

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-085**

██████████  
██████████, LT

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**FINAL DECISION**

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the applicant's completed application on April 28, 2015, and prepared the draft decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 29, 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 stated that he was discharged from active duty in the Coast Guard on June 30, 2013, after being found fit for duty and separation, but then the Coast Guard Reserve refused to allow him to accept a Reserve commission on July 1, 2013, finding that he was unfit for duty because he had previously been diagnosed with post-traumatic stress disorder (PTSD). The applicant asked the Board to correct his record to show that he is fit for duty so that he may accept the commission in the Reserve.

The applicant stated that under Chapter 3.F.16. of the Coast Guard Medical Manual, only members who have been treated for PTSD for more than a year without improvement are considered unfit for duty, and he had not been treated for PTSD for more than a year at the time of his discharge. He pointed out that if he had been, he would have been found unfit for duty prior to his discharge and processed for separation under the Physical Disability Evaluation System (PDES) for a medical separation. He alleged that after his discharge, he was counseled that he could not be processed under the PDES since he already had separation orders when he was diagnosed with PTSD, but he now believes this was erroneous advice. He argued that because he was discharged as fit for duty on June 30, 2013, he should have been allowed to accept his appointment in the Reserve.

In support of his request, the applicant submitted this timeline:

- October 2012—He received separation orders for June 30, 2013, due to being non-selected for promotion twice.
- November 2012—He was referred for evaluation for PTSD.
- February 2013—He was diagnosed with PTSD by an Air Force psychiatrist and referred for a Medical Evaluation Board (MEB) to determine his fitness for duty.
- March 2013—He was offered a Reserve commission as a lieutenant (LT).
- May 2013—He began his pre-separation physical examination at his last duty station in Texas.
- May 8, 2013—He began terminal leave and moved to [REDACTED] to be near his family.
- June 8, 2013—He went to the clinic at Coast Guard Headquarters to complete his pre-separation physical examination but was told it had to be restarted.
- June 13, 2013—A physician's assistant (PA) at the clinic asked him about his PTSD diagnosis and treatment. The applicant had not started treatment because he went on terminal leave and that he planned to get treatment as a member of the Reserve following his discharge. He was told to get another evaluation at Walter Reed.
- June 25, 2013—The applicant was again diagnosed with PTSD at Walter Reed, and the physician referred him for an MEB to determine his fitness for duty.
- June 28, 2013—A senior Medical Officer at Walter Reed concurred with the physician and recommended that an MEB be held prior to the applicant's separation, and so a chief warrant officer (CWO) at the Coast Guard clinic took him to an administrative office to be placed on administrative hold on active duty pending the MEB.
- June 30, 2013—The applicant was released from active duty instead of being placed on administrative hold.
- July 1, 2013—The applicant called the CWO and was told that the Officer Personnel Management (OPM) branch of the Personnel Service Center would not place him on administrative hold until the MEB paperwork was filed. The applicant was told to continue getting treatment at Walter Reed until the paperwork was filed and he could return to active duty.
- July 2 – August 12, 2013—The applicant called the CWO several times and was repeatedly told to call back another time because the physician had not yet filed the paperwork due to a backlog.
- July 12, 2013—The applicant asked to speak to the Department Head or Executive Officer to express his concerns.
- July 13, 2013—The applicant met with the clinic Department Head to explain his situation and express his concerns because he had had to turn down three job offers because he expected to be returned to active duty. The Department Head told him the matter would be cleared up within 48 hours.
- July 15, 2013—The Department Head advised the applicant that because he had already received separation orders when he was diagnosed with PTSD, he should not have been



referred for an MEB because his condition was not acute. She advised him to continue his treatment for PTSD while he was still eligible for Tricare and that if he thought he was entitled to a Reserve commission, he could apply to the BCMR. The applicant told her that he believed that a BCMR application takes “several years to process” and that he would lose his one-year window of opportunity after his discharge to accept his Reserve commission. The Department Head told him it might not take years and that he might get lucky with a quick turn-around.

In support of his claims, the applicant also submitted medical reports, which are included in the summary below.

### SUMMARY OF THE RECORD

The applicant served in the Marine Corps Reserve from July 11, 1988, to December 20, 1995. His Statement of Creditable Service (SOCS) and a Career Retirement Credit Record from the Marine Corps show that, while a member of the Marine Corps Reserve, he served various periods on active duty totaling 380 days, which equals 1 year and 15 days.

