



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-01397

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His narrative reason for separation be corrected to reflect a medical discharge.

APPLICANT'S CONTENTIONS

He had a medical condition and was given an experimental drug but did not want to risk his health.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force airman basic (E-1).

On 7 Jun 73, according to Special Order **Wor...**, the applicant entered the Regular Air Force.

On 26 Jun 73, the Mental Health Department stated the applicant related a history of sleep-walking since the age of 12. On three occasions he startled the dorms guards on duty in his barracks. It was recommended the applicant be administratively separated from the Air Force for his medical condition of sleep disturbance. The Mental Health Department stated the applicant did not have any psychiatric disease or condition to warrant separation under the provisions AFM 35-4, *Physical Evaluation for Retention, Retirement and Separation*.

On 27 Jun 73, the applicant was notified of his commander's intent to recommend he be discharged from the Air Force under the provisions of AFM 39-10, *Administrative Separation of Airmen*, paragraph 3-8Q and ATCR 39-2. The specific reason for the action was sleep disturbance.

On 28 Jun 73, the assistant staff judge advocate found the discharge action legally sufficient. On this same date, the discharge authority directed the applicant be discharged under the provisions of AFM 39-10, for sleep disturbance with an honorable service characterization.

On 16 Jul 73, per DD Form 214, *Armed Forces of the United States Report of Transfer or Discharge*, the applicant received an honorable discharge. The reason and authority is listed as "AFM 39-10, *Administrative Separation of Airmen*, paragraph 3-8Q." He was credited with 1 month and 10 days of total active service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

AIR FORCE EVALUATION

The AFBCMR Medical Advisor states that based upon a preponderance of available evidence, and upon the Presumption of Regularity in the discharge action, he found no objective basis that warrants the desired change of the record. The applicant was administratively discharged under the provisions of AFM 39-10, due to a medical condition not considered a compensable disability rendering him unsuitable for further military service. More importantly, the applicant's medical condition existed prior to service. Knowingly falsely entering "No" on his military entrance Report of Medical History made him vulnerable for a harsher discharge for Fraudulent Entry.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 27 Apr 22 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFBCMR Medical Advisor and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-01397 in Executive Session on 22 Jun 22:

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, Panel Chair

Work-Product

, Panel Member

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, Panel Member

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All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, dated 3 Sep 20.

Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, AFBCMR Medical Advisor, dated 26 Apr 22.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 27 Apr 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

3/17/2023

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Board Operations Manager, AFBCMR

Signed by: USAF