DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-123

[redacted]

FINAL DECISION

This proceeding was conducted 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 upon receiving the completed application, including the military and medical records, on June 4, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 8, 2016, 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 on July 26, 2000, asked the Board to correct her record to reflect a medical retirement. The applicant stated that she suffered a stroke in 1995 and underwent a carotid dissection "but residuals continued to plague me. Confusion, difficulty remembering and experiences of TIAs [transient ischemic attacks] left me at risk to myself and those in my charge. For these reasons I was forced to leave active duty." The applicant alleged that she discovered the error in her record on March 24, 2011, without further explanation. In support of her allegation, the applicant submitted copies of her records, which are included in the summary below.

SUMMARY OF THE EVIDENCE

The applicant enlisted in the Coast Guard on May 27, 1985, at age 22. She served on an [redacted] before attending "A" School to earn the [redacted] rating and advanced to [redacted]/E-4 in 1988. Following "A" School, she was transferred to a large office in New Jersey. On July 1, 1989, the applicant advanced to [redacted]/E-5. In 1991, she transferred to a cutter.

Following a quadrennial physical examination on October 1, 1992, the applicant was diagnosed with diabetes mellitus, type II, which was found to be controlled by diet and not disabling. She was provided nutritional counseling.

On January 27, 1995, the applicant reenlisted for five years to accept transfer orders that summer. On J[redacted] 6, 1995, before transferring, she suffered sudden confusion and inability to focus. She had a history of migraine headaches and hypertension. A CT scan and MRI revealed a "left parietal non-hemorrhagic non-space occupying lesion," and an angiogram revealed a "carotid artery dissecting aneurysm extending up to the petrous portion of the carotid artery on the left side." She was diagnosed with a left parietal stroke and "spontaneous left carotid dissection." Her symptoms abated while in the hospital, but she was prescribed Coumadin, a blood thinner, and Dilantin, an anticonvulsant, in case she had a seizure disorder, and was advised not to undertake strenuous activity or sea duty pending evaluation by a neurologist. The doctor noted that 20% of people who suffer such a stroke later suffer a similar stroke on their other side.

On August 16, 1995, a neurologist reported that the applicant's gait, strength, and sensation were normal. The applicant reported that her "symptoms have resolved completely." The neurologist stated that she was "status post left parietal stroke, secondary to left carotid artery non-traumatic dissecting aneurysm," and should continue to take Coumadin until the aneurysm was no longer present, as well as Dilantin until an EEG showed no evidence of a seizure disorder. The neurologist reported that her "prognosis at this time is good for complete neurological recovery from her stroke which occurred last month."

The applicant transferred to a new unit. On October 11, 1995, a neurologist noted that at the time of her stroke in July 1995, the applicant had suffered confusion and memory impairment, but her visual, m[redacted]or, sensory, cranial nerve, and cerebellar function examinations were normal. She was able to read without difficulty and showed no left/right confusi[redacted] "is oriented x 3 with no difficulty noted for memory or language. Motor and sensory modalities are normal now. Cranial nerves are normal. No gross visual field defects. Cerebellar function is normal. DTR's normal. Neck exam revealed normal bilateral carotid pulse with no bruits. No cardiac gallops or m[urmurs]. No edema. A: [Patient] stable and recovered from the vascular event. Needs a medical board to determine retainability."

On December 5, 1995, the applicant sought treatment for intermittent right arm and facial numbness, a missing spot in her visual field, cramps in her hands and neck, and a problem with her speech. The doctor increased her Dilantin dosage, advised her to return if her symptoms continued, and referred her to an ophthamologist and neurologist for an MRI. The ophthalmologist reported "no evidence of neuroophthamologic compli[cations]/sequelae (nl [normal] v. [visual] fields & optic nerve function."

From December 19 to 22, 1995, the applicant was evaluated at the National Naval Medical Center in Bethesda, Maryland, for [redacted]edical b[redacted] processing.

