

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

## Application for the Correction of the Coast Guard Record of:

## BCMR Docket No. 1997-163

## **FINAL DECISION**

## Attorney-Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10, United States Code. It was commenced on August 8, 1997, upon the BCMR's receipt of the applicant's application.

This final decision, dated October 22, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

## REQUEST FOR RELIEF

The applicant, a former xxxxxxxxxxxxxxxxx in the United States Coast Guard, asked the Board to correct her military record to show that, on xxxx 199x, she received a medical discharge based on a diagnosis of disabling migraine headaches. The correction would enable her to receive certain benefits for which her current discharge does not qualify her.

## APPLICANT'S ALLEGATIONS

The applicant alleged that during her enlistment she "was constantly plagued with migraine headaches, which were cause[d] by the pressures of [her] job." She stated that the doctors had found she suffered from papilledema (swelling of the optic papilla) and that analgesic (pain-relieving) medicines only partially relieved her headaches. She stated that, in February 199x, five months before she was released into the Coast Guard Reserve from active duty, she had suffered episodes of numbness and dizziness. She stated that, in May 199x, less than one month before her release, she was having daily headaches that were not relieved by taking 50 milligrams of Elavil, an anti-depressant. Therefore, she

alleged, the Coast Guard erred in failing to convene a medical board to evaluate her disability and in failing to give her a medical discharge.

The applicant alleged that since her release from active duty she has suffered headaches two or three times each week. She stated that the Department of Veterans Affairs (DVA) had found her migraines to be service connected and had granted her a 50% disability rating. To support her allegations, the applicant submitted copies of the findings of doctors for the DVA.

## **VIEWS OF THE COAST GUARD**

On August 17, 1998, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant the requested relief.

The Chief Counsel stated that to receive a medical discharge, a member must be found not fit for duty because of a physical disability. However, he argued, the applicant's medical record "clearly shows that she was found fit for duty and agreed to this finding prior to her discharge from active-duty service." The record also shows that the doctor who found her fit for release from active duty took into consideration her medical history of headaches.

"Even when medical records or evidence indicate that a member may have a medical condition or impairment, a member is presumed fit for duty." "[I]nadequate performance of duty, by itself, does not constitute physical unfitness. The evidence must establish a cause and effect relationship." "The only credible evidence on the record is the evaluation of the physician who performed her RELAD [release from active duty] physical who concluded that the Applicant was fit for duty. In fact, the Applicant was medically qualified to re-enlist if she so chose." In addition, the Chief Counsel stated that, because the physician who performed her RELAD physical did not question the applicant's fitness for duty, she was not entitled to a medical board evaluation in accordance with the Physical Disability Evaluation System (PDES).

The Chief Counsel argued that the applicant's 50% disability rating by the DVA "is insufficient to show that her impairments affected her past work performance in the Coast Guard." "[T]he Applicant was diagnosed with stress and tension headaches but was never found to have a disqualifying or ratable disease. The Applicant has provided no evidence that her work was affected by her impairments."

The Chief Counsel contended that the 50% disability rating by the DVA is not inconsistent with the Coast Guard's finding of fitness for duty because "[t]he procedures and presumptions applicable to the DVA evaluation process are

fundamentally different from, and more favorable to the veteran than those applied under the Coast Guard's [PDES].” The DVA “compensate[s] former service members whose *earning capacity is reduced*, at any time, as a result of injuries suffered incident to, or aggravated by, military service.”

## CHRONOLOGICAL SUMMARY OF THE RECORD

4/4/8x The applicant enlisted in the Coast Guard for a term of four years. On her Report of Medical History, she indicated that she suffered from frequent or severe headaches.

7/18/9x The applicant sought medical help for chronic headaches. She stated that she had been having frequent headaches for the past year but that they had increased during the previous two months. Her primary physician diagnosed tension headaches.

8/16/9x The applicant sought help for chronic headaches, tiredness, and interrupted sleep. She told her primary physician she had a history of migraine headaches. The doctor diagnosed a "sleep problem" and prescribed doxepin (an anti-depressant).

