

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-226



FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on September 19, 2018, and assigned it to [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated December 6, 2019, 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 was temporarily retired from active duty due to a disability on September 21, 1998; placed on the Temporary Disability Retired List (TDRL); and then honorably discharged with severance pay due to a permanent disability on September 12, 2001. He asked the Board to review and update the Type of Separation in block 23 of his September 21, 1998, DD 214 and the Narrative Reason for Separation in block 28. He argued that blocks 23 and 28 are incorrect because they show that he was "Retired" for "Disability, Temporary" and that these blocks should be updated to reflect that he was discharged due to "Disability, Permanent."

The applicant stated that he was removed from the TDRL and discharged due to a permanent disability on September 12, 2001, but that the temporary disability shown on his 1998 DD 214 is creating problems because it is "impacting my ability to be properly screened for government employment and preference." In support of his application, he submitted the following documents:

1. DD 214 for the period July 10, 1988, through May 6, 1992
2. DD 214 for the period May 7, 1992, through September 21, 1998
3. Letter from the Commander, Coast Guard Personnel Command (CGPC), dated September 12, 2001, notifying the applicant that the findings of the Physical Evaluation Board had been approved and that he would be removed from the TDRL and honorably discharged due to his disability effective September 12, 2001.

The applicant stated that he discovered the alleged error in his record on January 20, 2018, but did not explain why he did not notice the error when he was removed from the TDRL in 2001.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 10, 1988, and advanced to the rank of FS2/E-5. On July 1, 1998, after serving just shy of ten years on active duty, Commander, CGPC, approved the findings of a Central Physical Evaluation Board, which stated that the applicant was unable to perform the duties of his office due to a physical disability (coronary artery disease), and should be temporarily retired.

The applicant's DD 214, dated September 21, 1998, documents his service from 1992 to 1998 and shows the following:

- Block 23, Type of Separation: "Retired";
- Block 24, Character of Service: "Honorable";
- Block 25, Separation Authority: COMDTINST M100.6A 12-C-10;
- 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: "Disability, Temporary."

On August 8, 2001, a Physical Evaluation Board (PEB) issued a report recommending that the applicant be discharged with severance pay because his coronary artery disease rendered him physically unfit for active duty. The applicant signed and acknowledged the letter indicating that he accepted the proposed PEB findings and recommendation and waived his right to a formal hearing.

On September 12, 2001, Commander, CGPC, notified the applicant that the recommendations of the Physical Evaluation Board were approved and that he would be removed from the TDRL and honorably discharged from the Coast Guard with severance pay effective September 12, 2001. (These documents were sent to the applicant with the Coast Guard's advisory opinion.)

VIEWS OF THE COAST GUARD

On April 9, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case in accordance with the findings and analysis provided in a memorandum submitted by Commanding Officer, Coast Guard Personnel Service Center (PSC). The JAG also stated that the applicant is not entitled to receive a new or updated DD 214 after being removed from the TDRL because DoD¹ policy and Coast Guard policy state that members do not receive another DD 214 when they are removed from TDRL. The JAG

¹ Department of Defense Instruction 1336.01, which has been adopted by the Coast Guard, states that the DD 214 need not be prepared for personnel being removed from the TDRL.

also noted that the Coast Guard's actions are consistent with the Board's decision in BCMR Docket No. 2014-210, in which the Board stated that a member removed from the TDRL is not eligible to receive an updated DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 15, 2019, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The BCMR did not receive a response.

APPLICABLE LAW AND POLICY

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

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.D.2.a. of COMDTINST M1900.4D, the Commandant's instruction for preparing DD 214s, states that "[a]ll entries [on the DD 214], unless specified otherwise are for the current period of active duty only from the date of entry as shown in block 12a through the date of separation as shown in block 12b."

Article 1.B.3 of COMDTINST M1900.4D states that a DD 214 will NOT be issued to members "who are being removed from the [TDRL]."

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.

PREVIOUS BOARD DECISION

In BCMR Docket No. 2014-210, the Board denied a member's request to change Block 28 (Narrative Reason for Separation) of the DD 214 that he received when he was placed on the TDRL. The Board noted that Coast Guard policy states that members will not receive another DD 214 when they are removed from the TDRL.

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 September 1, 2001, and that he discovered the error on January 20, 2018. Although the applicant should have been familiar with the contents of his 1998 DD 214 and so known of the error in 2001, it is possible that he failed to realize in 2001 that his DD 214 continued to say “Retired” and “Disability, Temporary.” In light of the applicant’s claim, the Board finds that the preponderance of the evidence shows that the application was timely filed within three years of his discovery of the alleged error. Therefore, his application is timely.

3. The applicant asked the Board to review and update blocks 23 and 28 on his DD 214 and make any necessary corrections. 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 has not proven by a preponderance of the evidence that blocks 23 and 28 of his DD 214 should be updated to reflect his honorable discharge due to “Disability, Permanent.” Pursuant to Article 1.D.2.a. of COMDTINST M1900.4D, a DD 214 is supposed to be accurate as of the date of separation from active duty, and the applicant was separated from active duty in 1998, when he was placed on the TDRL. Moreover, Article 1.B.3 of COMDTINST M1900.4D states that members who are removed from the TDRL are not issued new DD 214s. Instead, they receive the notification letter from Commander, CGPC, explaining that they have been removed from the TDRL, and the applicant has already received a copy of his letter stating that he was honorably discharged due to a disability with the advisory opinion.

5. Accordingly, the applicant’s request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

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).

ORDER

The application of former [REDACTED], USCG, for correction of his military record is denied.

December 6, 2019

