

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-03128

COUNSEL: [REDACTED]

HEARING DESIRED: YES

Applicant requests that his records be corrected to reflect that he was medically retired rather than honorably discharged. 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 and counsel for review and response (Exhibit D). As of this date, no response has been received by this office.

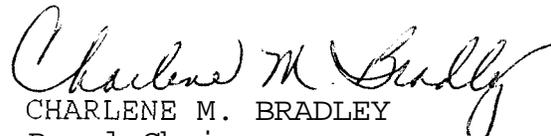
After careful consideration of applicant's request and the available evidence of record, we find insufficient evidence of error or injustice to warrant corrective action. The facts and opinions stated in the advisory opinions appear to be based on the evidence of record and have not been rebutted by 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 applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing is not favorably considered.

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 Ms. Charlene M. Bradley, Mr. Richard A. Peterson, and Mr. Henry Romo, Jr., considered this application on 27 Jan 98 in accordance with the provisions of Air Force Instruction 36-2603 and the governing statute, 10 U.S.C. 1552.


CHARLENE M. BRADLEY
Panel Chair

Exhibits:

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

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

25 Aug 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 Records [REDACTED]

REQUESTED ACTION: Applicant requests that his honorable discharge initiated under AFI 36-3208 be changed to a medical retirement.

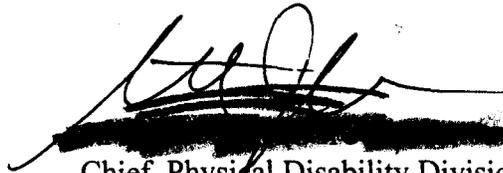
FACTS: Applicant voluntarily separated from the Air Force on 3 Jun 96 upon completion eleven years, four month, and nineteen days of active duty. As he received a 30 percent disability rating from the Department of Veteran Affairs (DVA) approximately two months after his honorable discharge, he now requests that he be granted a medical retirement for his service-connected conditions.

DISCUSSION: We carefully reviewed the AFBCMR application and verify that the applicant was not referred to or considered by the Air Force Disability System under the provisions of AFI 36-3212. 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 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.

The applicant's medical condition is fully explained by the Medical Consultant; we concur with his advisory. The medical record clearly shows that while the applicant may have been treated for various medical conditions while on active duty, none were serious enough to render him unfit for further military service under the provisions of disability law and policy. He was fit for duty upon his Jun 96 separation from active duty.

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RECOMMENDATION: We recommend denial of the applicant's request. The applicant **has** not submitted any material or documentation to show that the service member was unfit to perform the duties of **his** office, grade, rank or rating **as** the result of a physical disability.

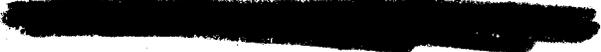

[REDACTED], USAF
Chief, Physical Disability Division
Directorate of Pers Prog Management

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4 Jun 97
96-03128

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**


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

REQUESTED ACTION: The applicant was separated under the provisions of AFI 36-3208 upon completion of required military service on 3 Jun 96 after serving 11 years, 4 months, 19 days on active duty. He now applies requesting the records be changed his separation to a medical retirement.

FACTS: Review of available medical records shows applicant was treated throughout much of his service time for orthopedic injuries of his ankles and thumb, injuries mainly related to participation in basketball games. He underwent several surgeries to correct problems, all the while performing well in his work as noted on his performance reports. He had a separation physical examination in Feb 95, and his history indicates he was "in good health" as reported by him. The exam did not find any disqualifying defects, and he was found qualified for worldwide service. In evaluating his service-connected conditions, the Department of Veterans' Affairs has awarded him a 30% compensation for a combination of 4 different factors, and he bases his claim for medical retirement on this.

DISCUSSION: 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 AFR 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. While the applicant was treated for some ordinary medical problems while on active duty, as will occur in most service members, none of these problems singly, nor any combination of them, was of sufficient severity to justify a finding of unfit. There is no evidence to suggest that the applicant deserved consideration for separation through the Medical Disability Evaluation System.

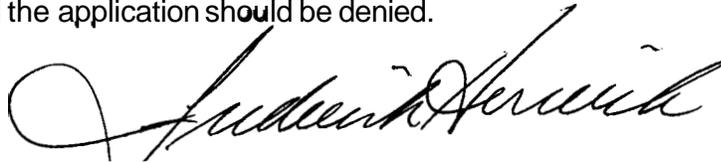
The reason why the applicant could be declared fit for duty by the Air Force and later be granted 30% service-connected disability by the Department of Veterans Affairs lies in understanding the differences between Title 10, USC, and Title 38, USC. Title 10, USC, Chapter 61 is the federal statute that 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 medical condition so severe that it prevents performance of any work commensurate with rank and experience. Once this determination is made,

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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 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 is of the opinion that no change in the records is warranted and the application should be denied.



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



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