

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for the Correction of  
the Coast Guard Record of:

BCMR Docket No. 2000-178

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**FINAL DECISION**

**Attorney-Advisor:**

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on August 22, 2000, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated June 28, 2001, is 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, a former [REDACTED] pay grade E-5), asked the Board to correct his record by making him eligible for separation pay. He alleged that he was involuntarily discharged due to chronic motion sickness (air sickness), which made him unable to perform his duties, but received no separation pay. He alleged that members of the other armed services who are involuntarily discharged due to motion sickness are awarded separation pay and that it is unfair that the Coast Guard does not.

The applicant further alleged that when he was being discharged, he was told he would receive separation pay if he joined the Inactive Ready Reserve (IRR). Therefore, he agreed to enter the IRR. He also alleged that he was supposed to be evaluated by a medical board and had signed a form stating that he was "under medical board evaluation." However, after he and his commanding officer (CO) signed the form, the word "board" was whited out, and he was never evaluated by a medical board.

**SUMMARY OF THE RECORD**

On October 1, 1991, the applicant enlisted in the Coast Guard after having previously served 4 years and 7 months in the Air Force. He reenlisted in the Coast Guard for a term of 3 years on May 30, 1995, and for another 4 years on April 10, 1998, so that his enlistment was due to end on April 9, 2002. The applicant's performance was exem-

plary: he received a personal Commendation Medal for his first two years of service and several performance marks of 7 (on a scale of 1 to 7, with 7 being best) over the course of his career.

On April 30, 2000, the applicant's CO did not recommend him for advancement in his rate because he had been medically grounded due to his complaints of chronic motion sickness. The administrative entry in his record documenting this fact stated that the motion sickness "makes performance of rate related flight duties impossible. Member is currently under medical [word whited out] evaluation."

On July 21, 2000, the applicant and his unit's yeoman signed an administrative entry stating the following:

As a condition of receiving separation pay under 10 U.S.C. 1174, I hereby agree to enlist or extend in the ready reserve for a period of 3 years following my discharge or release from active duty in addition to any remaining military service obligation. I understand this agreement is made without regard to the reason for my separation or my eligibility for affiliation with the ready reserve. Further, should I be accepted for enlistment or extension in the Coast Guard reserve, I must execute the extension or enlistment contract as a condition of qualifying for separation pay.... I understand that if I stay in the reserve and later retire, my retired pay will be reduced by the amount of the enlisted separation payments received.

On August 9, 2000, the applicant's master chief wrote an e-mail message to the Master Chief Petty Officer (MCPO) of the Coast Guard stating that he found it unusual that, under the regulations, members who are released due to alcoholism or homosexuality may receive separation pay but members who are released due to motion sickness may not. The master chief also asked why the applicant was not entitled to a medical board. He also stated that "we had requested to retain the [applicant] until tour complete [at the unit] since we were through SPEAR 00 and would see no replacement. There are plenty of non flying jobs that we could utilize the member in for a year until a replacement was received during SPEAR 01. We were floored when the discharge message came in allowing for a 30 day discharge period. Truly seems like a member with this much time-in-service, being discharged through no fault of his own, should be entitled to more than a handshake." The MCPO replied the same day, stating that "the decision stands and is valid from the legal review on this end. However, I do suggest that [the applicant] file a BCMR on this. The ruling in my opinion is a little 'squishy' at best and should be reviewed through the BCMR."

On August 15, 2000, the applicant was honorably discharged from the Coast Guard with a JFV separation code, an RE-3G reenlistment code, and "convenience of the government, condition, not a disability" as his narrative reason for separation. He had served 8 years, 10 months, and 15 days in the Coast Guard and a total of 13 years, 5 months, and 15 days on active duty. He was not authorized to receive separation pay.

#### VIEWS OF THE COAST GUARD

On January 31, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request for

relief. In doing so, he adopted a memorandum on the case prepared by the Military Compensation Division (MCD). MCD stated the following:

2. [The applicant] was separated ... due to a diagnosis of chronic motion sickness that prevented him from continuing service as an air crew member. Chronic motion sickness is medically disqualifying for continued active or reserve service, although it is not a disabling condition. Members who are so diagnosed are normally discovered within their first enlistment, which is too early in their careers for Separation Pay eligibility ... . For a member to be diagnosed with motion sickness so severe as to prevent continued service as an air crew member so far into a career as [the applicant's] is highly unusual and such diagnoses, along with other disqualifying, non-disabling medical conditions ... , are often suspect. Accordingly, the Coast Guard's policy in these situations is to direct discharge under honorable conditions without authorizing Separation Pay. [10 U.S.C. § 1174(b)(1)]

