

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for the Correction of  
the Coast Guard Record of:

BCMR Docket No. 1998-028

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**FINAL DECISION**

 Deputy Chairman

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. It was commenced on November 18, 1997, upon the BCMR's receipt of the applicant's application for correction of her military record.

This final decision, dated July 22, 1999, 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 seaman (SN; pay grade E-3) in the Coast Guard, was released from active duty on August 24, 1996, upon the completion of her first, four-year enlistment. She asked the Board to correct her record to show that she was medically retired on that date because of Crohn's disease.<sup>1</sup>

**APPLICANT'S ALLEGATIONS**

The applicant alleged that she had been diagnosed with and treated for Crohn's disease while on active duty. She stated that she should also have been evaluated by a Physical Disability Evaluation Board and medically retired. As evidence, she referred the Board to her medical records.

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<sup>1</sup> Crohn's disease is "regional ileitis." Ileitis is inflammation of the ileum, which is the "distal portion of the small intestine." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 25<sup>TH</sup> ED. (1974).

## VIEWS OF THE COAST GUARD

On March 15, 1999, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant her requested relief. The Chief Counsel stated that the applicant "was always able to perform her duties and was found fit for discharge in her separation physical with her known diagnosis of Crohn's disease clearly noted. Therefore, there was no error or injustice in this case."

The Chief Counsel alleged that the applicant had not proved that Crohn's disease rendered her unfit for duty. Citing Article 2-C-2a of the Physical Disability Evaluation System (PDES) Manual and 10 U.S.C. § 1201, he argued that "[t]he sole basis for a physical disability determination in the Coast Guard is unfitness to perform duty." He stated that the purpose of the PDES was "to compensate members whose military service is terminated due to a service connected disability." Furthermore, "Coast Guard regulations interpret the statutes to prohibit use of [PDES] to bestow compensation benefits on those who are retiring or separating and have continued on unlimited active duty while tolerating impairments that have not actually precluded Coast Guard service."

The Chief Counsel pointed to the following as evidence that the applicant was fit for duty at the time of her separation: she continued to perform well without limitation; she was recommended for reenlistment; and she joined the Coast Guard Reserve in 1997 and "completed her Reserve duties without any medical complications." The Chief Counsel alleged accordingly that the applicant had no right to be evaluated by a medical board because, according to Article 2-C-2b(2), "[s]ervice members being processed for separation or retirement for reasons other than disability shall not be referred for disability evaluation unless their physical condition reasonably prompts doubt that they are fit to continue to perform adequately in their assigned duties."

The Chief Counsel further argued that disability ratings made by the Department of Veterans Affairs (DVA) "are not determinative of the issues involved in military disability retirement cases." "Moreover, the DVA records do not support a finding that Applicant was unfit for continued duty...."

The Chief Counsel attached to his advisory opinion a memorandum prepared by the Coast Guard Personnel Command (CGPC) dated February 24, 1999. CGPC stated that the applicant had joined the Reserve in July 1997 and been referred to a clinic for evaluation and for an initial medical board (IMB), on October 20, 1997. On October 23, 1997, the IMB recommended that she be medically separated from the Coast Guard. However, the recommendation was not acted upon because the "applicant's Crohn's disease was not linked to

her reserve duties" since "the Crohn's disease was diagnosed prior to entry into the reserves."

CGPC also stated its opinion that "the applicant should have had a medical board prior to discharge from active duty." However, given the purpose of the PDES, CGPC recommended that no relief be granted because "the applicant was voluntarily discharged from active duty, and not as a result of inability to perform her duties."

### **Applicant's Response to the Views of the Coast Guard**

On April 2, 1999, the Board received the applicant's response to the views of the Coast Guard. She disagreed with them. The applicant stated, as follows:

When I was diagnosed with Crohn's in February 1994 I was told I would have to leave the service. After speaking to the Captain . . . at the CG clinic . . . I was told he would "take care of it for me" because of my hard work and dedication he hated to see me go. After speaking with HSCS cook I was informed I should have at least received a medical waiver to stay on active duty. None of these things were done. After my separation physical the doctor looked it up and stated I would be medically discharged because Crohn's was disqualifying and could not believe I was still in the Service.