On January 29, 1996, a neurologist reported that an MRI and ultrasound had confirmed the applicant's diagnosis of left parietal stroke and left carotid dissection. She was no longer taking Coumadin but continued to take Dilantin. Her intermittent numbness in her left cheek had stopped since she stopped taking Coumadin.

On March 11, 1996, the neurologist reported that the applicant had "no complaints" and was "doing well." There had been no changes in her condition. Her Dilantin prescription had been reduced to [redacted] mg daily and tapering off would continue.

On March 19, 1996, the Initial Medical Board (IMB) reported that the applicant's potentially disqualifying diagnoses were left parietal stroke secondary to a left carotid artery dissection, type II diabetes mellitus, labile hypertension, hyperlipidemia, and history of migraine headaches. The IMB placed her on limited duty for six months, with no deployment or physical fitness training, and also made the following findings and recommendations:

> Her left parietal stroke now seems to be well evolved and her intermittent right hand and arm tingling, as well as her periorbital tingling, may very well be the residual results of that defect. Given the results of her recent MRI and MRA findings, as well as her carotid Doppler ultrasound, it is felt that her condition has stabilized and that she can be safely discontinued from her Coumadin therapy. Additionally, we will taper her Dilantin over several months and to further evaluate whether or not she does, in fact, have a seizure disorder. It is felt that she probably does not since she never had any indication of seizures in the past, either prior to or after her parietal stroke. Additionally, it is well established in literature that there is a 20% chance of bilateral carotid artery dissections and so there is some concern that this may occur on the right but at present, there does not seem to be any indication of that and there is well re-established blood flow from the right side to the left [redacted] of the brain. Given that, and respecting the member's desire, it is felt that she should be observed for a minimum of six months on lin[redacted] [redacted]adin and her Dilantin, and at that time if she has no further problems, it is felt by this board that she could be returned to full duty.

On September 9, 1996, the applicant's command provided the IMB with a long list of all the duties she might be expected to perform as a telephone technician, and on September 12, 1996, the applicant again acknowledged the findings and recommendation of the IMB and indicated that she did not desire to rebut them. She also submitted a statement listing her symptoms as "weakness and numbness in right arm, headache, periods of confusion and shortened attention span," which "are more prominent after periods of physical exertion." She stated that she had been serving as the electronics shop supervisor and had helped close down the unit, which involved "three months of physical labor, moving furniture, loading and unloading trucks, etc. During this time, the residual symptoms of the stroke were much more prominent and I was often very fatigued. After [the unit's] decommissioning, I took 70 days' leave before reporting to [another unit] on September 7, 1996 and officially started work [there] on Monday the 9th of September. I am currently [redacted] on the [redacted] promotion list and will be competing in the upcoming November SWE [service-wide examination for advancement to [redacted]]. I feel that despite my condition, I have been and will continue to be a productive member of the United States Coast Guard."

On September 17, 1996, a neurologist reported that the applicant continued to suffer from headaches and paresthesia in association with the headaches. In addition, the applicant reported that she continued to note "mild confusion in association [with] fatigue," but no other problems.

The neurologist conducted motor, sensory, coordination, gait, and other tests and found her fit for full duty.

On January 30, 1997, after the applicant had been off both Coumadin and Dilantin for more than six months, the same doctors who had served on the IMB convened as a Disposition Medical Board and found that the applicant's potentially disqualifying diagnoses were left carotid artery dissection and status post parietal infarct with right arm numbness but that she was fit for duty. On February 28, 1997, the applicant was counseled about these findings and about her rights by an attorney and indicated that she did not desire to rebut them or to submit a statement.

On February 1, 1997, the applicant advanced to [redacted] E-6.

On April 8, 1997, a Central Physical Evaluation Board (CPEB) convened to consider the applicant's fitness for duty based on her medical records. The CPEB found the applicant to be fit for full duty.