8/17/9x The applicant complained to her primary physician that she could not sleep after taking the doxepin. She asked to consult a specialist about her "migraines."

8/18/9x The applicant sought help for chronic headaches. Her primary physician diagnosed chronic headaches; prescribed Fioricet, an analgesic for tension headaches; ordered neurological testing; and told her to stay in her quarters for one day.

8/19/9x The applicant reported that her headache now extended over her entire head and that light hurt her eyes. Her primary physician prescribed Tylenol and consulted a neurologist, who suggested she take a gradually increasing dosage of the anti-depressant Elavil.

8/22/9x The applicant reported to her primary physician that her condition had not changed. He prescribed a low level of Elavil for four weeks and told her to stay in her quarters for two days.

8/24/9x The applicant reported that her headache had caused her to vomit. Her primary physician told her to stay in her quarters for the rest of the day and to call about her condition the next morning.

10/13/9x After neurological testing, the neurologist diagnosed chronic tension headaches. He reported that the applicant had stopped taking Elavil after two weeks because she thought it was not working. The doctor told her to stay on Elavil for three or four months, increasing the dosage gradually to 50 milligrams per day.

10/26/9x The applicant sought relief for menstrual cramps, headaches, and an upper respiratory tract infection. Her primary physician prescribed medication for her cramps and told her to stay in her quarters for two days.

12/7/9x The applicant sought help for a migraine headache, which she stated occurred at least once a week. Her primary physician diagnosed "tension headaches vs. migraines,"<sup>1</sup> increased her dosage of Elavil, and prescribed Midrin, an analgesic prescribed for tension, vascular, and migraine headaches.

1/17/9x The applicant complained of having suffered from a migraine headache for three days with dizziness, nausea, and sensitivity to light and sound. An emergency room doctor diagnosed cephalgia (headache) and placed her on intravenous compazine,<sup>2</sup> which stopped the nausea and headache.

1/18/9x The final performance evaluation marks received by the applicant averaged 4.1 on a scale of 1 to 7, with 7 being the best mark.

1/19/9x The applicant complained of tiredness, interrupted sleep, and chronic headaches that became severe once or twice each week. She was taking 50 milligrams of Elavil per day and between 40 and 50 doses of Midrin per month. The neurologist reported that the headaches might be caused by "analgesic rebound" and told her not to take any Midrin for two weeks.

2/2/9x Upon her request, the applicant's primary physician allowed her to take Midrin again, but in limited quantities.

2/8/9x The applicant complained of feeling lightheaded and sick to her stomach. Her primary physician diagnosed a possible vasovagal.<sup>3</sup>

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<sup>1</sup> A "migraine" is "an often familial symptom complex of periodic attacks of vascular headache, usually temporal and unilateral in onset, commonly associated with irritability, nausea, vomiting, constipation or diarrhea, and often photophobia; attacks are preceded by constriction of the cranial arteries, usually with resultant prodromal sensory (especially ocular) symptoms, and commence with the vasodilation that follows." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 25<sup>TH</sup> ED. (1974).

<sup>2</sup> Compazine is "used as a major tranquilizer and antiemetic" [anti-nausea drug]. *Id.*

<sup>3</sup> A "vasovagal attack" is "a transient vascular and neurogenic reaction marked by pallor, nausea, sweating, bradycardia, and rapid fall in arterial blood pressure which, when below a

2/10/9x The applicant sought medical treatment for headaches she reported suffering for the previous nine months. She said that none of the drugs she had been prescribed relieved her headaches. She reported that once or twice each week her migraines caused her to stay at home in bed. She also complained of occasional lightheadedness and numbness in her hands and legs. Her primary physician reported that the lightheadedness might be caused by the Elavil.

