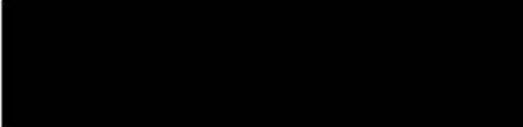


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-061



FINAL DECISION

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. The Chair docketed the application on February 19, 2016, upon receipt of the applicant's completed application and military records, and prepared the draft decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 15, 2016, 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 medically retired from the Coast Guard on September 8, 2014, asked the Board to change her reentry code on her discharge form DD 214 from RE-2 (ineligible to reenlist due to retired status) to RE-1 (eligible). The applicant explained that she was medically retired from active duty due to an on-the-job injury to her right eye that left her without vision in that eye. Her doctors were not certain that she would regain vision and so she was permanently medically retired. However, she alleged, she has since made a full recovery and has "full vision." Therefore, she asked the Board correct her record so that she may reenlist. In support of her request, she submitted several documents, which are included in the summary below.

SUMMARY OF THE RECORD

The applicant enlisted on active duty on August 16, 2011. A series of reports from a medical doctor at Retina Consultants of Hawaii dated from June 8, 2013, to September 10, 2013—before her retirement—shows that on June 8, 2013, the applicant "was walking with knife pointed upwards when she sneezed and impaled OD [her right eye] on knife. Immediate loss of vision." The reports show that following surgical repair on the day of injury, the applicant's recovery was slow. At first she could see nothing out of her right. By September 2013, she continued to have peripheral retinal detachment, light perception only, and decreased vision and the doctor suspected there was a nonorganic neuro/ophthamological cause. The diagnostic codes assigned by doctors included 361.00 and 871.00.

Because of her eye condition, the applicant was evaluated by a medical board and processed under the Coast Guard's Physical Disability Evaluation System (PDES). On April 24, 2014, an Informal Physical Evaluation Board (IPEB) convened to review her records. The IPEB reported that she had "no more than light perception in one eye; in the other eye 20/40." The IPEB noted that the applicant had also been diagnosed with retinal detachment and globe rupture but did not rate those conditions to avoid "pyramiding"—the evaluation of the same disability under various diagnoses—in accordance with 38 C.F.R. § 4.14. The IPEB found that her medical condition "continues to prevent her from performing the duties required of a service member of her rank and rating" and recommended that she be permanently retired with a 30% disability rating.¹

On July 21, 2014, the applicant signed a form "accept[ing] the tentative IPEB findings and recommended disposition and waive my right to a formal hearing." The form shows that no attorney was appointed to advise her regarding accepting or rejecting the recommendation of the IPEB because, the same day, she electronically signed a form declining the opportunity to consult with counsel.

On August 18, 2014, the Coast Guard issued separation orders, directing the applicant's command to retire her by reason of permanent disability. The applicant's DD 214 shows that she on September 8, 2014, she was retired due to a permanent disability with an RE-2 reentry code, which makes her ineligible to reenlist because of her retired status.

The applicant submitted the following post-retirement medical reports:

- A medical doctor from Virginia Eye Consultants wrote a letter dated May 20, 2015, stating that he "performed a comprehensive eye examination on [the applicant] this afternoon as part of her evaluation for a position with the U.S. Customs and Border Protection Agency. [She] has a history of an accidental perforating knife injury to her right eye which necessitated emergency surgical repair consisting of a globe repair with pars plana vitrectomy, localized retinal detachment repair and SF6 gas in 2013. On today's examination, ... [h]er visual acuity measured 20/20 ou. The anterior segments were unremarkable ou without evidence of iris injury or cataract. Dilated funduscopic exam of the retina OD revealed the retinal to be flat 360 degrees. Old laser retinopexy scars were noted at the infero-nasal periphery at the site of the old detachment. No retinal elevation was present. The optic disc and retinal vessels were normal. Mild retinal striae were noted at the inferior vascular arcade which extended to the macula. Dilated exam of the OS was normal to the periphery. Visual fields were also performed as part of her examination and were WNL [within normal limits] ou. [She] is stable following her injury with an excellent visual result. Based upon the above findings, it is my opinion that she should have no limitations in her ability to perform law enforcement duties including operation of a motor vehicle and the carrying and use of weapons. I do not anticipate that she would suffer an abrupt or gradual impairment of her physical function which would affect the

¹ The Board notes that 30% is the prescribed disability rating in the Veterans Affairs Schedule for Rating Disabilities (VASRD) when a member has only light perception in one eye and no better than 20/40 perception in the other.

performance of her assigned duties. In addition, I do not expect that her present condition will in any way be aggravated by the functional requirements of her position. I believe [she] has an excellent visual prognosis going forward. No treatment or medication for her condition is indicated at this time. Annual eye examinations are recommended, however."

- A report of a vision test dated May 18, 2015, shows that the applicant has normal visual fields, normal color vision, "stereo depth" of 3/9, tonometry of 6.0 in her right eye and 10.0 in her left, and uncorrected 20/30 vision in her right eye, 20/20 in her left, and 20/20 with both eyes. The report states that her right retina "remains attached" and that her diagnosis is 361.89 due to her history of retinal detachment.
- The applicant also submitted the reports of a 2015 medical examination, including blood, hearing, and EKG tests.

VIEWS OF THE COAST GUARD

On July 20, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with the findings and analysis in a memorandum submitted for the case by Commander, Personnel Service Center (PSC).

