

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 19-96

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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on November 6, 1995, upon the BCMR's receipt of the applicant's request for correction of his military record.

This final decision, dated May 17, 1996, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant is a retired senior chief [REDACTED] pay grade E-8). He was retired from the Coast Guard on July 1, 1995, by reason of 30 years, 10 months, and 24 days of active service. On November 6, 1995, he asked the BCMR to change the nature of this retirement to make it a retirement by reason of permanent disability .

From May 1, 1995 until his retirement, he suffered a cough, tightness in his chest, shortness of breath, and, starting on August 15, 1995, coughing up blood. On June 30, the date of his retirement, he said he "was hardly able to stand for [his] retirement ceremony because of [his] back and the coughing." On August 31, 1995, a doctor told him he suspected he had tuberculosis or lung cancer. A VA hospital later diagnosed him as suffering from cancer in his liver. .

The applicant alleged that if his condition had been properly diagnosed, he would have been extended on active duty for processing in the Physical Disability Evaluation System (PDES). His medical condition, he alleged, merited a retirement by reason of physical disability.

**Applicant's Special Request**

On January 11, 1996, the applicant asked the BCMR to expedite the review of his request for correction of his record due to "the nature of [his] illness." He said that he was undergoing treatment at a VA medical center for cancer as well as hemoptysis, liver metastases, and conjunctivitis.

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### **Views of the Coast Guard**

On March 22, 1996, the Coast Guard Personnel Command recommended that relief be granted to the applicant. According to the Command, "it is the advisory opinion of the Central Physical Evaluation Board (CPEB) that sufficient evidence was provided to justify 100 percent disability rating for VASRD code 6819, 'New growths of, malignant, . . . skin growths.'" It recommended that the "applicant receive the retroactive change to his military record that would place him on the TDRL at 100 percent disability for 1 July 1995, and that he receive the appropriate difference in compensation for his retired pay. "

On the same date, the Chief of the Operational Medicine Division stated that there is sufficient evidence to support the applicant's claim that he was "not fit for duty" at the time of his June 30, 1995 retirement "due to his already present malignancy."

On March 22, the Chief Counsel of the Coast Guard also recommended that relief be granted. The Chief Counsel submitted to the BCMR a recommended order, if the BCMR decides to grant relief to the applicant.

### **Response of the Applicant**

On April 24, 1996, the Board received a reply submission from the applicant. He stated that he agreed with most of what was set forth in the views of the Coast Guard, but he did feel, inter alia, that he should have been reimbursed \$500 for medical expenses that were not covered because he was retired on June 30, 1995.

## **FINDINGS AND CONCLUSIONS**

The BCMR makes the following findings and conclusions on the basis of the applicant's military record and submission, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The legal standard for retirement by reason of disability is set forth in Section 2-C-2, Physical Disability Evaluation System (PDES), COMDTINST M1850.2. The pertinent portion of this regulation provides as follows:

Entitlement to disability retirement or separation arises only on a determination that a member is not fit to perform the duties of his

grade and rating. It does not rest merely on the existence of an impairment or a condition ratable under the Veterans Administration Schedule for Rating Disabilities, VASRD. Not every impairment materially interferes with the performance of duty.

Unless a Coast Guard member is found not fit for duty, he cannot be considered for a medical retirement or separation. E.g., BCMR Docket No. 82-87; BCMR Docket No. 531-86; BCMR Docket No. 194-84.

3. The applicant was retired from the Coast Guard on June 30, 1995. At that time, according to the Chief, Operational Medicine Division, there was "sufficient evidence" to support the applicant's claim that he was not fit for duty "due to his already present malignancy."

4. The CPEB, on February 8, 1996, was of the view that the applicant should have a final 100 percent disability rating.

5. The applicant's record should be corrected to show that he was not fit for duty when he was retired on June 30, 1995. The record should be corrected to show that he was temporarily retired on that date with a disability rating of 100%.

ORDER

The application for correction of the military record of \_\_\_\_\_), is granted. His record shall be corrected to show that on June 30, 1995, he was temporarily retired from the Coast Guard, pursuant to 10 USC §1202 and Article 17-B-6 of the Coast Guard Personnel Manual, with a disability rating of 100% by reason of disability on the basis of the following diagnosis (VASRD 6819); new growths of, malignant, any specified part of respiratory system exclusive of skin growths; 100% disabling. The applicant's DD Form 214 shall also be corrected to show a separation code of "SFK" and a reenlistment eligibility code of RE-2. The applicant is also authorized to receive any such related sums as are appropriate.

