

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 2000-121

FINAL DECISION

Chair:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was commenced on May 1, 2000, upon the BCMR's receipt of the applicant's request for correction of his military record.

This final decision, dated January 31, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant a former seaman apprentice (SA; pay grade E-2) asked the Board to reinstate him on active duty retroactive to March 28, 2000, the date of his alleged erroneous discharge, with back pay and allowances.

The applicant was honorably discharged on March 28, 2000 because of seasickness,<sup>1</sup> with a JFV (condition not a disability) separation code and a RE-3X reenlistment code.

**SUMMARY OF RECORD AND SUBMISSIONS**

The applicant alleged that his discharge from the Coast Guard for "chronic motion sickness" was erroneous because it was based on an observation period of less than two weeks during his first assignment after completing recruit training. He further alleged that he was never counseled that he was being evaluated for chronic motion sickness.

The applicant stated that he had been assigned to his unit, a cutter, for only 14 days when he was temporarily assigned to a shore command for administrative discharge proceedings. He stated at that time he had been on medication for motion sickness less than 15 days, in contrast to COMDTINST 6710.15D<sup>2</sup>, which indicates that

<sup>1</sup> Seasickness and motion sickness are used interchangeably in this decision.

<sup>2</sup> Section 4.f. of COMDTINST 6710.15D (Antimotion Sickness Medications) states as follows: "Duration of Treatment. Antimotion sickness medication is intended only to help personnel adapt to their moving environment and get their "sea legs." It is not intended to be used for longer than 10 to 15 days at a time.

anti-motion medication should be taken for a period of between 10 to 15 days. He claimed that he should have been given 50 mgs of Meclizine (medication) daily instead of the 25 mgs he was prescribed.<sup>3</sup> He also stated that his command did not attempt to manage his symptoms but exacerbated them by ignoring the medical officer's recommendations (5 days sick in quarters (SIQ) and two weeks light duty) and by placing additional stresses on him. The applicant further stated as follows:

I was ordered to read and write while I was experiencing motion sickness and I was put off the boat, and put back on numerous times over the two-week period. I was never given a continuous period of time to get "my sea legs". I was never evaluated by a medical officer as having chronic seasickness nor were any other factors, physical or emotional, taken into consideration as [causing] my seasickness. In fact the command . . . totally ignored the medical officer's recommendations. On 27 December 1999, the medical officer put me sick in quarters (SIQ) for 5 days and on 28 December 1999; the medical officer recommended that I be placed on light duty for two weeks until I could be evaluated for chest pain. The command . . . ordered me to report . . . to the boat on 28 December 1999 and then criticized me for being sick on 31 December 1999. Both of these dates were during the five days that I should have been SIQ.

### Separation Proceedings

On January 12, 2000, the applicant's CO informed the applicant that he was being processed for separation because of chronic seasickness. The applicant acknowledged notification of the discharge, objected to it and indicated that he would submit a statement in his own behalf.

In a letter to the Commander, Coast Guard Personnel Command recommending the applicant's discharge from the Coast Guard for chronic seasickness, the CO stated as follows:

[The applicant] has been chronically seasick both in port and underway since he reported onboard on 16 December 1999. His illness renders him physically unable to stand watch.

[The applicant] was seasick at the pier while standing duty onboard [the cutter] on 17 December [1999].

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Personnel that require continuous medication or have symptoms poorly controlled should be evaluated for chronic motion sickness."

<sup>3</sup> Section 4.c. of COMDTINST 6710.15D provides guidance for prescribing Meclizine as follows.. "For many years this medication has been a mainstay for the prevention of motion sickness. It is less sedating than Dramamine. In the recommended dosage it should prove effective for the majority of persons. (1) Meclizine dose: 1-2 tablets (25 mg) one hour prior to departure, repeating this dose every 12 to 24 hours as needed. (2) Side-effects: sedation, blurred vision, and dry mouth. (3) . . . Meclizine 25 mg chewable tablets . . ."

[The applicant] got underway with [the cutter] on 18 December for a regular deployment. He took three doses of 25 mg Meclizine from 10-20 December. [The applicant] was seasick and unable to stand watch while underway during the patrol. The sea state varied from calm to 8 feet. [The applicant] was medevaced [to a shore facility] for seasickness and dehydration on 20 December. ...