I had to choose between the career I love and my health. Working the hours demanded by serving on active duty it was taking a toll on my health. I'm sure the records only show my performance awards, but what it doesn't show is that I slept through lunch (when I wasn't throwing up) and spent weekends in the hospital so that I was able to perform my duties. I have not been employed since leaving the Coast Guard.

I would . . . like to make the correction that I have been rated 30% by the VA and have received 100% because of corrective surgery to remove tissue that was mistreated while I was serving on active duty.

### **SUMMARY OF THE RECORD**

On August 25, 1992, the applicant enlisted in the Coast Guard for a term of four years. On July 31, 1995, one of the applicant's doctors wrote to the Chief of Health Services at the Coast Guard Academy, where the applicant worked. He stated that she had been diagnosed in March 1994 "with small

bowel Crohn's disease involving the terminal ileum." He stated at that time, that the applicant "was having no GI complaints and no further GI bleeding."

On April 9, 1996, at her end-of-enlistment interview, the applicant indicated that she wanted to be discharged upon the completion of her enlistment, although her commanding officer recommended her for reenlistment. On June 3, 1996, the applicant was issued a page 7 acknowledging her outstanding work performance.

On August 16, 1996, the applicant prepared a Report of Medical History for her physical examination prior to discharge. She wrote on the report, "Present health is good with the exception of Crohn's. Not currently taking medication due to pregnancy." The applicant also indicated that she had been hospitalized on several occasions for Crohn's disease. The physician's assistant who conducted her exam noted that she had a "history of Crohn's disease." On the Report of Medical Examination, the physician's assistant noted that she had "Crohn's Disease by history—NCD" [not currently diagnosable]. He found her to be "qualified for discharge." No other medical records were provided by the Coast Guard.

On August 24, 1996, the applicant was released from active duty upon the completion of her required active service. She received an RE-1 reenlistment code (eligible for reenlistment).

On September 9, 1996, the DVA granted the applicant a 10 percent disability rating effective from the date of her discharge. The rating report stated that "[a]n evaluation of 10 percent is granted if the record shows frequent episodes of bowel disturbance with abdominal distress. . . . Since there is a likelihood of improvement, the assigned evaluation is not considered permanent and is subject to a future review examination."

### **Applicant's Medical Record**

On June 7, 1999, the applicant submitted a copy of her medical record to the Board. It confirmed that on March 10, 1994, the applicant received confirmation that she suffered with Crohn's disease. The medical record does not contain any entries showing that the applicant was hospitalized after March 10, 1994. There are at least two entries in 1996, prior to her discharge, which show that the applicant reported to the clinic because of vomiting episodes. These entries also indicate that the applicant was in her first trimester of pregnancy.

The applicant's medical record also contains a copy of an entry signed by the applicant acknowledging that she agreed with the findings of the discharge examination she received on August 16, 1996, and that she did not wish to make a statement in rebuttal. This entry also advised the applicant

that she has been examined and found physically fit for separation from active duty. The defects noted during the examination were recorded in block #74 (Crohn's disease was noted) on the Report of Medical Examination (SF-88).

This entry further advised the applicant that "[t]he defects listed on the Report of Medical Examination do not disqualify you from performing your duties or entitle you to disability benefits from the Coast Guard. To receive a disability pension from the Coast Guard, you must be found unfit to perform your duties before you are separated."

### APPLICABLE REGULATIONS

#### *Provisions of the Medical Manual*

The Coast Guard Medical Manual (COMDTINST M6000.1B) provides the physical standards members must meet in order to be administratively separated from the service. According to Article 3-B-3, during the medical examination a member must undergo prior to separation.

Article 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 Article 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.

According to Articles 3-F-2 and 3-F-9.a.(8), regional ileitis (Crohn's disease) is "normally disqualifying" for administrative discharge or retention in the Service, and persons with disqualifying conditions "shall be referred to an Initial Medical Board."

#### *Provisions of the PDES Manual*

The PDES Manual (COMDTINST M1850.2B) governs the separation of members because of physical disability. Article 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-A-44. of this provision defines "unfit for continued duty (unfit) as "[t]he status of an individual member who is physically and/or mentally unable to perform the duties of office, grade, rank, or rating because of physical disability incurred while entitled to basic pay."

Article 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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Article 2-C-2.f.(2) of the PDES states that "[i]nability to satisfy the standard for initial entry into military service" will not be used as a basis for making determinations that a service member is unfit for continued military service by reason of physical disability.

