

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

JUL 15 1998

IN THE MATTER OF:

DOCKET NUMBER: 96-00315

COUNSEL: [REDACTED]

HEARING: [REDACTED] NO

APPLICANT REQUESTS THAT:

1. He be reinstated on active duty in an AGR-Title 32 position as a Security Police Officer.
 2. He be promoted to the grade of staff sergeant with back pay.
 3. NGB Form 26, ANG Active Duty Performance Rating, rendered for the period 20 September 1992 through 28 February 1993 be declared void.
 4. The mental health evaluations and alcohol counseling records/reports be removed from his records.
 5. His Secret Clearance be reinstatement.
 6. He be awarded the Community Service Award.
 7. Mismanagement on two evaluations and disciplinary action against the [REDACTED] ANG Base Commander for misuse/abuse of power, retaliation, retribution, and sending him to an improper mental health exam.
 8. Disciplinary action against the Deputy Chief of Security Police for retaliation, misuse/abuse of power, falsifying/fabricating records, violating the Privacy Act.
 9. He be authorized to carry his weapon in the full capacity of his duties.
 10. Disciplinary action against the clinical psychologist at Hanscom AFB and Dr. R. for falsifying mental health records.
 11. Disciplinary action against the Support Group Commander for retaliating against him because he went above her head in filing a complaint.
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APPLICANT CONTENDS THAT:

Applicant states that faulty mental health exams were Command influenced; that his separation was improperly conducted; that he was illegally suspended from duty; that his Command failed to answer complaints; that his Command violated regulations and retaliated against him; that the performance evaluation was rendered through retaliation; that statements provided to Mental Health were recruited, false, slanderous and falsified; and that he was discriminated against in promotion procedures. The applicant also contends that his suspension from duty was in violation of regulations and constituted retaliation; that massive noncompliance to regulations occurred; that his security clearance removal and admittance into alcohol classes incorporated through falsification of records and deceit; that evaluations conducted in retaliation for reporting complaints; and that the evaluations conducted were in total disregard for regulations.

In support of his appeal, applicant has provided a 46 page brief, with 46 attachments. In addition, he has provided a two page statement, with attachments, one being a copy of a cassette tape which involves a meeting with Col [REDACTED], Lt Col [REDACTED] and himself.

The applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant enlisted in the Regular Air Force on 25 November 1987 and was released from active duty 19 September 1990 in the grade of senior airman.

On 20 September 1990, he enlisted in the Air National Guard for a period of 6 years,

On 14 April 1993, the applicant was stopped and arrested by the Manchester, NH police for a DWI; however, due to insufficient evidence, the charges were later dropped and he was referred to alcohol counseling.

On 7 July 1993, applicant filed a formal complaint to the 157 ARG complaints officer.

On 19 August 1993, the investigating officer (IO) completed his investigation and recommended the applicant's claims of physical and emotional problem be evaluated, without obligation for treatment, and his employment as a security police specialist be terminated. Based on the recommendation of the investigating officer, applicant was referred for a mental health by his commander.

On 23 August 1993, applicant was evaluated by a Clinical Psychologist at ██████████ AFB. The psychologist indicated that the applicant presented with a high degree of defensiveness and a great fear of revealing himself. The psychologist noted that the applicant's profile was consistent with the following personality style: an individual who is likely to display some form of acting out behavior which may be quite intense and violent. The diagnosis was significant anti-social and narcissistic personality traits. In addition, the applicant was determined to have been unsuitable for duties involving the use of force or bearing of firearms under the provisions of AFR 125-26.

The applicant was again evaluated on 29 September and 6 October 1993. The diagnosis was alcohol dependence in remission and anti-social, narcissistic personality traits.

On 13 October 1993, applicant notified by his commander that he was recommending applicant for separation from full-time National Guard duty in accordance with ANGR 35-03, under the provisions of chapter 6, paragraph 6-5. The basis for the commander's action was that applicant had lost the professional qualification required for the performance of his assigned duties. (ANGR 35-03 para. 6-5(c) (3) Under the provisions of AFR 39-1 (C1), attachment 44, para 2c, applicant was required to carry a firearm to be qualified for duties in the Security Police career field. The recent mental health evaluation conducted by clinical psychologist concluded that applicant was not suitable for duties involving the use of force or bearing of firearms under the provisions of AFR 125-26.