[The applicant was] prescribed a 1.5 mg Scopolamine patch to treat [his] seasickness on 21 December ... Although [the applicant] indicated that he did not want to get underway again, he was advised that he would need to try another form of medication to see if it would alleviate his symptoms. He was directed to fill the prescription and get underway with [the cutter] on 24 December.

While underway with [the cutter] from 24-26 December, [the applicant] was again seasick and unable to stand watch despite calm seas the entire patrol. He also remained ill while at anchor in flat calm seas on 25 December.

Upon [the cutter's] arrival in [REDACTED] ... on 27 December, [the applicant] reported to the medical clinic for seasickness and dehydration. [Dr. R.] recommended [the applicant] spend five days [SIQ]. [The applicant] returned to the clinic on 28 December and was assigned 14 days limited duty for chest pain ...

During [the cutter's] inport work period from 27 December to 10 January 2000, [the applicant] continued to get seasick while onboard. He was unable to stand a proper watch inport and was sent home from duty at approximately 1400 [hours] on 31 December. He was limited to working outside the skin of the ship for the rest of his time on board. [The applicant] was transferred TAD to [REDACTED] force on 10 January 2000.

On February 3, 2000, the applicant submitted a statement in his behalf objecting to his discharge. He stated that he was surprised that he was being discharged and that he wanted to make the Coast Guard a career. He stated that he wanted the opportunity to complete his tour at [REDACTED] (shore command) so that he could prove his trustworthiness. He indicated that he was married with one child. He further stated as follows:

If I would have been stationed on a base, small boat station or air station, my seasickness would not have been detected until later in my career and the Coast Guard would have learned of my capabilities as a service member first. At this point, I am fresh out of boot camp and have had little chance to prove my worth to you. The Coast Guard needs the manpower. The shortage of personnel causes hardships on its members.

The Coast Guard needs honest, dedicated, hardworking people that will serve the Coast Guard's core values. I am one of those people.

On February 15, 2000, the applicant's CO wrote a reply to the applicant's letter objecting to his discharge. The CO described the applicant's bouts with seasickness as he had previously described them in an earlier letter to CGPC. He also stated that the applicant displayed an attitude and work ethic inconsistent with that required for success as a member of the Coast Guard. Prior to getting underway, the CO stated that the officer of the deck (OOD) advised the applicant to take Meclizine to alleviate symptoms of seasickness. He stated that at one point, the applicant stated to the OOD that he had no desire to be on the ship and asked what he needed to do to be transferred ashore. He stated that after two and a half days of the patrol the applicant was medevaced to an Air Station because his condition was becoming hazardous to himself. The CO stated that the applicant appeared to be very weak. He stated that when the applicant was not asleep on the mess deck he was tripping up and down ladders. At a follow up medical visit, the applicant was prescribed Scopolamine patch to treat his seasickness. The CO stated that the applicant protested using the patch and did not want to get underway with the ship for the second half of the patrol. The executive officer directed the applicant to obtain the patch and get underway.

The CO stated that from December 24, 1999 to December 26, 1999, the applicant suffered seasickness during the cutter's patrol. He stated that during an inport period from December 27, 1999, through January 10, 2000, the applicant suffered bouts of seasickness when onboard the cutter. Around January 10, 2000, the applicant was transferred to a shore unit. Sometime after learning that the CO would recommend his discharge, the applicant complained to the Command Master Chief, that he suffered from an ear infection that may have caused or contributed to his seasickness. The CO stated that a doctor who examined the applicant determined that he was not suffering from an ear infection. The applicant was honorably discharged on March 28, 2000 because of a condition not a disability (seasickness).

