

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-210

██████████
████████████████████

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. After receiving the applicant's completed application on August 22, 2014, the Chair docketed the application and assigned it to ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 5, 2015, 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 discharged from active duty on March 18, 2008, and subsequently placed on the Temporary Disability Retired List (TDRL), asked the Board to correct blocks 23, 26, 27, and 28 on his DD Form 214 (DD 214), which the applicant stated were incorrect.¹ In addition to correcting the DD 214, the applicant requested that his DD 214 be reissued, so that it reflects what he alleged is the proper information regarding his discharge status after being released from the TDRL. The applicant was released from the TDRL on October 1, 2012.

The applicant stated that when he was released from active duty on March 18, 2008, his separation code and reentry code in blocks 26 and 27, respectively, were erroneously prepared. On August 30, 2012, per the requirements of the TDRL, the applicant stated that he was reevaluated and found eligible for the separation type of "physical disability with severance pay." The applicant alleged that this separation type should be listed in block 23 of his DD 214, rather than "retirement/resume retirement," as currently noted, and that the change in block 23 would have also made necessary a change to block 28 (narrative reason for discharge). The applicant stated that he received a Separation Authorization notifying him that these changes should be made, but he alleged that he never received a corrected DD 214 and was told that one would not be provided. The applicant claimed that by not receiving an updated DD 214, there

¹ Block 23: Type of Separation; Block 26: Separation Code; Block 27: Reentry Code; Block 28: Narrative Reason for Separation.

has been great confusion regarding the status of his discharge and also has the possibility of affecting his benefits for federal employment. In support of his application, the applicant submitted the following documents:

1. U.S. Coast Guard Separation Authorization;
2. DD 214; and
3. Excerpt from COMDTINST M1900.4D – Chapter 2: Reenlistment Codes

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 3, 2001. On March 19, 2008, the applicant was placed on the Temporary Disability Retirement List, effective March 19, 2008. The applicant's DD 214 states the following:

- Block 23, type of separation: "retirement/resume retirement";
- Block 24, character of service: "honorable";
- Block 25, separation authority: COMDTINST M100.6A 17-B-6;
- Block 26, separation code: SFK, denoting placement on the TDRL due to a temporary disability;
- Block 27, reenlistment code: RE-2, denoting ineligibility due to retired status; and
- Block 28, narrative reason for separation: "temporary physical disability retirement."

A separation authorization form, effective March 19, 2008, stated that the applicant was given a disability rating of 30% and that he would therefore be temporarily retired and placed on the TDRL. The separation authorization form also listed the applicant's separation code as SFK and "disability, temporary," as his narrative reason for separation.

On March 2, 2012, the Informal Physical Evaluation Board (IPEB) issued its findings and recommended disposition recommending that the applicant be separated with severance pay for being found physically unfit. The applicant signed and acknowledged stating that he accepted the proposed IPEB findings and recommended disposition and waived his right to a formal hearing. The findings also referenced an IPEB finding from October 23, 2007, in which it recommended a 30% disability rating for "ankle, limited motion, and group XI, function and placement on the temporary disability Retirement List (TDRL)."

A separation authorization form, effective October 1, 2012, stated that the applicant was to be discharged from the Coast Guard, the separation/retirement type was classified as "physical disability with severance pay;" a separation code of "JFL," and a narrative reason for "disability, severance pay."

VIEWS OF THE COAST GUARD

On March 20, 2015, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board grant alternative relief in this case in accordance with the findings and analysis provided in a memorandum submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC). The JAG stated that the "issuance of a second Separation

Authorization to the applicant was an administrative error by the Coast Guard; only one Separation Authorization should be issued to a member.” Specifically, the JAG recommends—

1. Changing the narrative reason in block 28 of the applicant’s DD Form 214 to “disability temporary”;
2. Directing CG PSC EPM-1 to cancel the second, incorrectly issued Separation Authorization; and
3. Issuing the standard memorandum indicating the change in the applicant’s Separation type form “Placed on Temporary Disability Retirement List” to “Physical Disability with Severance Pay.”

The JAG also noted that the issuance of the standard memorandum described in section (3) above, is standard practice by CG PSC EPM-1 for this type of change.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 20, 2015, the BCMR sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. The applicant requested and was granted a 30-day extension to respond through May 19, 2015. However, the BCMR did not receive a response.

APPLICABLE LAW AND POLICY

The Separation Program Designator (SPD) Handbook states that the narrative reason for separation corresponding to separation code SFK is “disability, temporary.” The explanation provided states “mandatory retirement required by law due to temporary physical disability.” The corresponding reenlistment code is RE-2, which means the veteran is ineligible for reenlistment because of his retired status.