2/22/9x The applicant consulted her neurologist and complained of tension headaches, interrupted sleep, and analgesic rebound headaches. The neurologist reported as follows:

[The] low dose (50 mg) of Elavil QHS has helped her [sleep disorder], but not her [headaches], (possibly due to frequent analgesic use and subsequent rebound mechanisms that render [unreadable] [headache] medicines ineffective). Patient was advised to [avoid] all analgesics for at least 2 weeks, and thereafter limit their use to [less than or equal to] 2 times per week, and then to return for follow-up here in March-April 199x. However, she returns prematurely at this time, to report she still had daily holocephalic [headaches], generally constant low grade "nag" that does not interfere with [active duty], except at times when [it increases in] severity (about 1-2 times per week). She has been having light-headedness "all the time" for past 2-3 weeks, non orthostatic (but with orthostatic BP/HR changes on physical examination 10 February 199x by her primary doctor). She recently began Provera 30 milligrams per day on 13 January 199x for dysmenorrhea [painful menstruation] (dizziness is known potential side-effect for Provera). Valsalva not [known to change] headache, but patient may [have increased] headaches. She denies any depressive symptoms, but states she is frustrated that she still has [headaches]. She also gets "tense" and "frustrated" in traffic. She is getting out of the Coast Guard soon in order to join her fiancé [a member of the Marine Corps] who [was transferred] 3 months ago from xxxx to xxxx. Her body weight has increased about 15 pounds over past 6 months, currently at her maximum body weight. No transient visual obscurations. . . .

The neurologist also noted that the onset of the dizziness was coincident with the use of Provera and that her headaches had begun when she began to gain weight, which raised the possibility of a pseudotumor cerebri.<sup>4</sup> He diagnosed tension headaches and continued the prescription for Elavil.

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critical level, results in loss of consciousness and characteristic electrocephalographic changes. It is most often evoked by emotional stress associated with fear or pain." *Id.*

<sup>4</sup> A "pseudotumor cerebri" is "a condition caused by cerebral edema [swelling], marked by raised intracranial pressure with headache, nausea, vomiting, and papilledema without neurological signs except occasional sixth-nerve palsy [paralysis]." *Id.*

3/10/9x The applicant complained of feeling faint and underwent an EKG, but the results were normal.

3/14/9x A radiological examination report stated that the applicant had reported suffering "global [headaches] for past 10 months, probably tension etiology. . ." The doctor found "slight blurring of supp/nasal margins of optic discs" and ordered an MRI (magnetic resonance imaging) examination of her head. The results of the MRI were reported to be "normal."

3/30/9x The applicant was found not fit for duty for one day because of an upper respiratory tract infection, which was resolved.

5/4/9x The neurologist noted that staff from the applicant's unit had called to discuss her condition, which he listed as "chronic tension [headaches]" with "analgesic rebound [headaches] superimposed." The staff told him that "her [primary physician] . . . has been giving her a lot of quarters and other duty restrictions.<sup>[5]</sup> I advised them that no duty restrictions have been given this patient by this clinic. Restrictions imposed by [her primary physician] must be addressed with [her primary physician]."

5/5/9x The applicant's primary physician noted that he had discussed her condition with the neurologist and that their diagnosis was migraines but that she was fit for duty.

5/11/9x The neurologist reported that the applicant's neurological and MRI examinations had been normal. She told him that her dizziness had gone away since she stopped taking Provera. He stated that there was a "need to rule out pseudotumor cerebri."

5/15/9x The applicant underwent a spinal tap to rule out pseudotumor cerebri. The neurologist found "mildly [increased intracranial pressure], [connected] with mild pseudotumor cerebri." He prescribed 500 milligrams of Diamox and told her to lose 30 pounds.

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<sup>5</sup> Except for March 30, 199x, when the applicant's primary physician noted that he had found her not fit for duty for a day due to an upper respiratory tract infection, there is no notation in the applicant's military and medical records of a doctor finding her to be not fit for duty, fit for limited duty, or sick in quarters after October 26, 199x.

