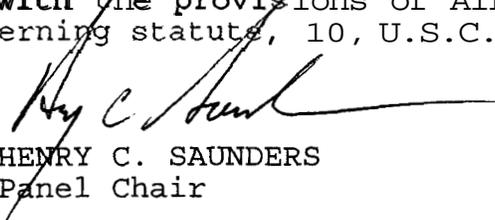
The applicant requests that his disability discharge on 15 March 1971 be set aside and he receive a disability retirement. Applicant's submission is at Exhibit A.

The appropriate Air Force offices evaluated applicant's request and provided an advisory opinions to the Board recommending the application be denied (Exhibit C). The advisory opinions were forwarded to the applicant for review and response (Exhibit D). As of this date, no response has been received by this office.

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 rebutted by 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. Henry C. Saunders, Mr. Henry Romo Jr., and Dr. Gerald B. Kauvar considered this application on 17 November 1998 in accordance with the provisions of Air Force Instruction 36-2603, and the governing statute, 10, U.S.C. 1552.


HENRY C. SAUNDERS
Panel Chair

Exhibits:

- A. Applicant's DD Form 149
- B. Available Master Personnel Records
- C. Advisory Opinions
- D. AFBCMR Ltr Forwarding Advisory Opinions

23 April 1998
98-00790

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


This request is not timely submitted, as 27 years have elapsed since final disposition was made in this case.

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

REQUESTED ACTION: The applicant was removed from the Temporary Disability Retired List (TDRL) and discharged with severance pay and 10% disability on 15 March 1971. He now applies requesting that his status be changed to a permanent disability retirement.

FACTS: The records indicate that the applicant met a Medical Evaluation Board (MEB) on 28 August 1967 and was referred to the Informal Physical Evaluation Board (IPEB) on 1 September 1967. He was assigned to the TDRL on 26 December 1967 with 100% disability for Schizophrenic Reaction, paranoid type, chronic, VASRD Code 9203. Following a 3-year period of observation on the TDRL, the applicant was found unfit for continued military service, removed from the TDRL, and discharged with severance pay and 10% disability effective 15 March 1971. The evaluation he underwent in December 1970, prior to this final disposition, found him in complete remission from all symptoms relating to his disorder and only slightly impaired for social and industrial reasons. He believes the record is in error because the military evaluated his disability at 10% and the Department of Veterans Affairs has evaluated his disability variously at 70-100% depending on his status at different re-evaluations. Findings and recommendations of the Physical Evaluation Board were sustained at all levels of review, approved by the Air Force Personnel Board on 22 February 1971, and are well supported by the evidence of record. There is no evidence to support a higher rating at the time of permanent disposition. His case was properly evaluated, appropriately rated and received full consideration under the provisions of AFR 35-4. Action and disposition in this case are proper and reflect compliance with Air Force directives which implement the law.

DISCUSSION: Once an individual has been declared unfit, the Service Secretaries are required by law to rate the condition based upon the degree of disability at the time of permanent disposition and not upon the possibility of future events. No change in military disability ratings can occur after permanent disposition under the rules of the military disability system, even though the condition may become better or worse. However, Title 38, USC authorizes the VA to increase or decrease the VA compensation ratings based upon the individual's condition at the time of future evaluations as has occurred in this case.

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RECOMMENDATION: The Medical Consultant is of the opinion that no change in the records is warranted and the application should be denied.

A handwritten signature in cursive script, reading "Frederick W. Hornick". The signature is written in black ink and is positioned above the printed name and title.

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

98 06790

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

22 May 98

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]
[REDACTED]

REQUESTED ACTION: Applicant requests that his disability discharge on 15 Mar 71 be set aside and he receive a disability retirement.

FACTS: Applicant was involuntarily relieved from active duty on 26 Dec 67 for physical disability under the provisions of AFM 35-4, and subsequently placed on the Temporary Disability Retired List (TDRL). He remained on the TDRL until he was Discharged With Severance Pay (DWSP) with a 10 percent disability rating on 15 Mar 71. Member completed seven years and twenty-three days of active duty. Member's application is considered untimely under the statute of limitations.

DISCUSSION: The purpose of the military disability system is to maintain a fit and vital force by separating members who are unable to perform the duties of their office, grade, rank or rating. Members who are separated or retired for 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 care to the member.

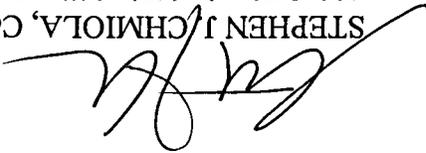
A review of the AFBCMR case file revealed that an MEB was convened at [REDACTED] AFB, [REDACTED] on 28 Aug 67, and referred to the Informal Physical Evaluation Board (IPEB). On 1 Sep 67, the IPEB found the member unfit for continued military service for a diagnosis of "schizophrenic reaction, paranoid type, chronic" and recommended he be placed on the TDRL with a 100 percent disability rating. Applicant agreed with the findings and recommendations of the IPEB on 8 Sep 67. Because of ongoing non-disability administrative actions, the member's case files were forwarded to the Secretary of the Air Force Personnel Council for adjudication. On 8 Dec 67, officials within the office of the Secretary of the Air Force approved the recommendation of the Physical Review Council (PRC) and directed that the member be placed on the TDRL under the provisions of 10 USC 1202, effective 27 Dec 67.

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While on the TDRL, the member received periodic physical evaluations at [REDACTED] on 20 Mar 69 and 17 Dec 70 respectively. During his initial TDRL evaluation in Mar 69, it was noted that his initial medical condition had subsided and had initially manifested primarily due to a lack of any social or job goals, along with difficulties in forming interpersonal relationships. Based on the updated medical evaluation, the PEB chose to retain the member on the TDRL for subsequent observation and reevaluation. During the Dec 70 TDRL evaluation, the member's medical condition was found to be in complete remission. Because his medical condition had significantly improved, the IPFB recommended that he be discharged with severance pay with a 10 percent disability rating. On 8 Feb 71, the member concurred with the findings and recommendations of the IPFB. Subsequently, officials within the Office of the Secretary of the Air Force directed that he be removed from the TDRL and discharged with severance pay with a 10 percent compensable disability rating under the provisions of 10 USC, Sections 1210 and 1203. Member was discharged on 15 Mar 71.

A thorough review of the AFBGMR file revealed no errors or irregularities in the processing of the applicant's case within the disability evaluation system. Applicant was appropriately found unfit for continued military service, properly rated under federal disability rating guidelines and, afforded all rights to which he was entitled under disability law and departmental policy. At the time of his discharge, he did not meet the requirement for disability retirement under the provisions of 10 USC 1201.

RECOMMENDATION: We recommend denial of the applicant's request. The applicant has not submitted any material or documentation to show he was inappropriately rated or processed under disability laws and policy at the time of his disability discharge.


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

[REDACTED]

[REDACTED]