PSC stated that members who are placed on the permanent disabled retired list (PDRL) are assigned an RE-2 reentry code, whereas members who are placed on the temporary disabled retired list (TDRL) may receive an RE-3 reentry code (which means that a veteran is eligible to reenlist except for a disqualifying factor and may reenlist if granted a waiver for the problem that caused the discharge). Therefore, PSC argued, the applicant properly received an RE-2 reentry code after she was found to be permanently disabled by the IPEB. PSC stated that if the applicant had been placed on the TDRL, she would have been reevaluated after her separation to determine her fitness for duty, but because she was placed on the PDRL, "her condition is not to be reevaluated even if she considers it to be fully healed."

PSC also argued that the applicant remains ineligible to reenlist because of her medical condition and not just because of her reentry code. PSC explained that the list of medical conditions that are disqualifying for reenlistment under Chapter 3.D. of the Medical Manual include conditions for which the candidate has either a current diagnosis or a "verified past medical history." PSC stated that because the IPEB found that she had no more than light perception in her right eye prior to her retirement, the applicant is disqualified for reenlistment under both Articles 3.D.8.d. and 3.D.8.h. of the Medical Manual. PSC stated that the applicant's record "demonstrates a history of abnormality of the retina and abnormal visual fields therefore she would not be eligible to enlist." PSC stated that although the applicant "claims that her condition has since healed, ... having a history of abnormality is sufficient to deny her eligibility to enlist."

The JAG argued that the applicant "has not proven that the [IPEB] erred in classifying her disability as permanent. The letter from a civilian doctor indicating her vision is no longer impaired is not dispositive in showing error on behalf of the Coast Guard." The JAG stated that even if the applicant's reentry code were changed, "her past medical history concerning her eye injury is a disqualifying factor for reenlistment, making her argument moot."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 3, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within thirty days. No response was received.

APPLICABLE REGULATIONS

Article 3.D.3.c. of the Coast Guard Medical Manual states the following regarding medical conditions that are disqualifying for enlistment or for reenlistment after more than a year of separation:

Disqualifying standards. Unless otherwise stipulated, the conditions listed in this section are those that would be disqualifying by virtue of current diagnosis, or for which the candidate has a verified past medical history.

Article 3.D.8.d.(1) provides that “[c]urrent or history of any abnormality of the retina (361.00-362.89, 363.14-363.22), choroid (363.00-363.9), vitreous (379.2x)” is a disqualifying condition.

Article 3.D.8.h.(1) provides that “[c]urrent or history of abnormal visual fields (368.9) due to diseases of the eye or central nervous system (368.4x), or trauma” is a disqualifying condition.

Article 3.D.8.h.(8) provides that “[c]urrent or history of intraocular foreign body (360.50-360.69, 871.x)” is a disqualifying condition.

Article 3.D.8.h.(10) provides that “[c]urrent or history of any abnormality of the eye (360) or adnexa (376, 379.9), not specified in subparagraphs 8.h.(1)-(9), which threatens vision or visual function (V41.0-V41.1, V52.2, V59.5)” is a disqualifying condition.

Article 3.D.9.a. states that visual acuity is a disqualifying condition if it does not meet at least one of the following standards:

- (1) 20/40 in one eye and 20/70 in the other eye (369.75).
- (2) 20/30 in one eye and 20/100 in the other eye (369.75).
- (3) 20/20 in one eye and 20/400 in the other eye (369.73).

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 10 U.S.C. § 1552. The application was timely filed.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.²

3. The applicant alleged that her RE-2 reentry code is erroneous and unjust because her vision has much improved since her retirement. When considering allegations of error and injustice, the Board begins its analysis 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.³ 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."⁴

4. The record shows that the IPEB found the applicant to be permanently disabled because of her post-surgical vision and the condition of her right eye. Therefore, she was permanently retired with a 30% disability rating. The record also shows that the applicant's vision has greatly improved and that at least some measurements of her eye are within normal limits. However, the fact that the applicant's visual acuity now meets the standards for enlistment under Article 3.D.9.a. of the Medical Manual does not prove that the applicant is medically qualified to reenlist in the military. Article 3.D.8.h. of the Medical Manual lists "miscellaneous defects and diseases" of the eye that preclude the applicant's reenlistment because she has a history of these defects even though they may not currently exist. The record shows that she has a history of an "intraocular foreign body" in her eye (i.e., a knife), which disqualifies her for reenlistment under Article 3.D.8.h.(8); that her retina was once detached, which disqualifies her under Article 3.D.8.d.(1); and that because of the trauma, for several weeks she could not see at all and then gained only "light perception" prior to her discharge many months later, which disqualifies her under Article 3.D.8.h.(1). Her diagnostic code upon injury was 361.00 and it is currently 361.89, both of which are disqualifying under Article 3.D.8.d.(1) of the Medical Manual.

5. The preponderance of the evidence shows that—even though her vision has improved—the applicant was properly retired due to a permanent disability with an RE-2 reentry code. In addition, she is medically ineligible to reenlist based on her medical history. Therefore, she has not proven by a preponderance of the evidence that her RE-2 reentry code constitutes an error or injustice, and her request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

² *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

³ 33 C.F.R. § 52.24(b).

⁴ *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 [REDACTED], USCG (Retired), for correction of her military record is denied.

December 15, 2016