5/15/9x The applicant underwent a physical to determine if she was fit for duty/release from active duty. She complained of suffering headaches 24 hours a day and migraines two or three times each week. She was taking Midrin for these symptoms. Her primary physician noted a diagnosis of "pseudotumor cerebri" and signed a report stating that she was qualified for release from active duty.

5/30/9x The applicant signed a form stating that she agreed that she was "reasonably able to perform [her] current duties, or [she has] a high expectation of recovery in the near term from illness, injury, or surgical procedures such that [she] would again be able to perform [her] usual duties."

6/1/9x The applicant was released from active duty into the Coast Guard Reserve with an "honorable" character of service, a reason for separation of "completion of required active service," and a reenlistment code of RE-1 (eligible to reenlist).

3/23/9x After examining the applicant four times between September and December 199x, the DVA granted the applicant "[s]ervice connection for migraine headaches . . . with an evaluation of 50 percent effective xxxxxx, 199x." The examiner reported the following:

Service connection for migraine headaches has been established as directly related to military service. This condition is evaluated as 50 percent disabling from xxxxxx, 199x. An evaluation of 50 percent is granted if the record shows very frequent, completely prostrating, and prolonged attacks productive of severe economic inadaptability.

The veteran was seen on numerous occasions while on active duty with severe headaches of a throbbing nature occurring on a daily basis. She was evaluated and found to have papilledema, which led to computerized tomography of the head. Computerized tomography showed no hydrocephalus or mass affect or midline shift. A lumbar puncture revealed elevated cerebrospinal fluid pressure and a normal cerebrospinal fluid examination. Assessment was pseudo-tumor cerebri. She was treated with a variety of analgesic therapy with only partial reduction in the severity of her headaches. It is documented in report of February 10, 199x that veteran complained of having 1 or 2 attacks per week that cause her to stay at home in bed. She also complained of numbness in both hand and legs. Approximately two weeks later, she gave a two [sic] history of dizziness, and light-headedness. It was noted that this may have been coincident with use of Provera. In May 199x, just before being discharged, veteran reported having headaches daily with no relief after taking Elavil 50 mg. On [D]VA examination, the veteran noted that she continues to have headaches two or three times a week, and have [sic] been refractory to somatropin and other nonsteroidal analgesics. A history of nausea, vomiting or seizures is not

documented. Objective examination revealed blurring of the optic discs without choking of the vessels, hemorrhages or narrowing of the retinal veins. Cerebellar and extrapyramidal neurological examinations were within normal limits. MRI of the brain was essentially normal. There was no evidence of pseudo-tumor cerebri. A definite diagnosis was not made.

While there is no evidence of intracranial pathologic changes, diagnosis of migraine headaches is supported by above symptom pattern. A future examination is scheduled for sustained improvement.

4/3/9x The applicant was discharged from the Reserve upon the expiration of her enlistment.

## APPLICABLE REGULATIONS

### *Applicable Provisions of the Personnel Manual*

Section 12-B-6 of the Personnel Manual (COMDTINST M1000.6A) requires each member not being discharged for a physical or mental disability to undergo a physical examination prior to release from active duty. It provides the following:

b. When the physical examination is completed and the member is found to be physically qualified for separation, the member will be so advised and will be required to make a signed statement as to agreement or disagreement with the findings. . . .

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d. When disqualifying physical or mental impairments are found . . .

(3) If the member does not desire to reenlist or is being discharged for reasons other than expiration of enlistment, and the physical or mental impairment is deemed to be of a permanent nature a medical board shall be held in accordance with chapter 17 . . . .

(4) If the member does not desire to reenlist or is being discharged for other than expiration of enlistment, and the disability is deemed to be of a temporary nature, the member may be retained, with personal consent, in accordance with article 12-B-11f.(1)(a), in order that the necessary treatment may be provided the member and a medical board held if indicated . . . .

### *Applicable Provisions of the Medical Manual*

The Medical Manual (COMDTINST M6000.1B) governs the disposition of members with physical disabilities. According to Section 3-B-3, during the medical examination a member must undergo prior to separation,

. . . the examiner shall consult the appropriate standards of this chapter to determine if any of the defects noted are disqualifying for the purpose of the physical examination. . . .