The applicant’s SOCS and reenlistment contract show that he enlisted on active duty in the Coast Guard on February 11, 1997. He subsequently attended Officer Candidate School and was commissioned an ensign in the Reserve on June 26, 2002. He served on continuous active duty following his enlistment and commissioning and was promoted to lieutenant junior grade on December 26, 2003, and to lieutenant on June 26, 2006, at which point he integrated into the regular Coast Guard. However, the applicant was not selected for promotion to lieutenant commander in either 2011 or 2012, and he received separation orders in October 2012 that required him to be discharged on or before June 30, 2013.

The last substantive Officer Evaluation Report (OER) in the applicant’s record is dated March 31, 2012. In the various performance categories, the applicant received six “above standard” marks of 5, eleven “excellent” marks of 6, one “superior” mark of 7, and a mark in the fifth spot on the comparison scale, denoting an “excellent performer.”

In December 2012, the applicant told a doctor that he felt depressed, that he thought he had PTSD, and that he had been suffering the symptoms for years. The doctor diagnosed him with depression, noted that a diagnosis of PTSD was probable given the applicant’s description of his symptoms, and referred the applicant for a psychiatric evaluation. He noted that the applicant was not fit for sea duty or worldwide deployment.

On February 4, 2013, the applicant underwent a comprehensive psychiatric evaluation for PTSD and depression at a clinic in [REDACTED]. The doctor noted that he had been referred for the evaluation because he had been complaining of PTSD symptoms. The psychiatrist diagnosed the applicant with PTSD and moderate, recurrent major depressive symptoms and noted that convening an MEB should be considered. The applicant was referred for counseling and released for duty without limitations.

On February 14, 2013, the applicant returned to the clinic for a duty status update. The doctor noted the applicant’s PTSD diagnosis and that the applicant had been “functioning in a

full duty status” for many years. The doctor reported that because the applicant had not yet begun treatment to determine if his condition could be improved with medication and therapy, he would not be referred for an MEB. The applicant was advised to continue therapy and seek a support group for PTSD.

On March 13, 2013, the Commandant issued ALCOAST 035/13, which listed the applicant’s name among those officers who had been selected for a Reserve commission following separation. The ALCOAST noted that to affiliate with the Reserve, the officers needed to meet physical retention standards and be fit to mobilize. In addition, they had to submit a DD-2697, Report of Medical Assessment, indicating that they were qualified for retention and service.

On April 1, 2013, the applicant signed an Acceptance and Oath of Office to accept his Reserve commission as of July 1, 2013. The applicant did not submit a DD-2697.

On May 8, 2013, a psychologist reported that he had evaluated and tested the applicant for PTSD, depression, and anxiety and had diagnosed the applicant with an adjustment disorder with mixed anxiety and depressed mood and a dysthymic disorder. He recommended psychotherapy and medication.

On June 14, 2013, the applicant underwent a pre-separation physical examination at the clinic at Coast Guard Headquarters. He was referred for a psychiatric evaluation at Walter Reed because of the prior PTSD diagnosis in his record.

On June 17, 2013, the applicant went to the clinic and asked the doctor whether he should have an MEB because of his diagnosis of PTSD and depression. The doctor noted that the applicant was asking about an MEB because he was about to be released from active duty into the reserves. The doctor stated that a psychiatric evaluation at Walter Reed would determine his fitness for duty in the reserves and/or his eligibility for treatment through the Department of Veterans Affairs as a veteran.

On June 25, 2013, the applicant underwent a psychiatric evaluation at Walter Reed and was diagnosed with PTSD and moderate, recurrent major depression. The doctor noted that the applicant had felt frustrated by his prior counseling for PTSD and had not continued it. The applicant was referred for psychotherapy and prescribed Lunesta. The doctor recommended that the applicant receive an MEB.

On June 28, 2013, the applicant returned to the Coast Guard Headquarters clinic. The doctor concurred with the need for an MEB.

On June 30, 2013, the applicant was honorably discharged from the Coast Guard due to his two non-selections for promotion. He was not transferred to the Reserve. He had served 1 year and 15 days of active duty in the Marine Corps and 16 years, 4 months, and 20 days of active duty (since February 11, 1997) in the Coast Guard, for a total of 17 years, 5 months, and 5 days of active duty. He received \$139,181.73 in separation pay.