### **Statement Submitted by the Applicant**

1. The applicant submitted a statement from the doctor who treated him while on active duty. The doctor wrote that on December 27, 1999, he recommended that the applicant be given five days of SIQ. He stated that on December 28, 1999, he recommended that the applicant be placed on light duty for two weeks after follow-up visits for seasickness and an irregular cardiac rhythm. The doctor stated that from a cardiac point of view, the applicant was fit for duty. With respect to seasickness, he stated that it was his opinion that the applicant was not evaluated long enough to make a diagnosis of chronic seasickness. He further stated as follows:

Regarding [the applicant's] motion sickness problem, chronicity should be considered only if (1) previous history recurrent motion sickness, unresponsive to treatment. (2) Recurrence of symptoms after repetitive exposure to a situation that may produce motion sickness in which there is no other medical cause that may produce symptoms (anxiety, ear infections, medications, brain pathology, cardiac pathology, severe

dehydration, eye-vision problems, etc.) and there is no response to optimal treatment.

2. The applicant submitted a statement from a warrant officer who was asked to look into the applicant's discharge by the executive officer of the group to which the applicant's cutter belonged. She stated that based on her recommendation the executive officer (XO) asked personnel at the Coast Guard Personnel Command (CGPC) to delay the applicant's discharge until a complete evaluation of his motion sickness could be conducted. This request was denied by CGPC because of concern that if the applicant were allowed to remain on active duty he could possibly injure himself and require a disability evaluation.

The warrant officer stated that she is a certified substance abuse specialist and familiar with stress and its physical and psychological effects. She stated that she believes stress contributed to the applicant's seasickness. She attached several pages from the Merck Manual on seasickness, which she states supports the applicant's position. She further stated her belief that the applicant was not given a fair evaluation to determine if he suffered from chronic motion sickness.

3. The applicant also submitted a statement from a petty officer second class PO2, who was the applicant's brother-in-law and mentor. He stated that new Coast Guard members usually need time to adjust and manage seasickness. He stated that the applicant should be given a significant amount of time to adjust or manage his seasickness. The PO2 stated that the applicant had not been a disciplinary problem. He further stated that the applicant's symptoms of seasickness had decreased on each patrol that he had undertaken.

4. The applicant also submitted a letter signed by five individuals that he worked with while on TAD at a shore command. These individuals stated that the applicant went out with them on a boat and even though he was mildly sick, he performed his duties well. They stated that he was a good shipmate and got along well with everybody.

5. The applicant submitted a statement from a chief petty officer (CPO) who stated that the applicant exhibited a great attitude on the few occasions that the applicant worked for him.

6. An ensign and another CPO from the applicant's TAD command wrote that the applicant was an outstanding performer and a self-motivator. The ensign stated that he believed that the applicant was an asset to the Coast Guard.

7. A petty officer first class (PO1), who had been in the Coast Guard for several years, wrote that he takes a daily dose of medication to combat the effects of motion sickness. He stated that with the medication he still feels some of the effects of motion sickness on the first day of being underway, but if he lies down for about an hour, the effects usually subside.

### Views of the Coast Guard

On July 3, 2001, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that the Board deny relief to the applicant.

The Chief Counsel stated that the applicant's argument that he was denied due process because he was not allowed sufficient time to determine whether he suffered from "chronic motion sickness," misstates the regulatory basis for his discharge. The Chief Counsel stated that the applicant was discharged for motion sickness, not "chronic motion sickness." He stated that the record contains sufficient evidence supporting a discharge for motion sickness.

The Chief Counsel asserted that no one has an absolute right to remain in the Armed Forces until the expiration of his enlistment period. *See Giglio v. United States*, 178 Ct. Cl. 160, 166 (1989). Therefore, "a member of the Armed Forces maybe appropriately and administratively discharged prior to that time." *Rowe v. United States*, 167 Ct. Cl. 468, 472 (1964).

The Chief Counsel stated that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. *Arens v. United States*, 969 F. 2d 1034, 1037 (1992). He stated that the applicant has failed in his burden of proving the existence of an error with respect to his discharge. He stated that the applicant was properly discharged for "motion sickness", not "chronic . . . motion sickness". He stated that the applicant was observed for a total of 26 days from December 16, 1999, until January 10, 2000, while underway in moderate and calm seas, while at anchor in calm seas and while working on a vessel moored to a pier. Under all these circumstances, applicant suffered from motion sickness. "Hence, applicant's commanding officer had a reasonable basis to conclude that he suffered from motion sickness when he initiated action to discharge applicant involuntarily on January 10, 2000."