3. In cases similar to [the applicant's], where conduct is not a bar to continued service in the Coast Guard, re-training alternatives are examined prior to authorizing separation. From the attached e-mails, you can see that [the applicant] was offered a 60 day extension of his active service to determine if he could be re-trained for a different enlisted career field and avoid involuntary separation. He declined this offer and explained that he was 'moving to [REDACTED]' As a result of his declination of additional active service, his separation became, for all practical purposes, voluntary. ... [Therefore, under 10 U.S.C. § 1174(e)(2) and COMDTINST 1910.1, the applicant's] case does not support entitlement to Separation Pay.

MCD attached to its memorandum copies of e-mail correspondence concerning the applicant's entitlement to separation pay. The messages show that he e-mailed the Chief of the Enlisted Advancements and Separations Branch at the Coast Guard Personnel Command (CGPC) on September 17, 2000, a month after his discharge, to ask for further news about his request for separation pay. In response to his message, which was forwarded to MCD, MCD asked CGPC on September 18, 2000, (a) if the applicant had been tested to determine whether his motion sickness was limited to air sickness or occurred at sea or in cars and (b) if he had been offered or would accept a lateral transfer to another rating, such as yeoman, storekeeper, or public affairs specialist. MCD stated that the Coast Guard "would have to get answers to all these questions before considering the question of Separation Pay."

On September 21, 2000, the branch chief at CGPC responded to MCD and stated that a review of e-mail correspondence indicated that the applicant "was offered an opportunity to stay on active duty for an additional 60 days so 'we could review our policy on Separation Pay'" but refused because he was moving to [REDACTED]. The branch chief stated that the applicant had told Coast Guard medical personnel that his motion sickness, which he had had since childhood when traveling in planes, ships, and cars, had become progressively worse. The branch chief at CGPC also stated that "[a]s far as I know, [the applicant] was not offered an opportunity to lateral to another rate." (Emphasis added.)

MCD responded to CGPC the same day, stating that if the member was offered the chance to remain on active duty and turned it down, his separation "can only be characterized as voluntary" and he is not entitled to separation pay.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On January 31, 2001, the Chairman sent the applicant a copy of the Chief Counsel's submission at his address in [REDACTED] and invited him to respond (or seek an extension of the time to respond) within 15 days. No response was received.

### **APPLICABLE LAW**

#### ***Personnel Manual (COMDTINST M1000.6A)***

Article 5.C.30.c. of the Personnel Manual provides the following:

When a commanding officer considers that an individual is no longer qualified to perform all the duties of his or her rate or rating for reasons other than incompetence, but is qualified or can within a reasonable time become qualified for a change to another rate or rating, he or she shall so inform Commander (CGPC-epm) setting forth the reasons in detail. A statement signed by the individual concerning the situation shall be forwarded as an enclosure. When Commander, CGPC considers that the proposed change is required in the best interest of the Service, such change will be authorized. The provisions of this article will not apply when there is any doubt as to the person's fitness for retention in the Service because of mental or physical reasons.

Under Article 12.B.12, members with certain medical conditions, including chronic motion sickness, obesity, enuresis, and somnambulism, may be administratively separated from the Coast Guard for the "convenience of the government."

#### ***Medical Manual (COMDTINST M6000.1B)***

Under Chapter 3.D.39.I. of the Medical Manual, persons with chronic motion sickness may not be enlisted. According to Chapter 3.F.19.c., members with a physical disability that precludes them "from a reasonable fulfillment of the purpose of employment in the military service" should be evaluated by a medical board.

#### ***Physical Disability Evaluation System (COMDTINST M1850.2C)***

Under Article 3.D.4. of the PDES Manual, a medical board must be initiated whenever a member fails to meet the physical standards for retention unless he fails to meet the standards because of one of "those conditions set forth in chapter 12, Personnel Manual, COMDTINST M1000.6 (series), e.g. obesity, motion sickness, erroneous enlistment, etc."

#### ***10 U.S.C. § 1174 Separation Pay for Regular Enlisted Members***

Under this statute, members who have served between 6 and 20 years of active duty and who are involuntarily discharged are entitled to separation pay "unless the

Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay." To receive separation pay, the member must agree to serve in the Ready Reserve (but need not actually qualify or be accepted) for at least three years. No one who is voluntarily discharged may receive separation pay.