On April 18, 1997, after being counseled by an attorney, the applicant accepted the CPEB's findings and recommendations in writing and waived her right to a formal hearing.

On April 24, 1997, the Commandant reported to the applicant's command that the recommendation of the CPEB had been approved and that the applicant would not be retired or separated by reason of physical disability.

On October 17, 1997, the applicant was awarded a Meritorious Team Commendation ribbon as part of a team replacing a [redacted]

The applicant's medical records show continuing assessment of and medication for diabetes, high blood pressure, and hyperlipidemia, with nutritional counseling and occasionally changes in dosage through 2000. In addition, in 1999 she was diagnosed with acute bronchitis and started several months of physical therapy for right elbow pain.

On February 15, 2000, the applicant underwent a pre-separation physical examination[1] because she had decided not to reenlist when her enlistment expired in July 2000. During this examination, it was noted that her blood pressure was high and she was referred to her primary care manager. In taking her medical history, the doctor noted her history of carotid dissection in 1995; diabetes mellitus, type II; and high blood pressure, for which she was taking medication. On the report of this examination, the doctor noted that her "defects and diagnoses" were uncontrolled high blood pressure, diabetes mellitus, and smoking. The doctor referred her to an internist for her blood pressure and noted that she was not then qualified for separation.

On February 28, 2000, the internist reported that the applicant had stopped taking her blood pressure medication when she suffered shortness of breath after the dosage was increased.

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[1] The Board notes that the applicant alleged that this was not a pre-separation examination, but the purpose of the examination is written on the first page of the report.

The doctor advised her to continue to stay off the medication for two weeks while checking her blood pressure frequently and then to contact him for further determination.

On April 5, 2000, the applicant's doctor adjusted her diabetes medication and stated that her hyperlipidemia was well controlled.

On April 7, 2000, the applicant reported that she had minimal pain in her right arm. Her physical therapist noted that she was progressing slowly.

On April 17, 2000, the applicant reported that she still had pain in her right arm when picking up heavy objects.

On June 28, 2000, a doctor noted that the applicant reported occasional low glucose values and they "discussed diet, exercise, snacks." The doctor did not change her medications for diabetes or blood pressure and noted that her hyperlipidemia was well controlled.

On July 26, 2000, the applicant was honorably discharged at the end of her enlistment with an RE-1 reentry code (eligible to reenlist).

On April 29, 2002, the applicant filed a claim with the Social Security Administration (SSA) for disability benefits. The claim was initially denied and at a hearing on June 7, 2004, the applicant alleged that her disability began on May 29, 2001, which was when she stopped working. The SSA stated that its decisions are based on whether she is unable "to engage in any substantial gainful activity by reason of any medically determinable physical or mental [redacted] pected to last for a continuous period of not less than 12 months." The SSA listed the applicant's medical conditions as diabetes mellitus, status post cerebrovascular accident, with right-sided paresthesias, status post left carotid artery dissection, hypertension, migraine headaches, epicondylitis of the right elbow and hand, and chronic bronchitis. The applicant told the SSA that she could neither stand nor sit for more than 20 to 30 minutes, walk for more than 300 feet, or lift more than one pound. The SSA awarded her benefits after finding that her claims were credible and that she had demonstrated that she "does not retain the residual functional capacity to perform a full, wide or significant range of jobs even at the sedentary level."

