DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-151

FINAL DECISION

[redacted] **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 June 26, 2000, when the application was completed by the Board's receipt of the applicant's military records.

This final decision, dated May 17, 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 is a former xxxxxxxxxx who was honorably discharged from the Coast Guard on xxxxxx, having served 4 years, 11 months, and 27 days on active duty. The applicant was born male and served in the Coast Guard as a man. She asked the Board to correct her discharge form DD 214 and her military record to show that she served as a woman with the name shown in the caption of this final decision, rather than as a man.

The applicant submitted a letter signed by a doctor indicating that she has been diagnosed with "gender identity disorder" and underwent "the transition to live full-time as a woman in the 'real-life test' as required by the Harry Benjamin Standards." She applied to have her gender changed on her driver's license on May 14, 2000, and the Circuit Court of the State of XXXXX legally changed her name to the female name shown in the caption on xxxxxxxxxx.

The applicant alleged that her gender identity disorder has been "long standing" and existed prior to her discharge from the Coast Guard in 1986. However, she did nothing about it because of the problems it would cause. She indicated that she is seeking this correction because she will have to show her DD 214 to future employers and might be discriminated against if they learn of her gender change because of the male name on it.

VIEWS OF THE COAST GUARD

On December 27, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief.

The Chief Counsel argued that the Board should deny relief under the Board's 3-year statute of limitations because the application was filed 14 years after the applicant received "his"[1] DD 214. The Chief Counsel alleged that the applicant's statement that his disorder is long standing proves that the application is untimely.

The Chief Counsel further argued that under COMDTINST M1900.4C, the applicant's DD 214 should reflect his actual gender during his service. The Chief Counsel argued that the applicant's DD 214 is correct because all of his military records indicate that he was a man with the name shown in the caption above when he served on active duty. He argued that the applicant has not proved that his military records were erroneous because he has not shown that he was female while he served on active duty. The Chief Counsel alleged that the applicant has only proved that he changed his name to a female name in 2000 and that he has not proved that he actually changed his gender.

The Chief Counsel alleged that the Coast Guard has an interest in maintaining the accuracy of its records for historical purposes and that the "information contained in those records should actually reflect the conditions and circumstances that existed at the time the records were created." He argued that "[w]hile there may exist sufficient authority for the BCMR to order a post-service name change for reasonable cause, there is no authority to change a member's record to reflect a name change based on a non-existent gender change." He also argued that the Board is not required to recognize the XXXXX court's order changing the applicant's name.

Finally, the Chief Counsel argued that if the Board granted relief, it would also be required to change the applicant's reenlistment code from RE-1 (eligible to reenlist) to RE-4 (ineligible to reenlist). Therefore, because under *Doyle v.*

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[1] The Chief Counsel chose to address the applicant as a man.

United States, 220 Ct. Cl. 285 (1979), the Board is prohibited from changing a record in a manner adverse to the applicant's interests, it cannot grant the applicant's request.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 28, 2000, the Chairman sent the applicant a copy of the views of the Coast Guard and invited her to respond within 15 days. The Board received no response.

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.

2. The Chief Counsel argued that the case is untimely because the applicant was discharged more than three years before she filed her application. However, under 10 U.S.C. § 1552(b), applications must be filed within three years of the date the applicant discovered or should have discovered the alleged error. Although the applicant's gender identity disorder may be long standing, she did not change her name or complete the transition to life as a woman until last year. Therefore, the Board concludes that her application was timely.

3. The Chief Counsel argued that the applicant's request should be denied because the Coast Guard has a strong interest in maintaining the accuracy of its records for historical purposes. However, the Board is not persuaded that issuing a second DD 214 with a new name for the applicant would necessarily corrupt the integrity of the Coast Guard's historical records and statistics.

4. The Chief Counsel argued that the Board is barred from granting relief because changing the name on the applicant's DD 214 from male to female would also require changing her reenlistment code. It is true that the applicant might have received an RE-4 if she had switched genders while in the service. It is also true that her gender identity change might disqualify her for further military service. However, the Board knows of no rule—and the Chief Counsel did not cite one—that requires a reenlistment code to be changed when the name on a DD 214 is altered from male to female. Therefore, the Board finds that it is not barred from granting relief in this case as the Chief Counsel alleged.

5. The Chief Counsel argued that the Board should not grant relief because the applicant has not proved that she has undergone a sex-change operation. In Army BCMR Docket No. AC98-12376, decided on January 13, 1999, the Army BCMR denied relief to a veteran who had undergone a sex-change operation from female to male based on its determination that he had "failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice." The Board finds that whether an applicant has undergone a sex-change operation, while possibly relevant to the permanence of the change in gender identity, should not necessarily determine the outcome of a case.

6. The applicant has not proved by a preponderance of the evidence that her military records contain any error, even though they do not reflect her current name or gender identity. The record shows that the applicant entered, served in, and was discharged from the Coast Guard as a man with the male name shown in the caption of this final decision. Therefore, the Board concludes that her military records are not in error.

7. In the absence of error, the Board must determine whether the applicant's male name and gender identity in her military records constitute an injustice. The BCMR has "an abiding moral sanction to determine insofar as possible, the true nature of an alleged injustice and to take steps to grant thorough and fitting relief." *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959). However, the Deputy General Counsel has ruled that in the absence of legal error, an applicant's treatment by military authorities must "shock the sense of justice" to justify correction by the Board. Decision of the Deputy General Counsel, BCMR Docket No. 346-89 (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976)).

8. Many employers require job applicants to present their DD 214s if they have previously served in the military. The applicant may face discrimination and lose job offers if potential employers realize that she was born male and has changed her gender identity. However, such unfair treatment would be an injustice caused by prejudice in society, not by the Coast Guard's treatment of the applicant. The Coast Guard does not issue new DD 214s when former members change their names due to marriage or divorce, for example, so it is not treating the applicant differently by refusing to issue her a DD 214 with her new name. Therefore, the Board concludes that the male name appearing on the applicant's DD 214 does not constitute treatment by military authorities that shocks the sense of justice.

9. Accordingly, the applicant's request for correction of her military record should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXX, USCG, for correction of her military record is denied.