The Separation Program Designator (SPD) Handbook states that the narrative reason for separation corresponding to separation code JFL is “disability, severance pay.” The explanation provided states “involuntary discharge directed by established directive resulting from physical disability with entitlement to severance pay – retirement not authorized.” The corresponding reenlistment code is RE-3.

Article 8.A.4 of COMDTINST M1850.2D, Physical Disability Evaluation System, states the following with regard to members on the Temporary Disability Retired List:

Temporary retirement status implies no inherent right for retention on the TDRL for the entire 5-year period provided by 10 U.S.C. §1210. Upon review of a periodic physical examination and a determination that the member’s condition is of a permanent nature and stable, an IPEB or FPEB may recommend removal of the member’s name from the TDRL by separation with severance pay, permanent disability retirement, or a finding of Fit for Duty, as appropriate.

Article 1.B.3 of COMDTINST M1900.4D, Certificate of Release or Discharge from Active Duty, DD Form 214, states that a DD Form 214 will NOT be issued to members who are being removed from the TDRL.

COMDTINST M1900.4D also states that for Block 23, Type of Separation, the type of separation effected should be entered: “DISCHARGED,” “RELEASED FROM ACTIVE DUTY,” “RETIRED,” “RESIGNED,” “COMMISSION REVOKED,” or other as appropriate. The instruction explicitly states to not enter the narrative reason for separation or the character of separation in Block 23.

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. The applicant stated that the alleged error occurred on October 1, 2012, and that he discovered the error on July 15, 2013. The applicant filed his application to the Board on August 21, 2014. Therefore, his application is timely.
3. The applicant requested that the Board correct blocks 23, 26, 27, and 28 on his DD 214, which the applicant stated were recorded incorrectly. Additionally, the applicant requested that the Coast Guard reissue his DD 214, so that it properly reflects what the applicant stated is the correct information regarding his discharge status after being released from the TDRL. When considering allegations of error and injustice, the Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”³
4. The applicant’s request to have his DD 214 reissued with the updated information on the separation authorization form he received in 2012 should be denied. Pursuant to Article 8.A.4 of COMDTINST M1850.2D, Physical Disability Evaluation System, the applicant was found to be unfit for duty and a recommendation was made for the applicant to be separated with severance pay. However, under Article 1.B.3 of COMDTINST M1900.4D, COMDTINST M1900.4D, Certificate of Release or Discharge from Active Duty, DD Form 214, the applicant is not entitled to a new DD 214, as Coast Guard policy states that a new DD Form 214 will not be issued to members who are being removed from the TDRL. The applicant was erroneously issued a second separation authorization form. While an error was made in issuing the applicant the second separation authorization, this does not prove that the applicant’s DD 214 is erroneous or unjust. Therefore, he is not entitled to a new DD 214.
5. Under COMDTINST M1900.4D, only the type of separation—e.g., “retired,” “discharged,” “released from active duty”—should be entered in block 23 of a DD 214, and the

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

narrative reason for separation or character of discharged should definitely not be entered in block 23, as those entries are made in blocks 28 and 24, respectively. Therefore, the applicant's request to have block 23 changed to "physical disability with severance pay" should be denied. Additionally, blocks 26 and 27, showing his separation code and reenlistment code, are also correct and should not be changed.

6. The applicant's DD 214 does contain an error, however, in block 28 which should be corrected. Block 28 currently lists the narrative reason for separation as "temporary physical disability retirement." Under the SPD Handbook, the correct narrative reason for the SFK separation code is "disability, temporary." Therefore, block 28 of the applicant's DD 214 should be amended to show the correct narrative reason for separation.

7. Accordingly, the applicant's request for relief should be denied, but the following alternative relief, which was recommended by the Coast Guard, should be granted:

- The Coast Guard should issue a DD 215 correction form to correct the narrative reason for separation in block 28 of the applicant's DD 214 to state "disability, temporary";
- The second separation authorization, which was erroneously issued, should be canceled by PSC; and
- PSC should issue the standard memorandum indicating the change in the applicant's status from being on the TDRL to being discharged with severance pay due to a physical disability.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED], USCG, for correction of his military record is denied, but the following alternative relief is granted: The Coast Guard shall—

- Issue him a DD 215 correction form to correct the narrative reason for separation in block 28 of his DD 214 to state “disability, temporary”;
- Cancel the second, erroneous separation authorization; and
- Issue him the standard memorandum documenting the change in his status on October 1, 2012, from being on the TDRL to being discharged with severance pay due to a physical disability.

June 5, 2015