In October 2003, more than two years after her discharge, the applicant was referred by a neurologist for a neuropsychological examination. A clinical psychologist noted that she had received a 50% service-connected disability rating from the Department of Veterans Affairs for diabetes, bronchitis, and thrombosis in brain. According to the psychologist, the applicant stated that after her stroke in 1995, she had xperien "severe fatigue and left-sided heaviness for periods of days. She also has episodes of 'fogginess' in which she will have nished awareness of surroundings, altered physical bodily sensations, plus a pressure in her head. Cognitive symptoms during these periods include 'getting confused', mixing up right & left ('get things backward'), and short-term memory impairment." The psychologist noted that a CT scan had "revealed an area of encephalomalacia in the left post-central gyrus and underlying white matter gliosis. An EEG was normal though." In addition, "[t]he results of testing were variable. … [She] performed poorly on selected measures of symptom validity, indicating that the effort she

expended was not adequate to yield a reliable determination of her true cognitive abilities. In addition, the pattern of results did not correspond to standard neurological disorders. Factors beyond her neu[redacted]gical damage are significantly affecting her cognitive functioning. While some of her test results will be discussed, these data should not be regarded as representative of her maximal skills." The test results showed that her motor skills and language skills were within normal limits, that her "attention and concentration were mixed," and that her "short-term memory skills were highly erratic," and raised "extreme doubt about her effort." The psychologist attributed the testing results to emotional distress and depression.

VIEWS OF THE COAST GUARD

On November 19, 2015, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief in this case.

The JAG stated that the application is untimely and so should not be considered by the Board beyond a cursory review. In this regard, the JAG noted that the applicant filed a disability claim with the SSA in 2002 and did not explain her alleged date of discovery being March 24, 2011.

Regarding the applicant's disability claim, the JAG stated that she was discharged from the Coast Guard on July 26, 2000, with an RE-1 reentry code because she did not reenlist when her enlistment ended. The JAG also stated that there is no clear medical evidence that she was unfit for duty at the time of [redacted]discharge. Instead, the JAG concluded, the record indicates that the applicant "knowingly and willingly separated from the service having completed [redacted] of active duty time."

The JAG also adopted the facts and analysis provided by the Personnel Service Center (PSC) in an attached memorandum. PSC noted that the applicant did not explain why she waited fifteen years from her date of discharge to apply for correction of her record.

Regarding her stroke and residual symptoms, PSC stated that the applicant was processed under the PDES from 1995 through 1997, requested retention despite her condition and residual symptoms, and was found fit for duty by the CPEB in 1997 despite her condition and residual symptoms. She received legal counsel regarding her PDES processing and waived her right to a hearing after being found fit for duty. Therefore, PSC argued, the fact that she continued to have some residual symptoms of her stroke did not make her unfit for military service at the time of her discharge. PSC noted that the SSA had found that the applicant's disability began in May 2001, several months after her discharge.

Regarding her high blood pressure, PSC noted that she was not fit for [redacted] on the date of her pre-separation physical examination, February 15, 2000, because of high blood pressure. However, PSC stated, the record shows that she was better two weeks later and she continued to visit the clinic for this condition and others prior to her separation without a finding that she was unfit for military service.

PSC stated that the applicant's contention that she was discharged because she was physically unable to serve is not supported by her record. PSC stated that she continued to work at her unit as a [redacted] and that under Chapter 2.C.2.b.1. of the Physical Disability Evaluation System (PDES) Manual, COMDTINST M1850.2D, the applicant's continued performance of duty until her separation created a presumption of fitness for duty, which she has not overcome.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 20, 2016, the Board received the applicant's response to the advisory opinion. Regarding the timing of her application, the applicant stated that "she discovered the results of the medical board's decision only after she was able to obtain copies of her military records." She also learned the results of her February 15, 2000, physical examination only after receiving her records. She alleged that she had never believed that CPEB's finding that she was fit for duty was correct, thought that they had not properly considered the risk to her and others, and after reading an online article about medical retirements in 2011, she started trying to get copies of her medical records but could not and so hired a lawyer in November 2012.