On 18 October 1993, applicant acknowledged receipt of the notification and indicated that he would submit a rebuttal.

Based on an anonymous letter received by the National Guard Bureau Office of the Inspector General (NGB/IG) on 21 June 1994, alleging the fraudulent use of a government credit card, reprisal and several instances of mismanagement with the 157th Security Police Squadron, the NGB/IG completed an inquiry.

On 21 November 1994, the applicant's request for voidance of the Performance Appraisal rendered for the period 1 March 1993 through 11 August 1993 was approved by the Adjutant General and the report was removed from his records.

On 5 February 1995, the applicant requested separation from the ██████████ ANG and Air Force Reserve under the provisions of AFI 36-3209 (Resignation own Convenience). His request was approved and he was separated from the ██████████ ANG and Air Force Reserve on 12 March 1995. His service was characterized as honorable.

AIR FORCE EVALUATION:

The Chief, Utilization, Air National Guard Readiness Center, ANG/MPPU, reviewed this application and indicates that on 14 April 1993, applicant was stopped and arrested by the ██████████ police for a DWI. He was referred to mental health for evaluation, and based on his mental evaluation, applicant was no longer authorized to carry a firearm. Air National Guard Regulation 35-03, paragraph 6-5c(3) provides that an individual may be involuntarily separated from full-time National Guard duty for loss of professional qualification required for the performance of assigned duties.

Applicant has demonstrated that individuals with a later date of rank than his were promoted before him; however, no evidence was found to establish that applicant was more qualified than these individuals. Applicant's supervisor gave him an overall performance rating of "Excellent," for the period ending 28 February 1993, but the reviewing official non-concurred and lowered the rating to "Satisfactory." Applicant's evaluation was not signed by the reviewing official until 14 June 1993, nevertheless, they have no evidence that the evaluation would have been different had it been on time.

The Distinguished Community Service Award (DCSA) of the Federal Executive Association (FEA) does not appear to be affiliated with the Department of the Air Force or any other part of the Department of Defense, and therefore, the AFBCMR has no jurisdiction.

In regard to applicant's request concerning his security clearance, ANG/DPPU states that the Defense Investigative Service has coded applicant's security clearance "z" which means, "lost jurisdiction before determination was made." They can not recommend reinstatement of his security clearance until they know if applicant's clearance was suspended for other reasons to which they are not privy. Although a decision was made by the senior staff not to establish a Special Security file, this decision was never communicated to the Clearance Adjudication Division, and therefore applicant's clearance remained suspended pending adjudication of a file that was never created. This matter needs to be clarified to prevent unnecessary detriment to applicant's changes of obtaining a new security clearance in the future.

A complete copy of the evaluation, with attachment., is attached at Exhibit C.

The Chief, Information Security Division, Directorate of Security Forces, AF/SFI, reviewed this application and indicates that on 1 July 1993, the 157th SPS/CC established a special security file on applicant based on a request by the 157th ARG/CC. It was forwarded to the 497 IG/INS on 12 March 1995 with notification that applicant would be separated on 12 March 1995 and discharged honorably. On 3 May 1995, the 497 IG/INS coded applicant's

security clearance status as "Z" meaning the Air Force has lost jurisdiction over the individual.

Although the 157 ARG/CC formally requested the 497 IG/INS to void any prior notification to suspend applicant's security clearance, the 497 IG/INS representatives advised the 157 ARG representative that no action for reinstatement could be taken without the 497 IG/INS reviewing the special security file. Previous conversations with 157 ARG representative indicated a file was established based on a motor vehicle offense and statements towards co-workers.

