DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

[redacted]

BCMR Docket No. 2014-055

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 and military records on February 3, 2014, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 3, 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, who received a hardship discharge from the Coast Guard on July 31, 1959, asked the Board to correct his record to show that he was medically separated because he incurred a service-connected disability by injuring his back during a judo class in training on December 1, 1955. He alleged that he would have been processed for a medical separation if he had not been forced to request a hardship discharge when his wife's health deteriorated. He alleged that on February 13, 1958, doctors at a Baltimore hospital offered him a medical discharge for his back injury because he was unable to stand for long enough periods to perform his duties as a [redacted] but those hospital records have been lost.

The applicant alleged that as a result of the pain in his back and leg, he was anxious and nervous and was sent to the hospital nine times even though it was a 300-mile round trip from his unit. Therefore, he asked to be transferred to the medical department. His request was granted, which allowed him to complete all but three months of his four-year enlistment. In July 1959, he became a [redacted] but then he had to request an immediate hardship discharge due to his wife's health. If he had not had to request an immediate discharge, he alleged, he would have been medically separated. The applicant alleged that he discovered this error in his record on December 13, 2010.

In support of his allegations, the applicant submitted many documents, including the following:

- A medical log shows that the applicant sought treatment for backache on December 1, 1955.
- Medical records show that on May 2, 1957, the applicant complained of experiencing numbness and tingling in his right thigh for about fifteen month. His right pelvis and hip were xrayed, but no abnormalities were found.
- A medical log entry dated June 21, 1957, shows that the applicant sought help for increased numbness and pain in his right thigh.
- Travel orders issued show that the applicant traveled to the PHS Hospital in Baltimore from his unit in New Jersey for a day o[redacted]atient treatment on September 11, October 9, November 27, December 4, and December 18, 1957, and January 15, January 29, and February 12, 1958.
- On January 20, 1959, the applicant's commanding officer asked the Commandant if the applicant could change rate from [redacted] did not explain the request but noted that the applicant was performing highly efficiently. On February 1, 1959, the Commandant approved the change as being effective on February 1, 1959.
- On July 20, 1959, a doctor wrote a letter stating that the applicant's marriage was badly damaged and that he and his wife needed psychiatric care, which was not available in the vicinity of the applicant's unit. The doctor recommended a hardship discharge.
- In a memorandum dated July 21, 1959, the applicant requested a hardship discharge because his wife "is in her second month of pregnancy and is in need of psychiatric treatment." He noted that his enlisted was ending on November 7, 1959.
- On July 27, 1959, the Commandant ordered that the applicant be released to inactive duty in the Reserve to complete the remainder of his six-year military service obligation.
- On July 31, 1959, the applicant was honorably discharged from active duty and transferred to the Reserve due to hardship.
- A doctor's report dated December 6, 2010, states that the applicant came in complaining of numbness and pain in his right thigh and claimed that he received them during judo training in the Coast Guard in December 1955. The doctor wrote that the applicant told him that following the judo injury, his back pain eventually stopped but the numbness and tingling in his right thigh continued and he visited the hospital in Baltimore seven times because of the leg pain. The doctor diagnosed his condition as either an L2 spinal nerve compression or meralgia paresthetica.
- A Department of Veterans' Affairs (DVA) report dated April 17, 2012, shows that the applicant was diagnosed with meralgia paresthetica and the condition was "at least as likely as not" incurred while in the Service as the applicant claimed.
- On June 21, 2012, the DVA awarded the applicant a zero percent disability rating for service-connected meralgia paresthetica in his right thigh. Degenerative changes in his spine were found not to be service-connected.

- A doctor's note dated July 5, 2012, states that the applicant reported that the DVA had found his meralgia paresthetica to be service-connected but assigned it a zero percent disability rating.
- In a letter to the DVA dated July 25, 2012, the applicant described an incident in which he hurt his back during recruit training and began experiencing numbness in his thigh after he became a dental technician. When the applicant asked to transfer ratings to be a hospital corpsman, his doctor told him he could begin immediately. The applicant wrote that when he told the doctor that the dentist would not allow that, the doctor replied, "I am not going to give them a choice, it is either transfer you to the medical dept or I will give you a medical discharge." As an [redacted] the applicant wrote, he was able to complete most of his enlistment but got out early due to his wife's mental health. The applicant told the DVA that his pain was extreme, rather than moderate, that he cannot work, that he needs a cane to walk, and that he had not told the doctor he had taken aspirin and Advil when he described how h[redacted]he applicant also disagreed with the doctor's assessment that his pain was due to a pinched nerve in his groin because another doctor had told him it might stem from an old herniated disc in his back.
- A doctor's note dated September 11, 2012, states that the applicant provided medical records that "suggest that there is a connection between the injury in his military service and his continued pain of the years."
- A doctor's note dated September 24, 2013, states that the applicant was unhappy with the doctor's prior evaluation because the doctor failed to mention records he had reviewed and the applicant believes that there is a connection between his current injury and his military service. "He has been documented as having meralgia paresthetica, which goes along with the findings that he had back when he was first evaluated."
- A statement signed by a retired Army major dated September 25, 2013, states that the major has known the applicant for more than forty years and can recall that when he was a boy his father told him that the applicant always traveled with a heating pad, used a special car seat, and took hot baths because of an injury he incurred in the Coast Guard.
- Letters from a member of Congress and the U.S. Public Health Service (PHS) state that PHS is unable to provide a copy of the applicant's admission records from the PHS Hospital in Baltimore from 1957 to 1959 because the records had been put on microfilm and the index for those records had been lost.

