

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-111

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on February 25, 2011, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 22, 2011, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, who was honorably discharged from active duty on July 28, 1982, asked the Board to correct to make him eligible for veterans' benefits from the Department of Veterans' Affairs (DVA). He stated that he is currently ineligible because he did not complete at least 24 months of continuous active duty and he was not discharged due to disability, hardship, or an early release program. The applicant alleged that he was released early from active duty because of chronic seasickness. Although he had been given shots and pills to try to alleviate his seasickness, the doctor stopped prescribing the medications because, he told the applicant, they were slowing his heart rate down. The applicant also alleged that "the motion sickness brought about an increase in my blood pressure" and that he "should have gone before a medical board ... to determine the exact cause for early release." The applicant alleged that he discovered the error in his record in October 2010.

SUMMARY OF THE RECORD

On October 27, 1981, the applicant enlisted in the Coast Guard. During his enlistment physical examination on October 28, 1981, he reported no history of motion sickness, and his blood pressure measured 126/88 while sitting, 122/82 while recumbent, and 132/100 while standing. Upon completing boot camp, the applicant was assigned to a cutter.

Medical notes in the applicant's record show that while aboard the cutter, he was repeatedly treated for severe episodes of seasickness. A doctor reported that the applicant "remains sick with or without medications. ... Patient a good worker in port but non-functional underway. Does not desire separation from service, but explained that if unable to be retained as fit for sea duty, the CG may take that direction." The doctor noted that the seasickness medications were making the applicant too drowsy to work. The medical records also show that his blood pressure was recorded as 108/72 on March 9, 1982, and 110/70 on March 25, 1982.

On June 3, 1982, the commanding officer (CO) of the applicant's cutter recommended that the applicant be discharged due to motion sickness in accordance with Article 12-B-12 of the Personnel Manual. The CO stated that "even with medication, he is only able to function marginally at best. [He] does not desire separation from the Coast Guard, however, he is considered not capable of performing acceptably in any capacity afloat."

On July 14, 1982, the applicant underwent a physical examination pursuant to his pending discharge. He reported that he was in good health except when he was aboard ship and seasick. The doctor noted that his blood pressure was 130/82 while sitting, 132/84 while recumbent, and 134/82 while standing. He recommended that the applicant follow up with more blood pressure tests in three months but found the applicant fit for discharge. The applicant signed a form agreeing with the doctor's finding that he was fit for discharge.

On July 28, 1982, the applicant was honorably discharged for the "convenience of the Government" with a JFV separation code and an RE-3X reenlistment code. The JFV separation code means that he had a "condition, not a disability, interfering with performance of duty." The RE-3X code meant that he was eligible to reenlist except for the fact that he had motion sickness. The applicant had completed 9 months and 2 days of active duty.

VIEWS OF THE COAST GUARD

On June 2, 2011, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny relief in this case. He stated that the applicant should be denied because it is untimely and because the applicant "has not provided any relevant documentation or rationale to support his position. Based on the information of record, there is no error or injustice."

The JAG also adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC). The PSC stated that under the Coast Guard Medical Manual, members with incapacitating motion sickness are not entitled to medical boards; instead they are administratively discharged. The PSC stated that the records show that the applicant was discharged because of motion sickness and that he has not proved that his records are erroneous or unjust.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 22, 2011, the applicant responded to the views of the Coast Guard. The applicant stated that about six or eight months after his discharge, he sought benefits at a local DVA hospital and was denied because he did not have 24 months of continuous service. He accepted

that decision because he did not know any better. However, in October 2010, he went to an unemployment office, which contacted the DVA on his behalf. Through the DVA, he learned that because he had served over six months of continuous active duty and received an honorable discharge, he should be eligible for all veterans' rights and privileges. The applicant again alleged that while in the Coast Guard, the doctor declined to give him more shots or pills for his seasickness because they were slowing his heart rate down.

APPLICABLE LAW

The Coast Guard Medical Manual contains the regulations governing members with various medical conditions. Chapter 9.A.3.h. of the Medical Manual states that "Members that manifest chronic motion sickness, that do not respond to conventional therapy, and are unable to perform their duties as a result, will be considered for administrative separation from active duty as per the Personnel Manual, COMDTINST M1000.6 (series)."

Chapter 3.F.8.c.(2) of the Medical Manual states that members may be disqualified from service and processed for a physical disability evaluation if they have been diagnosed with "hypertensive cardiovascular disease and hypertensive vascular disease," as evidenced, for example, by "diastolic pressure consistently more than 90 mm Hg following an adequate period of therapy on an ambulatory status."

Article 12-B-12 of the Personnel Manual states that servicemembers with chronic motion sickness may be discharged for the convenience of the government.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The applicant alleged that he discovered the error in his record in October 2010. However, the record shows that he knew in 1982 that he was being discharged for chronic motion sickness, rather than because of a physical disability, hardship, or early release program. Under 10 U.S.C. § 1552(b), an application should be filed within three years of the applicant's discovery of the alleged error or injustice. The Board finds that the application was not timely filed because it was filed more than 25 years after the applicant knew he had been discharged for chronic motion sickness.
3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports excusing the untimeliness of an application, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." *Id.* at 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant stated that he only recently discovered that he should be eligible for veterans' benefits through the DVA. However, he also stated that he was told that he was ineligible for veterans' benefits six to eight months after his discharge in July 1982. The record before the Board contains no information that justifies the applicant's long delay in seeking correction of the alleged error.

5. The Board's cursory review of the merits of the case shows that the applicant was discharged because of chronic motion sickness that (a) did not improve with medical treatment and (b) interfered with his performance of duty. The doctor reported that the applicant remained seasick "with or without medications" and was "non-functional underway." Therefore, in accordance with Chapter 9.A.3.h. of the Medical Manual, the applicant was subject to an administrative discharge because he had "chronic motion sickness, that [did] not respond to conventional therapy, and [was] unable to perform [his] duties as a result." The record shows that he was properly discharged for the convenience of the government pursuant to Article 12-B-12 of the Personnel Manual. The applicant's military and medical records showing that he was discharged because of chronic motion sickness are presumptively correct. 33 C.F.R. § 52.24(b). Motion sickness, even if chronic and unresponsive to medical treatment, is not considered a disability, and it does not entitle a member to a medical board or disability separation. Although the applicant claimed his seasickness medication was affecting his blood pressure, there is no evidence in his medical records showing that he was ever diagnosed with hypertension while on active duty or that his blood pressure was ever measured at a level that met the requirements for such a diagnosis. The Board finds that there is no evidence supporting the applicant's allegation that he was or should have been discharged because of a disability. Therefore, the Board finds that his claim cannot prevail on the merits.

6. Accordingly, the applicant's request should be denied because it is untimely and lacks merit. However, whether the applicant is eligible for veterans' benefits can only be determined by the DVA. If he has not recently consulted the DVA about his eligibility, he should do so again.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Bruce D. Burkley

Christopher M. Dunne

Barbara Walthers