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When the individual is not physically qualified for the purpose of the examination . . . , the reviewing authority will arrange for the examinee to be evaluated by a medical board and provide administrative action as outlined in [the PDES Manual].

According to Section 3-B-6 of the Medical Manual, which is entitled "Separation Not Appropriate by Reason of Physical Disability,"

[w]hen a member has an impairment (in accordance with section 3-F of this manual) an Initial Medical Board shall be convened only if the conditions listed in paragraph 2-C-2.(b) [of the PDES Manual] are also met. Otherwise the member is suitable for separation.

Section 3-F-1.c. of the Medical Manual states the following:

Fitness for Duty. Members are ordinarily considered fit for duty unless they have a physical impairment (or impairments) which 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. Members considered temporarily or permanently unfit for duty shall be referred to an Initial Medical Board for appropriate disposition.

According to Sections 3-F-15 of the Medical Manual, the following neurological disorders "are normally disqualifying" for administrative discharge or retention in the Service, and persons with disqualifying conditions "shall be referred to an Initial Medical Board":

h. Migraine. Manifested by frequent incapacitating attacks or attacks which last for several consecutive days and unrelieved [sic] by treatment.

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o. General. Any other neurological condition, regardless of etiology, when after adequate treatment, there remain residuals,

such as persistent severe headaches, . . . of such a degree as to definitely interfere with the performance of duty.

### *Applicable Provisions of the PDES Manual*

The PDES Manual (COMDTINST M1850.2B) governs the separation of members due to physical disability. Section 2-A-15 of the PDES Manual defines the term "fit for duty" as "... the status of a member who is physically and mentally able to perform the duties of office, grade, rank, or rating. . . ."

Section 2-C-2 of the PDES Manual states the following:

b.(1) Continued performance of duty until a service 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 service member, because of disability, was physically unable to perform adequately the duties of office, grade, rank or rating; 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 the service member unfit for further duty.

(2) Service members who are being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless their physical condition reasonably prompts doubt that they are fit to continue to perform the duties of their office, grade, rank or rating.

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i. The existence of a physical defect or condition that is ratable under the standard schedule of rating disabilities in use by the [Department of Veterans Affairs] does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render the member unfit for military duty. . . .

## 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 section 1552 of title 10 of the United States Code. The application was timely.

2. The applicant alleged that she should have been referred to a medical board and given a disability discharge because, at the time of her release from active duty, she suffered disabling migraines.

3. The Chief Counsel argued that the applicant had been diagnosed with tension headaches. He said that the physician who performed her physical examination prior to her release from active duty had taken into account her chronic headaches and still found her fit for duty. The Chief Counsel also stated that the applicant had not presented any proof that she was not fit for duty at the time of her release. He argued that the disability rating granted to her by the DVA did not prove she was not fit for duty.

4. According to Section 3-F-2 of the Medical Manual, if a member is found to have a "disqualifying" physical impairment during a medical examination, a medical board "shall" be held to determine the member's disposition. However, Section 3-B-6 states that the Coast Guard shall convene an IMB for members with disqualifying impairments only if the requirements of Section 2-C-2.b. of the PDES Manual are met. That section requires members to prove by a preponderance of the evidence that they are not fit for duty because of a disability. It also states that members such as the applicant, who are being processed for separation for reasons other than physical disability, shall not be referred to a medical board "unless their physical condition reasonably prompts doubt that they are fit to continue to perform the duties of their office, grade, rank or rating." Therefore, the Board finds that, to prove that the Coast Guard erred by not convening a medical board to evaluate her for disability discharge, the applicant must prove that, at the time of her release from active duty, (a) she had a disqualifying physical impairment which rendered her unfit for duty or (b) her physical condition reasonably prompted doubt as to her fitness for duty.