#### *Eligibility of Personnel for Separation Pay (COMDTINST 1910.1)*

Paragraph 4.a. of this instruction states that members involuntarily discharged may receive separation pay if they (1) have between 6 and 20 years of active service; (2) receive an honorable discharge; (3) agree to serve in the Ready Reserve for at least 3 years (even if not qualified or accepted); and (4) are qualified for retention but are not recommended for retention or are involuntarily separated under a reduction in force.

Paragraph 4.b. allows for payment of half the usual amount of separation pay if the member (1) has between 6 and 20 years of active service; (2) receives an honorable or general discharge; (3) agrees to serve in the Ready Reserve for at least 3 years (even if not qualified or accepted); and (4) is involuntarily separated and not recommended for reenlistment because of homosexuality, alcohol abuse, or security concerns or upon the expiration of an enlistment.

Paragraph 4.d. states that a member "who declines training to qualify for a new skill or rating or who refuses to obligate service for a PCS transfer as a precondition to reenlistment or continuation on active duty" is not eligible for separation pay. It also provides that separation pay may be denied upon a "[d]etermination in extraordinary cases by the Commandant that the conditions under which the member is separated do not warrant separation payment. It is intended that this discretionary authority to deny payment be used sparingly. This authority is not to be delegated."

Paragraph 5 provides that the "Commandant (G-P) will make determinations on cases not adequately addressed by the provisions of this Instruction." It also states that the Commandant "will determine if the member is entitled to receive full or half separation pay upon receipt of the discharge package and will issue a separation authorization which shall direct the execution of the discharge, if approved, state whether the member is or is not entitled to separation pay, whether the member is or is not qualified to be enlisted in the Ready Reserve, and shall direct the execution of a Reserve enlistment contract, if appropriate, as part of the discharge action."

### 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 section 1552 of title 10 of the United States Code. The application was timely.
2. The applicant alleged that he was originally told that he would be evaluated by a medical board. The record indicates that, in advising him that he would not

be recommended for advancement due to a medical condition that prevented him from flying, his commanding officer used an administrative form with language indicating that the applicant was being evaluated by a medical board. The language is appropriate for most aircrew members grounded due to chronic medical conditions. However, under Article 3.D.4. of the PDES Manual, members with motion sickness are not entitled to evaluation by a medical board. Therefore, the form apparently was amended afterward to show that he was only undergoing medical evaluation, rather than evaluation by a medical board. While the form should have been amended before he signed it, the fact that it mentioned a medical board at the time that he signed it did not make the applicant entitled to a medical board. The form did not concern the applicant's rights to medical processing in any way; it merely advised him that because of his condition, he was not eligible for advancement in his rating. Therefore, the Board finds that the fact that the form used to advise him of his ineligibility for advancement erroneously described the type of medical evaluation that he was undergoing did not entitle him to a medical board or create any error or injustice for the Board to correct.

3. The applicant alleged that it was unfair for the Coast Guard to deny him separation pay when members of other military services who are separated because of motion sickness receive separation pay. The Coast Guard has determined that a diagnosis of motion sickness more than 6 years into a member's career is suspect. Motion sickness is not necessarily objectively verifiable. Therefore, under Article 12.B.12., members complaining of chronic motion sickness are subject to administrative discharge, and they are not eligible for separation pay under COMDTINST 1910.1. The applicant has not proved that the Coast Guard's policy and regulations regarding motion sickness, based on long experience and medical knowledge, are unreasonable or unjust. Nor has he proved that they were unjustly applied to his case.

4. Under Article 5.C.30.c. of the Personnel Manual, the applicant's commanding officer should have made a determination as to whether he could be retrained to serve in another rating and made a recommendation to CGPC about a possible change of rating. The record is unclear as to whether this was done. The applicant himself made no allegations regarding any offer or lack of offer of retraining. The record contains a statement from a branch chief at CGPC indicating that he had no knowledge of any proffer of rating change, but this does not mean that the applicant's commanding officer did not consider having him retrained or did not discuss the issue with the applicant. The Chief Counsel's advisory opinion states that the applicant was asked to remain on active duty for 60 days to determine whether he could be retrained, but other evidence indicates the 60-day extension was offered only to determine whether he might be eligible for separation pay. The record indicates that he rejected any extension because he was moving to [REDACTED]

5. Given the applicant's silence on this issue, his rejection of the proffered extension, and the inconclusiveness of the other evidence in the record, the Board finds that he has not proved by a preponderance of the evidence that his commanding officer failed to act in accordance with Article 5.C.30.c. or that his separation from the Coast Guard was involuntary.

6. Accordingly, the applicant's request should be denied.

**ORDER**

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

