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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1998-025

FINAL DECISION

 **Attorney Advisor:**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on February 26, 1999, when the application was completed by the BCMR's receipt of the applicant's medical and military records.

This final decision, dated December 9, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a former seaman apprentice (SA; paygrade E-2) in the Coast Guard, asked the Board to correct her military record by changing her reenlistment code from RE-4 (not eligible for reenlistment) to one that will allow her to reenlist in the Coast Guard Reserve.

APPLICANT'S ALLEGATIONS

The applicant alleged that she was honorably discharged by reason of physical disability on March 30, 1993, due to a fracture in the upper right tibia of her right knee. She alleged that xrays taken on June 2, 1997, showed that her knee injury has healed. She argued that it was wrong for her to have been assigned an RE-4 reenlistment code when she had a medical condition that could heal. She stated that she did not challenge the RE-4 within three years of her discharge because she did not then know that her knee would ever heal.

VIEWS OF THE COAST GUARD

On November 5, 1999, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board grant the requested relief by

changing the applicant's reenlistment code from RE-4 to RE-3P, which means "eligible for reenlistment except for disqualifying factor: physical disability."

The Chief Counsel attached to his advisory opinion a memorandum that he had received from the Coast Guard Personnel Command (CGPC) on August 12, 1999. CGPC stated that "[t]he applicant was discharged in March 1993 by reason of physical disability with a 20% rating and received severance pay." CGPC stated that the applicant was assigned the separation code JFL, which means "involuntary discharge ... resulting from physical disability with entitlement to severance pay," and that members with that code are supposed to be assigned the reenlistment code RE-3P, not RE-4. The RE-3P code, CGPC stated, would allow the applicant to reenlist "if she can document to the recruiter/MEPS that her medical condition has changed, and she meets all other requirements for enlistment."

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On November 10, 1999, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited her to respond within 15 days. The applicant did not respond, and the mailing was returned to the BCMR marked "Undeliverable" by the U.S. Postal Service.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 23, 1991, for a period of four years under the delayed entry program.

On April 30, 1992, the applicant received a performance evaluation in which she received 24 marks of 4 and 5 marks of 5 (on a scale of 1 to 7, with 7 being best).

On July 28, 1992, the applicant was examined prior to an Initial Medical Board. She was diagnosed with a "healed tibial fracture with 2-3 mm 'stepoff' split depression," iliotibial tendonitis, and iliotibial band syndrome. The examining doctor reported that she "is never expected to be fit for full duty." On September 21, 1992, the doctor signed a narrative summary indicating that her tibia had been fractured in a car accident on June 27, 1991, prior to her enlistment. He reported that she had suffered pain during basic training and was placed on a "Fit for Light Duty" status several times during training. She had sought treatment for sever pain in her knee several times during her 11 months on active duty. On October 19, 1992, the results of the medical board, recommending that her condition be further evaluated by a Central Physical Evaluation Board (CPEB), were forwarded to the applicant's command.

On October 31, 1992, the applicant received a performance evaluation in which she received 14 marks of 4 and one mark of 5 (on a scale of 1 to 7, with 7 being best).

On January 13, 1993, a CPEB found the applicant to be 20% impaired by the condition of her right knee. It further found that all 20% of the impairment was caused by aggravation that had occurred while on active duty. The CPEB recommended that she be separated with severance pay. The recommendation was approved on February 25, 1993. On March 1, 1993, the applicant's command received orders to discharge her within 30 days by reason of physical disability with severance pay and a separation code of JFL.

On March 30, 1993, the applicant was honorably discharged by reason of "physical disability with severance pay." She received a JFL separation code and an RE-4 reenlistment code.

On September 29, 1993, the applicant was evaluated by a doctor for the Department of Veterans Affairs (DVA). On August 3, 1994, she was assigned a 10% disability rating by the DVA due to pain and discomfort in her right knee. On July 8, 1997, her 10% disability rating was continued, although a recent examination revealed that she had a full range of motion in her right knee and xrays showed that "the right superior tibia is normal." The applicant had reported to the examining physician that her knee ached upon exertion and during cold, damp weather and that she could not kneel for any length of time without discomfort.

APPLICABLE REGULATIONS

According to the Separation Designator Program (SPD) Handbook, members who are assigned the JFL separation code must be assigned an RE-3P reenlistment code. No other reenlistment code is authorized.

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, United States Code. The application was timely.

2. The applicant was discharged due to a physical disability on March 30, 1993. She was properly assigned the separation code JFL. However, the Coast Guard erred in assigning her an RE-4 reenlistment code. The SPD Handbook requires members who receive the JFL separation code to be assigned an RE-3P reenlistment code, which permits them to be reenlisted if they can prove to a recruiter's satisfaction that the disability no longer exists.

3. Accordingly, the applicant's request for relief should be granted, and her DD Form 214 should be corrected to show that she received an RE-3P reenlistment code rather than an RE-4.

ORDER

The application for correction of the military record of [REDACTED]
[REDACTED] JSCG, is hereby granted as follows:

Block 27 on the applicant's DD Form 214 shall be corrected by replacing the RE-4 reenlistment code with an RE-3P reenlistment code.