If applicant becomes re-affiliated with the Air Force and a commander or supervisor requests reinstatement of his security clearance, the 497 IG/INS will adjudicate the special security file and make a security clearance eligibility determination in accordance with AFI 31-501, Personnel Security Program Management. Applicant earliest eligibility for reinstatement would be 3 May 1997. Applicant may request a copy of the special security file from the 497 IG/INS under the provisions of the Freedom of Information Act.

A complete copy of the evaluation, with attachments, is attached at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Counsel for the applicant reviewed the Air Force evaluations and indicates that the applicant has provided the Board with a lengthy, rambling narrative of his concerns. Frankly, having seen the advisory opinions he doubts that the application was read or, if read, understood. Neither the application nor the advisory opinions give the Board much guidance. This response is, therefore, an effort to focus the case on the central issue; namely, "Whether Applicant was misdiagnosed by an Air Force clinical psychologist thereby causing his separation." There is no other issue here.

On 20 August 1993, applicant's commander requested a mental health evaluation (Exhibit I). The Board will note that this request is directory in nature with multiple complaints articulated about applicant leaving no doubt as to command's negative attitude toward applicant. Importantly, however, what was not said was that applicant was a threat because he carried firearms. This will be a significant omission. Applicant saw a clinical psychologist and on 20 October 1993 was tested utilizing the MMPI-2. The raw scores are at Exhibit II. At Exhibit III is clinical psychologist's interpretation of the results. What is curious about this interpretation lies in block 15, Remarks, paragraph 1. she defines the referral as "Referred for a mental health evaluation by his commander due to various work-related problems and concerns about this individual's suitability to

carry a weapon." Nowhere in the referral is there any mention of concerns over carrying a weapon. This is significant because it strongly suggests that there were off record communications between this clinical psychologist and applicant's commander done in an effort to reshape the facts. One could call this command influence or professional dereliction. In any event somehow this clinical psychologist developed a new agenda,

Counsel states that the a new agenda had to develop because the MMPI-2 results were benign. This was "No Diagnosis" on AXIS I, and on AXIS II there was "Diagnosis Deferred" meaning no diagnosis. In other words there is no DST-IV basis for concluding that applicant had any psychiatric abnormality of any kind. What happen next is simply a violation of standard of care and points up once again the need for physicians to more clearly regulate the activities of clinical psychologists. The instant case is reminiscent of Blevings, AFBCMR 95-03103, where he successfully showed the failure to use DSM-IV standards as being fatal to a clinical psychologist's claim of mental disorder in a separation case.

The clinical psychologist stated that she did not recommend administrative separation under the provisions of AFR 39-10. Of course not, there was no personality disorder. But then in a burst of psychobabble she states: "it is my professional opinion that these personality traits are severe enough to preclude him from future duties in the Security Police career fields. He is not considered suitable for duties involving use of force or bearing of firearms under the provisions of AFR 125-26 and is not suitable for duties in the Personnel Reliability Program (PRP under the provisions of AFR 35-99." The clinical psychologist relies upon test results that by no means led to that conclusion, but she did end up with the result the command wanted.

Immediately after this disgraceful performance by the clinical psychologist, applicant quite prudently sought professional advice in the civilian sector within days of the military evaluation. On 4 November 1993, The civilian physician provided a report of evaluation of applicant. Applicant was again administered an MMPI-2. The raw data is at Exhibit IVA and the results are at Exhibit IV. The civilian physician's diagnosis is not merely differential, it is diametrically opposed to Air Force clinical psychologist's. Of almost equal importance is the common sense associated with this case. Applicant provided security to the President of the United States. He was screened in every possible sense and found to have no mental or emotional condition which would preclude him from such sensitive work. His lack of violence is attested to time and time again in every facet of his life by those around him (Exhibit V). There is no doubt that his bogus mental evaluation formed the basis for applicant's separation (Exhibit VI!). When a psychologists acts in league with a commander who has a agenda and that psychologist betrays her professional responsibilities on the

altar of rank, they have all taken a collective step backward. This Board can correct this wrong.