The applicant’s DD 214, however, appears to reflect 18 years, 11 months, and 10 days of total active duty as follows:

- The date of entry on active duty in the Coast Guard in block 12a is shown as January 26, 1996, which is actually the applicant's adjusted active duty base date—i.e., his date of enlistment in the Coast Guard, February 11, 1997, minus his prior 1 year and 15 days of active duty in the Marine Corps.
- Block 12c on the DD 214 credits the applicant with 17 years, 5 months, and 5 days on active duty in the Coast Guard, from January 26, 1996, through June 30, 2013, even though he enlisted in the Coast Guard on February 11, 1997.
- Block 12d on the DD 214 credits the applicant with 1 year, 6 months, and 5 days of total prior active duty in the Marine Corps Reserve, instead of the 1 year and 15 days reported by the Marine Corps and shown on his SOCS.

On August 19, 2013, an MEB reviewed the applicant's records and issued a Narrative Summary in which they concurred with the applicant's diagnosis. The summary states that his prognosis was uncertain and would change over time depending upon the success of his treatment. It also states that he would not be available for worldwide assignment on active duty because he needed treatment for PTSD and marital therapy in the [REDACTED] area, where his wife lived, because they were divorcing. Therefore, the summary concludes a waiver for PTSD and depression was not recommended.

#### **VIEWS OF THE COAST GUARD**

On August 10, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case and adopted the findings and analysis in a memorandum prepared by the Personnel Service Center (PSC).

Based on the entries on the applicant's DD 214, PSC stated that at the time of his discharge on June 30, 2013, the applicant had more than 18 years, 11 months, and 10 days of total active duty. Therefore, PSC argued, he should have been given the opportunity to remain on active duty until he could retire with 20 years of service, pursuant to Article 1.A.12.d. of COMDTINST M1000.4, the Military Separations Manual, because he had more than 18 years of active duty.

PSC stated that at the time of the applicant's discharge, he had not yet completed psychotherapy or psychopharmacological treatment for PTSD, and a Medical Officer had noted that he should not be referred for an MEB until he had done so. In addition, on June 17, 2013, a doctor had noted that it was not clear whether the applicant was fit for duty in the Reserve and so needed a psychiatric evaluation. At Walter Reed on June 25, 2013, PSC noted, the psychiatrist arranged for the applicant to receive psychotherapy and psychopharmacological treatment. The psychiatrist also recommended that the applicant's primary doctor initiate an MEB. No MEB was initiated, however, because the applicant was administratively discharged on June 30, 2013, for non-selection for promotion.

PSC stated, however, that given the applicant's diagnoses, it is likely that an MEB would have been convened if he had remained on active duty. PSC recommended that the Board direct the Coast Guard to provide the applicant with a medical evaluation and additional review of the

Narrative Summary dated August 19, 2013. PSC stated that if the evaluation and review show that he currently meets the criteria for an MEB, one should be convened for him “as an active duty member.” And, PSC stated, if the MEB finds that he meets retention standards, he should be given the opportunity to accept the Reserve commission he was offered and placed in the Individual Ready Reserve, where he can compete for a Selected Reserve billet for the next assignment year.

### **APPLICANT’S RESPONSES TO THE VIEWS OF THE COAST GUARD**

On September 25, 2015, the applicant responded to the views of the Coast Guard, stating that he agreed that relief should be granted and that he should be allowed to retire since he had reached the 18-year sanctuary mark on his date of discharge. In addition, the applicant argued, he should have received an MEB and been either medically retired or allowed to accept his Reserve commission.

### **APPLICABLE LAW**

Title 14 U.S.C. § 283 states the following regarding regular lieutenants who are twice non-selected for promotion:

(a) Each officer of the Regular Coast Guard appointed under section 211 of this title who is serving in the grade of lieutenant and who has failed of selection for promotion to the grade of lieutenant commander for the second time shall:

(1) be honorably discharged on June 30 of the promotion year in which his second failure of selection occurs; or

(2) if he so requests, be honorably discharged at an earlier date without loss of benefits that would accrue if he were discharged on that date under clause (1); or

(3) if, on the date specified for his discharge in this section, he has completed at least 20 years of active service or is eligible for retirement under any law, be retired on that date; or

(4) if, on the date specified for his discharge in clause (1), he has completed at least eight-  
een years of active service, be retained on active duty and retired on the last day of the month in  
which he completes twenty years of active service, unless earlier removed under another provision  
of law. (Emphasis added.)

### ***Medical and PDES Manuals***

Chapter 3.F. of the Medical Manual, COMDTINST M6000.1E, lists the conditions that may be disqualifying for retention in the Service and warrant initiating an MEB. Chapter 3.F.1.c. states the following:

Members are ordinarily considered fit for duty unless they have a physical impairment (or impairments) that interferes with the performance of the duties of their grade or rating. A determination of fitness or unfitness depends upon the individual's ability to reasonably perform those duties. Active duty or reserves on extended active duty considered permanently unfit for duty shall be referred to a Medical Evaluation Board (MEB) for appropriate disposition.