The applicant alleged that she was discharged "because she was unfit to complete the duties of her position" due to her headaches, fatigue, and confusion, which rendered her unsuitable for retention. She stated that she "had symptoms and physical impairments that were listed as disqualifying conditions for retention or reenlistment" at the time of and after her discharge. The applicant noted that under Chapter 2.C.2.(e), a member whose impairment "may be expected to interfere with the perform[redacted]e of duty in the near future may be found not fit for duty even though the member is currently capable of performing all assigned duties." [redacted]

The applicant stated that the report of her physical examination dated February 15, 2000, shows that she had uncontrolled high blood pressure, diabetes, migraines, weight gain, right collar pain, and back pain. She alleged that it was actually a regular physical examination, not a pre-separation examination, but it qualified as a pre-separation examination because it occurred within a year of her discharge. She argued that because she "failed" this examination, she should not have been separated without PDES processing. She noted that under Chapter 3.F. of the Medical Manual, aneurysms, hypertension, cerebrovascular symptoms, diabetes, and migraines are listed as disqualifying conditions for retention.

The applicant stated that she did desire to stay in the Service but did not understand why she was found fit for duty because of her symptoms. She alleged that her "normal duties if returned to full duty includ[ed] working with high-voltage cables (5,000 volt cables and transformers), communication equipment, climbing and maintaining towers up to 180 feet, and overseeing of junior members. I did not w[redacted]t to cau[redacted]jury to myself or others." She noted that she was therefore placed on limited duty that expired on September 15, 1996. [redacted]

The applicant stated that after the CPEB found her fit for duty, her symptoms continued and work was extremely difficult. She alleged that she made many mistakes due to her confusion. Her duties "kept me traveling hundreds of miles per week" because the Coast Guard—

> was overhauling all of its communication and computer systems. I was feeling worse and more confused. At the time of my discharge, I was unable to wear my uniform without help buttoning my shirt. I wore coveralls most of the time. Both of my hands were swelling up, my right elbow and shoulder were in constant pain. I was still experiencing residuals of blindspots, mental confusion, fatigue and migraines. I also had developed chronic bronchitis, chest pain, shortness of breath, [and] had undetermined nodules on my lungs as per medical records.[2] I was treated at several local emergency rooms for migraines and difficulty breathing. I was in poor health and it was worsening, which was stated in my last physical. Yet despite this I was listed as fit for duty. I did not want to become more incapacitated. I had a young daughter, was a single parent, and I did not want to be responsible for causing injury to som[redacted] or myself.

The applicant stated that after her discharge from the Coast Guard, she tried to work but could not maintain the activity. Because she was trying to work up until May 2001, the SSA used that as the starting date for her disability. She stated that the SSA and DVA have both found her unfit for duty or work.

The applicant concluded that there is substantial evidence to support her claim that she was not fit for duty and should have been medically retired.

APPLICABLE REGULATIONS

Chapter 3.B.3.a.1. of the Medical Manual in effect in 2000, COMDTINST M6000.1B, states that when completing the Report of Medical Examination, pursuant to a physical examination, [redacted]

> [w]hen the results of all tests have been received and evaluated, and all findings recorded, the examiner shall consult the appropriate standards of this chapter to determine if any of the defects noted are disqualifying for the purpose of the physical examination. …

Chapter 3.F.1.c. of the Medical Manual states the following:

> Members are ordinarily considered fit for duty unless they have a physical impairment (or impairments) that interferes with the performance of the duties of their grade or rating. A determination of fitness or unfitness depends upon the individual's ability to reasonably perform those duties. Active duty or selected reserves on extended active duty considered permanently unfit for duty shall be referred to an Initial Medical Board for appropriate disposition.

Chapter 3.F.2. of the Medical Manual states the following:

> This section lists certain medical conditions and defects that are normally disqualifying. … Its major objective is to achieve uniform disposition of cases arising under the law, but it is not a mandate that possession of one or more of the listed conditions or physical defects (and any other not listed) means automatic retirement or separation. If the member's condition is disqualifying but he/she can perform his/her duty, a waiver request could be submitted in lieu of immediate

[2] The applicant's medical records show that a nodule that had appeared on an x-ray of her lungs was later found not to exist by an MRI.