Counsel provided an additional response and states that they strongly disagree with the notion that applicant's mental health evaluation was proper and correct. In truth there is no psychiatric diagnosis from the clinical psychologist which supports her conclusions. This is simply horrendous health care delivery that the Boxer amendment is aimed at. They cannot allow clinical psychologists to use their position of trust to accommodate command. It is wrong and must be stopped.

Counsel's complete responses, with attachments, are attached at Exhibits F and G.

ADDITIONAL AIR FORCE EVALUATION:

The Chief, Medical Consultant, AFBCMR, reviewed this application and states that based on the Board's request for further review, professional mental health provider input was sought regarding applicant's allegations of impropriety in the administration and evaluation of his case. A thorough review by the Chief of Neuropsychiatric Services at Malcolm Grow Medical Center found the medical consultation and recommendations appropriate for the findings and results of testing performed in 1993 prior to the applicant being removed from his Security Police position with the New Hampshire Air National Guard. Therefore, the BCMR Medical Consultant is of the opinion that no change in the records is warranted and the application should be denied.

A complete copy of the Air Force evaluation, with attachment, is attached at Exhibit H.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant's counsel reviewed the Air Force evaluation and states that this case once again demonstrates that some clinical psychologists within the military bow to command influence, rather than to principles dictated by their professional status. Counsel notes the applicant has been accepted into Federal Law Enforcement with the right to carry a gun. In addition, to being accepted, he was investigated as to his mental health status. In view of this, counsel believes this demonstrates more conclusively that applicant was wronged.

Counsel's complete response, with attachments, is attached at Exhibit J.

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. We agree with the applicant's counsel in that the only issue before this Board is whether or not the applicant was misdiagnosed by an Air Force clinical psychologist; thereby, causing his separation. After thoroughly reviewing the evidence of record and noting the applicant's contentions, we are not persuaded that the applicant was misdiagnosed. Counsel contends the applicant was referred for a mental health evaluation and removed from his AGR position in retaliation for his filing complaints against [REDACTED] ANG personnel. However, we find no evidence to support this contention. The NGB/IG thoroughly investigated this allegation and determined that the separation action was not reprisal. The evidence of record indicates that the applicant was referred for a mental health evaluation by the commander, based on his pattern of behavior and the recommendation of the officer who was investigating his complaints against [REDACTED] ANG personnel. Prior to the applicant's separation, he received three separate mental health evaluations. These evaluations have been independently reviewed by an active duty specialist in this field (Chief, Neuropsychiatric Services, Malcolm Grow Medical Center) and found to be appropriate for the findings and results of the testing performed prior to the applicant's removal from his Security Police position. The applicant would have been provided the opportunity to challenge the medical findings and the reasons cited for the proposed discharge action against him had he not elected to voluntarily separate. Therefore, in the absence of evidence to the contrary, we find no basis upon which to recommend favorable consideration of these requests.

THE BOARD DETERMINES THAT:

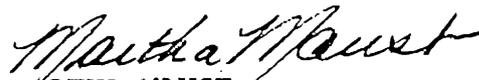
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 7 October 1997 and 10 June 1998, under the provisions of AFI 36-2603:

Ms. Martha Maust, Panel Chairman
Mr. Michael P. Higgins, Member
Mr. Gregory H. Petkoff, Member
Mr. Phillip E. Horton, Examiner (without vote)

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 30 Apr 96, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, ANG/MPPU, dated 21 Nov 96, w/atchs.
- Exhibit D. Letter, AF/SFI, dated 29 Jan 97, w/atchs.
- Exhibit E. Letter:, AFBCMR, dated 24 Feb 97.
- Exhibit F. Letter, Counsel, dated 25 Apr 97, w/atchs.
- Exhibit G. Letter, Counsel, dated 15 Jun 97.
- Exhibit H. Letter, BCMR Medical Consultant, dated 22 Dec 97, w/atchs.
- Exhibit I. Letter:, AFBCMR, dated 15 Jan 98.
- Exhibit J. Letter, Counsel, dated 21 Mar 98, w/atchs.


MARTHA MAUST
Panel Chairman