

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-040

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on January 14, 2014, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 19, 2014, 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, a retired chief [REDACTED] asked the Board to correct his record to show that he was not retired on [REDACTED] but was retained on active duty for six months on a medical hold and retired on [REDACTED] instead. The applicant stated that prior to his retirement, he was diagnosed with a quadruple blockage. He underwent open heart surgery on August 29, [REDACTED] and was in the hospital on his retirement date. His command and medical personnel at the Coast Guard clinic knew he was undergoing heart surgery but failed to take action to place him on medical hold. The applicant stated that the Coast Guard's failure to place him on medical hold caused him and his family distress and financial hardship. He stated that recuperation periods for such surgery last from six months to a year and that the Coast Guard erred by failing to place him on a medical hold and delay his retirement.

In support of his request, the applicant submitted a letter from a cardiac surgeon to the administrator of the Coast Guard clinic. The surgeon stated that the applicant had undergone a cardiac catheterization on August 9, [REDACTED] and would undergo open heart surgery on August 29, [REDACTED]. The applicant also submitted a report of his cardiac catheterization on August 9, [REDACTED] which states that on July 1, [REDACTED] the applicant had sought help for chest pain and shortness of breath when exercising and that the procedure revealed multi-vessel coronary artery disease, total occlusion of the right coronary artery, total occlusion of the mid left circumflex artery, and a left dominant system.

SUMMARY OF THE RECORD

[REDACTED] The medical records that the Board received from the Department of Veterans' Affairs contain no medical records subsequent to the applicant's release from the hospital on September 4, [REDACTED] following his heart surgery. His instructions upon discharge from the hospital state that for eight weeks he should not lift more than ten pounds, play golf, swim, or exercise strenuously, but that he should walk four times per day for increasing distances with a goal of being able to walk up to a mile in four to six weeks.

VIEWS OF THE COAST GUARD

On July 2, [REDACTED] the Judge Advocate General submitted an advisory opinion in which he recommended that the Board grant relief in this case and adopted the findings, analysis, and recommendation provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that it consulted its medical authorities and that the applicant's arterial occlusions and open heart surgery in August [REDACTED] constituted an "acute and grave" medical condition. Therefore, pursuant to Chapter 2.C.2.b.1(a) and (b) of the Physical Disability Evaluation System (PDES) Manual, his scheduled retirement should have been delayed. PSC recommended that the Board correct his retirement date on his DD 214 to March 1, [REDACTED] and award him any back pay and allowances he is due, offset by his retired pay, as a result of the correction.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 21, [REDACTED] the applicant responded to the views of the Coast Guard. He alleged that he believes that he should be returned to active duty up until such time as a physical examination can be completed to determine his fit for duty/retirement status.

APPLICABLE REGULATIONS

Chapter 2.A.15. of the PDES Manual defines "fit for duty" as "[t]he status of a member who is physically and mentally able to perform the duties of office, grade, rank or rating." Chapter 2.B.2. states that a member "is presumed fit to perform the duties of his or her office, grade, rank or rating. The presumption stands unless rebutted by a preponderance of evidence."

Chapter 2.C.2.b. of the PDES Manual states the following:

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.

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 application was timely filed.¹

2. The applicant alleged that his retirement date is erroneous and unjust because he had undergone open heart surgery just three days before he was retired. 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.² 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."³

3. The Board agrees with the Coast Guard that pursuant to Chapter 2.C.2.b. of the PDES Manual, the applicant should not have been retired on [REDACTED] because he was suffering from an "acute and grave" medical condition that could have rendered him unfit for further duty. The applicant originally requested that the Board delay his retirement date by six months, and the Coast Guard has agreed that this relief is appropriate. In his response to the advisory opinion, the applicant increased his request for relief, stating that he should be retained on active until such time as he undergoes a physical examination to determine his fitness for duty. However, the applicant submitted nothing to show that his surgery has rendered him not fit to perform his duties as an [REDACTED], and the Coast Guard had no opportunity to respond to this request.

¹ 10 U.S.C. § 1552(b) (requiring application within three years of the applicant's discovery of the error).

² 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

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

4. Accordingly, the Board will grant relief by correcting the applicant's retirement date to March 1, [REDACTED] and by awarding him back pay and allowances offset by any retired pay and as required by law. If the applicant believes he is entitled to a medical separation, he should submit another application with sufficient medical evidence to prove his case.

[REDACTED]

(ORDER AND SIGNATURES ON NEXT PAGE)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ORDER

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

The Coast Guard shall correct his military record, including his DD 214, to show that he was placed on the retired list on [REDACTED] and shall pay him any back pay and allowances he is due as a result of this correction, offset by his retired pay and as required by law.

No other relief is granted.

September 19, 2014