> referral to an Initial Medical Board. If the request is denied, then an Initial Medical Board is required.

The list mentioned in Chapter 3.F.2. includes the following:

- Lungs: Chapter 3.F.7.b.(4) states that chronic bronchitis may be disqualifying if there is "considerable expectoration, or with moderate emphysema, or with dyspnea at rest or on slight exertion, or with residuals or complications that require repeated hospitalization.

- Aneurysms: Chapter 3.F.8.b.(3) states that the aneurysms may be disqualifying if there are "residual limiting symptomatic conditions that preclude satisfactory performance of duty."

- Hypertension: Chapter 3.F.8.c.(2) states that hypertensive cardiovascular disease and hypertensive vascular disease may be disqualifying if there is either—

  (a) Diastolic pressure consistently more than 90 mm Hg following an adequate period of therapy on an ambulatory status; or

  (b) Any documented history of hypertension regardless of the pressure values if associated with one or more of the following:
  1. cerebrovascular symptoms;
  2. arteriosclerotic heart disease if symptomatic and requiring treatment;
  3. kidney involvement, manifested by unequivocal impairment of renal function; or
  4. grade III (Keith-Wagener-Barker) changes in the fundi.

- Migraines: Chapter 3.F.15.h. states that migraines may be disqualifying when "[m]anifested by frequent incapacitating attacks or attacks that last for several consecutive days and unrelieved by treatment."

- Diabetes Mellitus: Chapter 3.F.10.e. states that diabetes mellitus may be disqualifying "[w]hen requiring insulin or not controlled by oral medications."

- Joint Ranges of Motion: Chapter 3.F.12.a.(2) states that should and elbow conditions may be disqualifying for retention if the joints do not have particular ranges of motion or if there is recurrent dislocation.

- Spine: Chapter 3.F.13. states that spina bifida, spondylolysis, coxa vara, herniation, kyphosis, and scoliosis may be disqualifying if there is severe deformity or more than mild symptoms following treatment or remediable measures.

According to Chapter 3.B.6. of the Medical Manual, which is entitled "Separation Not Appropriate by Reason of Physical Disability,"

> [w]hen a member has an impairment (in accordance with section 3-F of this manual) an Initial Medical Board shall be convened only if the conditions listed in paragraph 2-C-2.(b) [of the PDES Manual] are also met. Otherwise the member is suitable for separation.

Physical Disability Evaluation System (PDES) Manual

Article 2.A.15. of the PDES Manual defines "fit for duty" as "[t]he status of a member who is physically and mentally able to perform the duties of office, grade, rank or rating." Article 2.B.2. states that a member "is presumed fit to perform the duties of his or her office, grade, rank or rating. The presumption stands unless rebutted by a preponderance of evidence."

Article 2.C.2. of the PDES Manual states the following:

Fit For Duty/Unfit for Continued Duty. The following policies relate to fitness for duty:

a. The sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated through military service. Each case is to be considered by relating the nature and degree of physical disability of the evaluee concerned to the requirements and duties that a member may reasonably be expected to perform in his or her office, grade, rank or rating. In addition, before separation or permanent retirement may be ordered:

(1) There must be findings that the disability:
(a) is of a permanent nature and stable, and
(b) was not the result of intentional misconduct or willful neglect and was not incurred during a period of unauthorized absence.

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b. The law that provides for disability retirement or separation (10 U.S.C., chapter 61) is designed to compensate a member whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. That law and this disability evaluation system are not to be misused to bestow compensation benefits on those who are voluntarily or mandatorily retiring or separating and have theretofore drawn pay and allowances, received promotions, and continued on unlimited active duty status while tolerating physical impairments that have not actually precluded Coast Guard service. The following policies apply:

(1) Continued performance of duty until a member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty. This presumption may be overcome if it is established by a preponderance of the evidence that:

(a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or
(b) acute, grave illness or injury, or other deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons other than physical disability which rendered him or her unfit for further duty.