The Chief Counsel stated that the doctor, a contract civilian, who stated that there was insufficient time allowed to determine if the applicant suffered from chronic motion sickness was not familiar with Coast Guard regulations that permit discharge for motion sickness. The Chief Counsel stated that the doctor's "conclusion may have been medically valid regarding chronic motion sickness, it was nevertheless, irrelevant to the determination that applicant suffered from motion sickness."

The Chief Counsel stated that the applicant received all of the due process rights afforded to him by regulation. He was given notice of the discharge and an opportunity to make a statement, as required by regulation.

The Chief Counsel states that there is no injustice here "that shocks the senses". The applicant received an honorable discharge and a RE-3X reenlistment code (eligible for reenlistment except for disqualifying factor-condition (motion sickness) interfering with performance of duty). The Chief Counsel stated that the applicant is eligible to reenter the service as his military record now stands if he can show that he has overcome his motion sickness.

Attached to the advisory opinion was a memorandum from the Commander, Coast Guard Personnel Command (CGPC). He noted that applicant's DD Form 214 (discharge document) contains the incorrect separation authority. The separation authority should be Article 12-B-12 (convenience of the Government - condition not a disability) and not Article 12-B-11 (expiration of enlistment). CGPC indicated that this correction should be made to the applicant's DD Form 214.

### **Applicant's Response**

On September 5, 2001, the Board received the applicant's reply to the views of the Coast Guard. He stated the following:

... I strongly feel that I have been treated unjustly and unfairly. Had this discharge been for any other reason, like indebtedness, homosexuality, abuse of a family member, etc., a thorough investigation would have taken place ... an adequate grace period would have been awarded in which the member could have resolved the problem and continued his enlistment. I was not awarded this time. The process was swift and went unquestioned. ...

The fluid in my ears, the flu symptoms ... the contradiction of medical recommendations (SIQ for 5 days ... established medical recommendations for motion sickness, poorly written directions on prescription bottle, unavailability of Scopolamine Patch at military installations in [redacted] failure to follow COMDTINST 6710.15D) vs. the command's orders, combined with the stress (my wife's ... [redacted] moving from the cold climate of [redacted] to the warm climate of [redacted] moving to a new home, starting a new job, and being determined and anxious to do well, exacerbated my symptoms. There was no real medical diagnosis. The Coast Guard didn't give me enough time to gain my "sea legs" or rule out other possibilities ... and I was improperly treated for alleged motion sickness.

... I have recently been to a [Ear, Nose, and Throat specialist] and have submitted to an Electronystagmography (or ENG, a test of the body's balance system). The results were normal ... This rules out having an inner ear/balance system problem that would make me more susceptible to motion sickness in itself, and shows that other factors were causing or worsening the symptoms (Fluid in my ears, stress, etc.). It also shows that I was not given enough time to get "sea legs". Had my ear problem been treated ... and had I been given more time to gain my "sea legs", I would have been over the motion sickness symptoms and would have continued my enlistment.

The applicant stated that because he was not prescribed the correct dosage of medication, it was ineffective. His prescription read "take 1 tab 2 hr before going underway and 1 daily as long [as] you are [underway] Meclizine 25 mg." He stated that

according to a memorandum attached to the advisory opinion as enclosure (1), the appropriate dosage of Meclizine is "1-2 tablets (25 mg) one hour prior to departure, repeating this dose every 12 to 24 hours as needed." The applicant claimed that on December 20, 1999, the doctor noted that he had fluid in his ears, but he did not do anything to correct it or investigate whether having fluid in his ears was causing the applicant to experience symptoms similar to those of seasickness.<sup>4</sup>

### 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 submission, 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 requested an oral hearing before the Board. The Chairman, acting pursuant to 33 CFR 52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The Coast Guard's decision to discharge the applicant from the Coast Guard was neither erroneous nor unfair. Article 12.B.12.a.9 of the Personnel Manual gives CGPC the authority to discharge a member who suffers from "Motion sickness." A doctor who treated the applicant for seasickness stated that the applicant had not been allotted a sufficient amount of time to determine if the applicant suffered from "chronic seasickness," but he did not deny that the applicant suffered from seasickness. The applicant's medical record contains several entries pertaining to treatment for seasickness.