5. Disqualifying Physical Impairment. Section 3-F-15 of the Medical Manual lists migraines among those medical conditions that are "normally disqualifying" for retention in service. However, the migraines must be "[m]anifested by frequent incapacitating attacks or attacks which last for several consecutive days and [are] unrelieved by treatment." The record shows that the

applicant suffered from chronic headaches at the time she left active duty in order to join her fiancé in xxxxx. During her last year on active duty, the applicant's doctors ascribed various etiologies to the headaches, including tension, analgesic rebound, sinusitis, and pseudotumor cerebri. On May 5, 199x, just 26 days before her release from active duty, the applicant's primary physician consulted with her neurologist and concluded that she had migraines. The applicant reported that the migraines kept her in bed two or three times each week. In addition, the doctors determined that the applicant's headaches were only partially relieved by the medications they were prescribing. However, the applicant continued to perform her duties until the date of her release.

6. **Fitness for Duty.** Section 2-C-2.b.(1) of the PDES Manual states that "[c]ontinued performance of duty until a service member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty." The applicant may overcome this presumption, however, if she establishes by a preponderance of the evidence she was unable to perform her duties adequately.

The applicant continued to perform her duties until the date of her release. Although the staff of her unit apparently believed that she had been receiving frequent duty restrictions from her doctors, neither her primary physician nor her neurologist noted a duty restriction in her records due to her headaches during her last nine months of active duty. The last record of her being ordered to stay in quarters due to a headache is dated August 24, 199x. In addition, there are no indications in the applicant's service records that she had been missing work or that her commanding officer was dissatisfied with her work.

On May 5, 199x, after consulting the applicant's neurologist, her primary physician noted in her medical record that, despite the diagnosis of migraines, she was fit for duty. On May 22, 199x, upon the completion of her physical examination prior to release from active duty, he found her qualified for separation. In light of these records, the Board finds that the applicant has not proven by a preponderance of the evidence that she was unable to perform her duty adequately at the time of her release from active duty.

7. **Reasonable Doubt of Fitness for Duty.** The applicant asked to be discharged in order that she might join her fiancé in xxxxx. Section 2-C-2.b.(2) of the PDES Manual states that members who are being administratively separated shall be referred to a medical board if "their physical condition reasonably prompts doubt that they are fit to perform the duties of their office, grade, rank or rating." The record shows that less than a month prior to her release from active duty, the applicant's primary physician and neurologist discussed her condition and concluded that she was fit for duty. Given (1) her doctors'

discussion and conclusion, (2) the fact that she actually performed her duty until the date of her release, and (3) the fact that she had not been found unfit for duty (except for two short instances of upper respiratory tract infection) in over nine months, the Board finds that the applicant was not entitled to a medical board under the terms of Section 2-C-2.b.(2) of the PDES Manual.

8. The applicant argued that the disability rating she received from the DVA proved she should have received a medical discharge. However, as the Chief Counsel of the Coast Guard stated, pursuant to Section 2-C-2.i. of the PDES Manual, the applicant's VASRD rating does not prove that she would have been found unfit for duty by a medical board. The Court of Federal Claims has held that "[d]isability ratings by the Veterans Administration [now the Department of Veterans Affairs] and by the Armed Forces are made for different purposes. The [DVA] determines to what extent a veteran's earning capacity has been reduced as a result of specific injuries or combination of injuries. . . . The Armed Forces, on the other hand, determine to what extent a member has been rendered unfit to perform the duties of his office, grade, rank, or rating because of a physical disability. . . . Accordingly, [DVA] ratings are not determinative of issues involved in military disability retirement cases." Lord v. United States, 2 Cl. Ct. 749, 754 (1983).

9. Therefore, the Board finds that the applicant has not proved by a preponderance of the evidence that the Coast Guard committed any error or injustice by not convening a medical board or by not giving her a medical discharge.

10. The applicant's request should be denied.

**[ORDER AND SIGNATURES APPEAR ON FOLLOWING PAGE]**

## **ORDER**

The application for correction of the military record of former XXXXXX, USCG, is hereby denied.