Chapter 5.B.11. of the Medical Manual states that PTSD may be disqualifying for retention under Chapter 3.F. Chapter 3.F.16.b. states that PTSD may be disqualifying for retention if there is “[p]ersistence or recurrence of symptoms sufficient to require treatment (medication, counseling, psychological or psychiatric therapy) for greater than twelve (12) months. Pro-

phylactic treatment associated with significant medication side effects such as sedation, dizziness, or cognitive changes or requiring frequent follow-up that limit duty options is disqualifying. Prophylactic treatment with medication may continue indefinitely as long as the member remains asymptomatic following initial therapy.”

Chapter 2.C.2. of the Physical Disability Evaluation System (PDES) Manual, COMDT-INST M1850.2D, states the following:

Fit For Duty/Unfit for Continued Duty. The following policies relate to fitness for duty:

a. The sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated through military service. Each case is to be considered by relating the nature and degree of physical disability of the evaluatee concerned to the requirements and duties that a member may reasonably be expected to perform in his or her office, grade, rank or rating. ...

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b. The law that provides for disability retirement or separation (10 U.S.C., chapter 61) is designed to compensate a member whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. That law and this disability evaluation system are not to be misused to bestow compensation benefits on those who are voluntarily or mandatorily retiring or separating and have theretofore drawn pay and allowances, received promotions, and continued on unlimited active duty status while tolerating physical impairments that have not actually precluded Coast Guard service. The following policies apply:

(1) Continued performance of duty until a member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty. This presumption may be overcome if it is established by a preponderance of the evidence that:

(a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or

(b) acute, grave illness or injury, or other deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons other than physical disability which rendered him or her unfit for further duty. ...

(2) A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in paragraphs 2.C.2.b.(1)(a) or (b) are met.

c. If a member being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is presumed fit for duty even though medical evidence indicates he or she has impairments.

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f. The following standards and criteria will not be used as the sole basis for making determinations that an evaluatee is not fit for duty by reason of physical disability:

(1) inability to perform all duties of the office, grade, rank, or rating in every geographic location and under every conceivable circumstance. ...

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(5) the presence of one or more physical defects that are sufficient to require referral for evaluation ...

(6) pending voluntary or involuntary separation, retirement, or release to inactive status (see article 2.C.2.b.(1)).

h. An evaluatee found unfit to perform assigned duties because of a physical disability normally will be retired or separated. ...

i. The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide

justification for, or entitlement to, separation or retirement from military service because of physical disability.

### 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 within three years of the applicant's discharge.

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.<sup>1</sup>

3. The applicant alleged that his discharge from active duty without being allowed to accept a commission in the Reserve was erroneous and unjust. In addition, after the Coast Guard claimed that he had been erroneously discharged with more than eighteen years of service, the applicant supported the claim and argued that he should have been allowed to remain on active duty until he could retire. In 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.<sup>2</sup> 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."<sup>3</sup>

4. The record shows that the Coast Guard prepared block 12 on the applicant's DD 214 erroneously and so has wrongly concluded in the advisory opinion, based on the erroneous DD 214 entries, that the applicant had more than eighteen years of active duty upon his discharge and should have been retained on active duty until retirement. The record shows that the applicant served on active duty in the Coast Guard from February 11, 1997, through June 30, 2013, which is 16 years, 4 months, and 20 days. When added to the 1 year and 15 days of active duty he had served while a member of the Marine Corps Reserve, the applicant's total active duty upon discharge was 17 years, 5 months, and 5 days. Therefore, 14 U.S.C. § 283(a)(4) was inapplicable, and the applicant was correctly advised in October 2012, following his second non-selection for promotion, that he was subject to an administrative discharge pursuant to 14 U.S.C. § 283(a)(1).

5. The record shows that after the applicant was advised in October 2012 that he would be administratively discharged for two non-selections, he began complaining about symptoms of PTSD and asking for an MEB. In February 2013, the applicant was diagnosed with PTSD and symptoms of depression but released for full duty without limitations. A doctor noted

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<sup>1</sup> *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).

<sup>2</sup> 33 C.F.R. § 52.24(b).

<sup>3</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).



that the applicant had been “functioning in a full duty status for many years” and had not yet begun treatment. The Board finds that the doctor correctly concluded on February 14, 2013, in accordance with Chapter 3.F.b. and c. of the Medical Manual, that convening an MEB would have been inappropriate because the applicant had not yet undergone any treatment.