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2-C-2.g.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 the Coast Guard erred by not convening a medical board to evaluate her disability due to Crohn's disease and by not medically retiring her rather than separating her from active duty.

3. The Chief Counsel urged the Board to deny the applicant's request because she failed to prove that she was unfit for continued duty at the time of her separation. The Chief Counsel said that unfitness for duty is "the sole basis for a physical disability determination."

4. The evidence indicates that the applicant was diagnosed with Crohn's disease, or regional ileitis, while on active duty in the Coast Guard. The applicant failed to provide any evidence that her condition at the time of her separation rendered her unable to perform her duty. The evidence indicates that she admirably performed her duties until the date of her separation. The physician's assistant who conducted her physical examination prior to separation noted that the applicant had a history of Crohn's disease, but her condition was not then diagnosable. He found her qualified for discharge.

5. Article 12-B-6 of the Personnel Manual requires members who are found qualified for discharge to sign a form indicating whether they agree with the finding. Any objections are forwarded to the Commandant for further review. The applicant was afforded the opportunity to appeal the finding of qualification for discharge, but she elected not to do so. In fact, she indicated that she agreed with the findings of the medical examination.

6. According to Articles 3-F-2 and 3-F-9.a.(8) of the Medical Manual, regional ileitis (Crohn's disease) is "normally disqualifying" for enlistment or retention, and persons with disqualifying conditions "shall be referred to an Initial Medical Board." However, Article 3-B-6 of the Medical Manual and Article 2-C-2 .b.(2) of the PDES Manual, provide that members, such as the applicant, who are being processed for separation other than for physical disability shall not be referred to a medical board for 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."

7. Since the applicant continued to perform her duties, with Crohn's disease, until the time of her separation, it is presumed that she was fit for continued duty. Article 2-C-2.b.(10), PDES. The applicant has not submitted evidence necessary to overcome this presumption. Her medical record does not indicate that she lost time from work due to Crohn's disease, after it was diagnosed and treated in 1994. In her response to the views of the

Coast Guard she stated that she "slept through lunch (when [she] wasn't throwing up) and spent weekends in the hospital so that [she] was able to perform [her] duties." Copies of the applicant's medical record do not support her claim that she spent weekends in the hospital after her Crohn's disease was diagnosed and treated. Also, there is no evidence to support her claim that she spent lunch hours sleeping when not vomiting. Her medical record does contain at least two entries of visits to the clinic, in 1996, for nausea/vomiting. The medical entries for these visits note both the applicant's Chron's disease and her pregnancy ( first trimester). Nothing in these entries indicate that she was not able to return to work.

8. There is no evidence that the applicant's command was concerned that Crohn's disease was interfering with her ability to do her job. By all accounts she performed her duties in an excellent manner. The applicant has not shown by a preponderance that with Crohn's disease she was unable to perform her duties as a seaman at the time of her discharge from the Coast Guard.

9. There is no dispute that the applicant was diagnosed with Crohn's disease while on active duty. However it did not affect her ability to do her military job. If Crohn's disease affects her civilian earning capability, that is within the purview of the DVA. The applicant is being compensated by the DVA for any loss to her civilian earning capacity. Article 2-C-2.i. of the PDES states, in pertinent part, that although a member has physical impairments ratable by the DVA, such impairments do not necessarily render the member unfit for military duty. This provision further states that "[a] member may have physical impairments at the time of separation which could affect potential civilian employment. . . . Such a member should apply to the [DVA] for disability compensation a the time of, or after release from, active duty."

Moreover, The Court of Federal Claims has stated 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 Veterans Administration determines to what extent a veteran's earning capacity has been reduced as a result of specific injuries or combination of injuries [citation omitted]. 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 [citation omitted] Accordingly, Veterans' Administration ratings are not determinative of issues involved in military disability retirement cases." Lord v. United States, 2 Cl. Ct. 749, 754 (1983).

10. Therefore, the applicant has not proved by a preponderance of the evidence that the Coast Guard committed any error or injustice by failing



to hold a medical board in her case and by separating her based on expiration of her enlistment rather than by physical disability.

11. Accordingly, the applicant's request should be denied.

**[ORDER AND SIGNATURES ON NEXT PAGE]**

**ORDER**

The application for correction of the military record of former SN [redacted], is hereby denied.

