

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-119

████████████████████
██████ FS3 (retired)

FINAL DECISION ON RECONSIDERATION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case for reconsideration on March 20, 2018, and assigned it to staff attorney ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 22, 2019, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

BACKGROUND: BCMR DOCKET NO. 2016-061

In BCMR Docket No. 2016-061, the applicant 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 to reenlist). 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 application, the applicant submitted several medical documents to show that the vision in her right eye had improved drastically since her release from active duty. The Coast Guard recommended denying relief because the applicant had gone before an Informal Physical Evaluation Board (IPEB) and was found to be permanently disabled, as opposed to temporarily disabled. The Coast Guard also stated that the applicant remains disabled due to her medical condition, not just because of the reentry code. Her medical history “demonstrates a history of abnormality of the retina and abnormal visual fields therefore she would not be eligible to enlist” because, under Chapter 3.D. of the Medical Manual, the list of medical conditions that are disqualifying for reenlistment includes conditions for which the applicant has a “verified past medical history.” The Coast Guard argued that the applicant did not prove that the IPEB erred in classifying her disability as permanent and the fact that her eye had healed did not

change the fact that “her past medical history concerning her eye injury is a disqualifying factor for reenlistment, making her argument moot.”

In the Final Decision for 2016-061, the Board found that the applicant’s RE-2 reentry code was not erroneous or unjust. The applicant was found by the IPEB to be permanently disabled because of the condition in her right eye and she was therefore permanently retired. The Board found that just because the applicant’s eye had healed did not mean that she was 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 Board therefore found that the preponderance of the evidence showed that the applicant was properly retired due to a permanent disability with an RE-2 reentry code and that she was medically ineligible to reenlist based on her medical history.

SUMMARY OF APPLICANT’S REQUEST FOR RECONSIDERATION

After the Chair sent the applicant a copy of the Board’s decision to deny relief in her original case on December 30, 2016, she submitted her request for reconsideration on March 19, 2018. She obtained counsel to represent her for her new request and again asked the Board to change her reentry code on her discharge form DD 214 from RE-2 to RE-1. She submitted the same medical documents, as well as five letters of recommendation. The letters were from four people the applicant knew in her civilian capacity and one person she knew while in the Coast Guard. All gave glowing, emotional recommendations with pleas to allow the applicant back on active duty. They wrote that she is dedicated, devoted, and loyal and only wishes to serve her country once again.

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 871.0

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 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 had—
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 fundoscopic exam of the retina OD revealed the retina 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 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.

¹ 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.

IEWS OF THE COAST GUARD UPON RECONSIDERATION

On September 28, 2018, the Board received the Coast Guard's response to the applicant's request for reconsideration. The Coast Guard stated that this application is "nearly identical" to the applicant's 2016 application. The Coast Guard stated that given the applicant's injury, "albeit during her tenure of service," she is precluded from enlisting because the injury qualifies as a pre-existing medical condition. This preclusion is permanent under Chapter 3.D.8.d.(1) of the Medical Manual. The Coast Guard stated that the applicant is attempting to sway the opinion of the Board by adding supporting declarations, but she "has provided no new information or shown that there was a misinterpretation of law or policy on the first application." The Coast Guard asserted that while the declarations tend to show that the applicant would be an excellent candidate for enlistment, they "do not establish that the applicant was a victim of a violation of policy ... or that she suffered an injustice." The Coast Guard therefore recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 2, 2018, 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 LAW AND POLICY

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The applicant's request for reconsideration was timely filed.²

2. 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

3. As the Board found in BCMR Docket No. 2016-061, the applicant has not proven by a preponderance of the evidence that her RE-2 reentry code constitutes an error or injustice. The applicant was permanently retired with a 30% disability rating after being evaluated by the IPEB. While the record shows that the applicant's vision has greatly improved and that people recommend her for reenlistment, under Article 3.D.9.a. of the Medical Manual the applicant is simply not 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 apparently do not currently exist: 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); her retina was once detached, which disqualifies her for reenlistment under Article 3.D.8.d.(1); and she could not see at all for several weeks and then gained only "light perception" prior to her medical retirement many months later, which disqualifies her for reenlistment under Article 3.D.8.h.(1). The applicant has not shown that these policies, which make her medically ineligible to reenlist, are erroneous or unjust.

4. Despite the fact that the applicant's eye has been surgically repaired and her vision has improved, her history of severe eye trauma makes her ineligible to reenlist under military medical policy. Accordingly, her request for an RE-1 should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

² 10 U.S.C. § 1552(a)(3)(D).

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 retired FS3 [REDACTED], USCG, for correction of her military record is denied.

February 22, 2019