6. The record shows that on June 17, 2013, the applicant requested an MEB because of PTSD, and the doctor attributed the request to the applicant’s pending separation but referred him for a psychiatric evaluation anyway. On June 25, 2013, a psychiatrist at Walter Reed noted that the applicant had started treatment for PTSD following his February 2013 diagnosis but stopped treatment because he found it frustrating. The psychiatrist prescribed more psychotherapy and medication and recommended that the applicant be evaluated by an MEB. However, under Chapter 3.F.b. of the Medical Manual, members are supposed to undergo treatment for PTSD for a least a year before an MEB will be convened, and the record shows that the applicant had chosen to stop treatment. The preponderance of the evidence shows that he had not been treated for PTSD for more than a year without improvement at the time of his discharge. The record reflects at most a few months of treatment for PTSD between his initial diagnosis and the date he told a doctor he had stopped his treatment.

7. Chapter 2.C.2.b. of the PDES Manual states that the law providing for disability separations “is designed to compensate a member whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. That law and this disability evaluation system are not to be misused to bestow compensation benefits on those who are voluntarily or mandatorily retiring or separating and have theretofore drawn pay and allowances, received promotions, and continued on unlimited active duty status while tolerating physical impairments that have not actually precluded Coast Guard service.” Under Chapter 2.C.2.b.(2), an officer who, like the applicant, is being administratively discharged for non-selection “shall not be referred for disability evaluation [by an MEB] unless the conditions in paragraphs 2.C.2.b.(1)(a) or (b) are met.” Those paragraphs require that the officer be physically incapable of performing his duties or suffer an “acute, grave illness or injury, or other deterioration ... which rendered him or her unfit for further duty.” There is no evidence in the record that the applicant met these requirements for disability evaluation by an MEB in June 2013. As the applicant’s doctor noted in February 2013, he had been “functioning in a full duty status for many years.” Thus, the preponderance of the evidence shows that the diagnosed impairment of PTSD had not interfered with his performance of duty.

8. Therefore, the Board finds that the preponderance of the evidence does not support the claim that the applicant should have been retained on active duty and retired or that he should have been processed for a disability separation in 2013. His administrative separation from active duty on June 30, 2013, was required by 14 U.S.C. § 283(a)(1) despite the fact that he had recently been diagnosed with PTSD and depression.

9. The record shows, however, that the applicant should have been offered a Reserve commission upon his separation from active duty. ALCOAST 035/13 shows that he had been selected for a Reserve commission, and on April 1, 2013, he signed an Acceptance and Oath of Office to accept the commission as of July 1, 2013. He did not submit a DD-2697, Report of Medical Assessment, presumably because he was seeking an MEB for a disability retirement, but

there is insufficient evidence of impairment in the record for the Board to conclude that he was not fit for further military service at the time of his discharge.

10. Accordingly, the applicant's record should be corrected to show that upon his separation from active duty, he received the Reserve commission that he accepted on April 1, 2013, and entered the Individual Ready Reserve (IRR) on July 1, 2013. If he had entered the IRR, he would have been able to drill or complete correspondence courses and earn satisfactory years of service during his anniversary years ending on February 10 in 2014, 2015, and 2016. Therefore, his record should be further corrected to show that he earned satisfactory years of service (at least 50 points) toward retirement during his anniversary years ending on February 10 in 2014, 2015, and 2016. In addition, if the applicant provides the Coast Guard with copies of his medical records since his discharge on June 30, 2013, and the Coast Guard finds upon his return to military service that he is unfit for further military service because of a disability incurred in the line of duty, the Coast Guard should process him in accordance with the PDES.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

**ORDER**

The application of LT [REDACTED], USCG, for correction of his military record is granted as follows:

- The Coast Guard shall correct his record to show that upon his separation from active duty, he received the Reserve commission that he accepted on April 1, 2013, and entered the Individual Ready Reserve (IRR) on July 1, 2013.
- The Coast Guard shall correct his record to show that he earned satisfactory years of service (at least 50 points) toward retirement during his anniversary years ending on February 10 in 2014, 2015, and 2016.
- If he provides the Coast Guard with copies of his medical records since his discharge on June 30, 2013, and is found to be unfit for further military service because of a disability incurred in the line of duty, the Coast Guard shall process him in accordance with the Physical Disability Evaluation System.
- The Coast Guard shall pay him any amount due as a result of these corrections.

April 29, 2016