(2) A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in paragraphs 2.C.2.b.(1)(a) or (b) are met.

c. If a member being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is presumed fit for duty even though medical evidence indicates he or she has impairments.

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i. The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physi-

> cal disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render him or her unfit for military duty. A member may have physical impairments that are not unfitting at the time of separation but which could affect potential civilian employment. The effect on some civilian pursuits may be significant. Such a member should apply to the Department of Veterans Affairs for disability compensation after release from active duty.

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. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in her record. Although the applicant alleged that she discovered the error in her record in 2011, the evidence shows that she knew that she was being administratively discharged instead of medically retired (which is the alleged error she wants the Board to correct) in 2000, and she knew her diagnoses at the time. Therefore, the Board finds that her application was not timely filed within three years of her discovery of the alleged error.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.[3] In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"[4] to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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."[5]

4. Regarding the delay of her application, the applicant alleged that she was unaware of the contents of her medical records until she recently received them. The record shows, however, that she was aware of her diagnoses prior to her discharge and yet did not request another medical board or seek to correct her administrative discharge for more than a decade even though she was able to timely apply to the SSA and the DVA for benefits after her discharge. The Board finds that the applicant's long delay in applying to the Board is unjustified.

5. A cursory review of the merits of this case indicates that the applicant's claim cannot prevail. The record shows that she was administratively discharged at the end of her enlistment when she chose not to reenlist even though she was eligible to do so. Having already been processed through the PDES once, she was clearly aware of the procedures and yet did not claim to be unfit for duty because of her medical conditions prior to her discharge. She accepted and did not disagree with the CPEB's finding that she was fit for duty in 1997 even though she and

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[3] 10 U.S.C. § 1552(b).

[4] *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

[5] *Id*. at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (D.C. Cir. 1995).

her doctors were aware of her residual symptoms of her stroke. She alleged that she did not reenlist because she was concerned for her safety and that of other members, but there is no documentary ev[redacted]ce that she expressed any concerns for her safety or the safety of others prior to her discharge.

6. The record shows that the applicant incurred several impairments while on active duty, but impairments do not entitle a member to PDES processing and a disability separation unless the member cannot physically perform her assigned duties. There is no evidence that the residual symptoms of her stroke were interfering with her performance of duty, and her medical records indicate that at the time of her discharge, her diabetes, hypertension, and hyperlipidemia were being controlled by medication, which was adjusted as needed. She had been treated for elbow pain and acute bronchitis and had complained of back and collar pain, but there is no medical evidence that in July 2000, her conditions were disqualifying for retention pursuant to the descriptions provided in Chapter 3.F. of the Medical Manual. In addition, under Chapter 3.B.6. of the Medical Manual and Chapter 2.C.2.b.(2) of the PDES Manual, a member being separated administratively is not entitled to evaluation by a medical board and PDES processing unless the terms of Chapter 2.C.2.b.(1)(a) or (b) of the PDES Manual are met. Apart from the applicant's current claim, there is no evidence that in July 2000, her condition met the terms of Chapter 2.C.2.b.(1)(a) or (b) of the PDES Manual. Although she claimed that she was unable to perform her duties, her military and medical records do not support this claim, and there is no evidence that she was suffering from an "acute, grave illness or injury" that rendered her unfit for further duty in July 2000. To the contrary, following her stroke and while suffering her residual symptoms, she advanced to [redacted]/E-6 based on her performance and her command's recommendation and she was awarded a Meritorious Team Commendation ribbon for replacing a [redacted].

7. The applicant's delay in applying is unjustified, and her allegation of error with respect to her lack of PDES processing in 2000, when she did not reenlist and so was administratively discharged at the end of her enlistment, lacks apparent merit. Therefore, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

[redacted]

ORDER

The application of former [redacted] USCG, for correction of her military record is denied.

April 8, 2016

[redacted]