4. The record also contains sufficient evidence that the applicant's condition interfered with his ability to perform duties aboard the cutter to which he was assigned. At one point, the CO wrote that the applicant had to be medevaced from the cutter while underway to an air station because of seasickness. He also stated that whether inport or underway, in calm or high seas, the applicant experienced symptoms of seasickness.

5. The applicant's claim that the Coast Guard did not attempt to manage his seasickness is without merit. He was prescribed two different treatment programs for his condition. Neither one worked. The fact that the applicant thinks that he should have been given a longer period to adjust to sea duty is insufficient to prove that the Coast Guard committed an error by discharging him. There was no regulation requiring the Coast Guard to manage the applicant's seasickness or to allow him a specific period of time to gain his sea legs.

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<sup>4</sup> The medical entry dated December 12, 1999, stated that the applicants ears were within normal limits and without fluid.



6. The applicant's claim that the CO failed to follow the doctor's instructions that the applicant spend 5 days SIQ followed by two weeks of light duty is also without merit. The doctor stated that on December 27, 1999, he prescribed 5 days SIQ for the applicant but during a December 28, 1999, follow-up visit for seasickness and a suspected heart problem, the doctor prescribed two weeks of light duty. There is nothing in the doctor's statement or the applicant's military record that supports the applicant's view that he was prescribed two weeks of light duty in addition to the earlier prescription of 5 days SIQ. The Board finds that on the December 28 follow-up visit the doctor changed the applicant's duty status from SIQ to two weeks of light duty. Therefore, when the CO ordered the applicant back to work on December 28, 1999, he did not violate the doctor's orders.

7. The applicant's claim that his problem was the result of an ear infection and stress rather than motion sickness is not proven. There is no evidence in the record that the applicant suffered from an ear infection. Contrary to the applicant's claim, it appears to the Board that the doctor stated in a medical note dated December 20, 1999, that the applicant's ears were within normal limits and there was no fluid. The latest report from the ENT specialist, which was submitted by the applicant, shows that the applicant's ears were not infected with disease or injury. This report corroborates the finding of the earlier doctor that the applicant did not suffer from an ear infection.

8. The Board finds that the applicant was not misled about the reason for his discharge, even though the Coast Guard used the words "chronic seasickness" to describe the reason for the applicant's discharge. The applicant had been diagnosed and treated for seasickness since reporting to the cutter on December 16, 1999. In addition, he was treated for the illness and had to be medavaced off the cutter back to shore because of it. The applicant could not have been confused about the reason for his discharge. Whether the word chronic was used or not, the fact is that the applicant suffered from seasickness and that was the basis for his discharge.

9. There is no requirement under the Personnel Manual that an individual be given time to gain his sea legs. Article 12.B.12.a.9 of the Personnel Manual states that CGPC "may authorize or direct enlisted members to separate for the convenience of the government for [motion sickness]." The Board finds that CGPC properly exercised its authority when he directed that the applicant be discharged from the Coast Guard due to seasickness. The timing of the request for discharge is left to the CO and approval of the discharge is left to CGPC. In this case, there is ample evidence supporting CGPC's decision to order the applicant discharged from the Coast Guard because of seasickness.

10. The applicant has not proved that the Coast Guard committed an error or injustice by discharging him from the Service:

11. The Board has considered all of the applicant's contentions. Those not discussed within the findings and conclusions are considered to be not relevant to his claim.

12. Accordingly, the application should be denied, except that if the Coast Guard has not done so already, the applicant's DD Form 214 should be corrected to show

Article 12.B.12 (convenience of the government) of the Personnel Manual as the separation authority rather than Article 12.B.11 (expiration of enlistment).

**[SIGNATURES AND ORDERS ON NEXT PAGE]**

ORDER

The application of \_\_\_\_\_, USCG, for correction of his military record is denied, except that block 25 of the applicant's DD Form 214 shall be corrected to show Article 12.B.12 (convenience of the government) of the Personnel Manual as the separation authority rather than Article 12.B.11 (expiration of enlistment).