VIEWS OF THE COAST GUARD

On July 22, 2014, the Judge Advocate General submitted an advisory opinion in which he recommended that the Board deny relief in this case based on the findings, analysis, and recommendation provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC noted that the application is not timely filed. In addition, PSC stated that the record shows that although the applicant was treated for backache and numbness in his right thigh during his active duty service, he continued serving on active duty until July 1959, and "his injury did not prevent him from performing his duties." PSC stated that after the applicant's transfer to the Ready Reserve, his drill record was sparse and in 1961, he requested a transfer to the Standby

Reserve based on his civilian job obligations, not because of a medical condition. In support of this claim, PSC submitted a copy of an annual screening questionnaire dated July 20, 1960, in which the applicant requested a transfer to the Standby Reserve because "due to my job I will be doing a lot of traveling and I would like to be transferred to the Standby Reserve." A memorandum shows that his request was approved on March 27, 1961. PSC stated that if the applicant had been unfit for duty while in the Reserve, "he could have still been evaluated for medical discharge."

PSC concluded that the evidence of record "does not support a finding that the member was medically disabled and unable to perform his duties" while serving in the Coast Guard. Instead, PSC argued, "the preponderance of the evidence supports a finding that the member's injury did not prevent him from performing his duties and that it was a voluntary decision to be released from the [Coast Guard]." Therefore, PSC recommended denying relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 6, 2014, the applicant responded to the views of the Coast Guard and disagreed with them. The applicant described his training and service as a dental technician and a hospital corpsman. He alleged that the constant standing as a [redacted] gave him frequent back and leg pain, and a doctor offered to give him a medical discharge. However, the applicant wanted to remain in the Service, so he asked to transfer ratings to become an [redacted]

The applicant stated that after his release from active duty, he never drilled in the active Reserve because he "had a traveling job." His only contact with the Reserve was through the annual screening questionnaire. He did not know at the time that he could file a claim for service-connected disabilities and did not learn this fact until 2009.

Regarding his hardship discharge, the applicant stated that his wife had a nervous breakdown in the first week of July 1959 and needed mental health treatment, which was not available where he was stationed. The applicant submitted more copies of his records to support these claims. He also submitted a letter from the retired Army major, who stated that in August 2009, when the applicant was helping him file a claim with the DVA, the major asked him why he did not file a claim, and the applicant replied that he did not know he could. After the major told him it was not too late, the applicant filed his first claim with the DVA in 2010.

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.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record.[1] The preponderance of the evidence shows that the applicant knew by July 1959, and no later than March 1961, that he was not receiving a

[1] 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

medical separation from the Coast Guard. Therefore, his request for correction of this alleged error is untimely.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.[2] In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"[3] to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review."[4]

4. The applicant alleged that up until August 2009, he was unaware that he could apply to the Board to request a medical separation. The Board finds, however, that nothing prevented the applicant from complaining about his lack of a medical separation, if he thought he should have received one, and from learning about and applying to the Board earlier. In this regard, the Board notes that the applicant was an HM2 and so clearly knew that members could be medically discharged or retired due to disabilities incurred in the Service.

5. The Board's cursory review of the merits shows that the applicant's claim cannot prevail. Coast Guard members and reservists may be medically discharged or retired if they are separated because they are unfit for further military service due to a disability incurred or aggravated in the line of duty. The applicant's records clearly show that he incurred a medical condition—numbness and pain in his right thigh—while on active duty in the Coast Guard and was treated for it in 1957. However, the record does *not* show that this medical condition caused his separation or caused him to be unfit for further military service in 1959, when he was released from active duty, or 1961, when he was transferred to the Standby Reserve. Because there is no evidence that the applicant's medical condition rendered him unfit for further military service in 1959 or 1961, his request for a medical discharge or retirement from the Coast Guard cannot be granted. In this regard, the Board notes that the Coast Guard and other military services process members for medical separations only if the members can no longer perform their assigned military duties because of a disability incurred or aggravated in the line of duty, while the primary purpose of the DVA is to provide medical treatment and benefits to veterans who, like the applicant, become disabled *after* they leave military service due to medical conditions they incurred during military service.[5]

6. Therefore, the Board finds that it is not in the interest of justice to waive the statute of limitations because the applicant's request for a medical separation cannot prevail.

(ORDER AND SIGNATURES ON NEXT PAGE)

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[2] 10 U.S.C. § 1552(b).
[3] *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).
[4] *Id*. at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).
[5] *See Dzialo v. United States*, 5 Cl. Ct. 554, 565 (1984) (holding that a VA disability rating "is in no way determinative on the issue of plaintiff's eligibility for disability retirement pay. A long line of decisions have so held in similar circumstances, because the ratings of the VA and armed forces are made for different purposes.").

ORDER

The application of former [redacted], USCG, for correction of his military record is denied.

October 3, 2010

[redacted]