


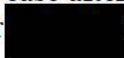
**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-160

 (Retired)

FINAL DECISION

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. The Chair docketed the case after receiving the completed application on June 19, 2014,¹ and assigned it to staff member  to prepare the draft decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 13, 2015, 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 asked the Board to correct his military records so that they document a head injury he sustained while serving onboard a Coast Guard cutter between June 23 and July 5, 1963. The applicant alleged that the Department of Veterans' Affairs (DVA) has denied his claim for a 10% disability rating because he could not provide medical records documenting the head injury he received while on active duty in the Coast Guard Reserve. He alleged that he cut his scalp climbing out of an engine room and his wound required stitches. The applicant also alleged that while applying for DVA disability benefits he learned that the ship's records were destroyed by fire and he would be unable to obtain official documentation of his injury. The applicant asked the Board to allow copies of the "Report of Medical History" he provided, in which he noted his head injury, to substitute for the ship's missing records.

The applicant stated that he discovered this error on February 10, 2011, after receiving copies of his medical records mentioning that he received stitches in 1963. In support of his allegations, the applicant submitted copies of his military medical records and related documentation, which are included in the summary of the record below.

¹ The applicant's DD 149 was received on June 27, 2012, and his case was docketed on June 19, 2014, upon receiving the necessary military records from Archives and medical records from the DVA. 33 C.F.R. § 52.21.

SUMMARY OF THE RECORD

The applicant served in the Coast Guard Reserve (USCGR) between April 13, 1960, and January 10, 1984. While serving on active duty in the USCGR, the applicant underwent numerous physical examinations and was treated for various ailments. Diagnoses, treatments, and results of physical examinations are documented in the Chronological Records of Medical Care, which the applicant was required to sign each time he was examined and treated, and the Reports of Medical Examination in the applicant's medical records. The applicant's medical records document the following diagnoses and treatments:

March 2, 1960 – Pilonodal cyst scar

April 6, 1963 – Clinical evidence of moderate periodontal involvement

April 29, 1969 – Surgical repair left hernia (Successful)

On May 31, 1963, the applicant received Active Duty for Training Orders from Commander, [REDACTED] Coast Guard District (dcr-3) to report for (04) [REDACTED] on the USCG [REDACTED]. The applicant was required to report for training from June 23 to July 5, 1963.

A Chronological Record of Service in the applicant's records documents his service on the USCGC [REDACTED] between June 23 and July 5, 1963. The applicant received a memorandum from Commander dated June 6, 1963, which notified him that his Active Duty for Training Orders were amended to change the termination date of the training to July 6, 1963.

Approximately ten years later, on June 12, 1973, the applicant completed A Report of Medical History pursuant to a physical examination. On this report, the applicant noted that in June 1963 he had sustained a "scalp cut" which "required stitches" while onboard the USCG [REDACTED].

Enlistment contracts in the applicant's military records, dated April 13, 1960, and May 4, 1963, both note, "Distinguishing Marks and Scars: Pilonodal cyst scar." A third contract in the applicant's military records, dated July 19, 1969, notes, "Distinguishing Marks and Scars: None."

The applicant was placed on the Reserve Retired List as an MKCS on January 13, 1984.

VIEWS OF THE COAST GUARD

On September 24, 2014, Commander, Personnel Service Center (PSC) sent a memorandum to the Judge Advocate General (JAG) of the Coast Guard in which PSC concluded that the applicant's application was not submitted timely. PSC stated that the applicant was discharged in 1984 and did not provide any justification for the untimeliness of his application or relevant support for his allegations. PSC stated that the applicant served onboard CGC [REDACTED] from June 23 to July 5, 1963, and in 1973 noted for a Report of Medical History during a physical examination that he had received a scalp cut that required stitches onboard the [REDACTED] in a section of the report for "injury other than those already noted" in the report. PSC stated that there is no additional information in the applicant's record to support this claim. PSC also concluded

that according to the applicant's statement, the VA's search for corroborating evidence in support of his claim, "comes back negative."

In a memorandum dated November 5, 2014, the JAG adopted the facts and analysis provided by PSC and asked the Board to accept PSC's comments as the Coast Guard's advisory opinion. The JAG recommended that the Board deny relief to the applicant.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

In a letter dated January 20, 2015, the applicant responded to the views of the Coast Guard. The applicant objected to the Coast Guard's conclusion that his application to the Board is untimely. He stated that the "Report of Reenlistment Record (1964-1965) also has 'Remarks' of scalp cut requiring stitching." He alleged that he told "somebody at [REDACTED] VA on [a] phone call" that he would be willing to take a lie detector test at their office, back in 2010. The applicant questioned why he would write about stitches on his head if the records at that time did not document the injury.

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.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record.² The alleged error appears to be the lack of contemporaneous medical records documenting a 1963 scalp cut that required stitches, which the applicant mentioned on a Report of Medical History he completed in 1973. Although the applicant may have had access to his medical records all along, there is no evidence showing that he ever received a complete copy of his medical records and noticed the lack of contemporaneous documentation of his scalp cut before 2011. He submitted his DD 149 application in 2012. Therefore, although the applicant was discharged about thirty years ago, the preponderance of the evidence shows that his application to the BCMR is timely.

3. The applicant asked the Board to correct his record by adding documentation of a head injury he incurred aboard the CGC [REDACTED] in 1963 according to a statement he made for a Report of Medical History in 1973. He alleged that the lack of such documentation is erroneous and unjust because it is preventing the DVA from finding that his current medical condition is service-connected, which would increase his disability benefits. 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

² 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

or unjust.³ 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.”⁴

4. The record before the Board contains no evidence from 1963 that validates the applicant’s 1973 and current claim that he sustained a scalp cut requiring stitches while serving aboard the CGC [REDACTED] in 1963. The 1973 Report of Medical History is the only record mentioning the scalp cut and stitches in his military file, and other records in his file report no scarring from stitches. The applicant wants the Board to find or create such documentation and add it to his file, but the Board has no authority to conduct an investigation. The Board’s procedural rules place the burden of finding such evidence on the applicant.⁵

5. The Board finds the applicant’s 1973 report of getting a cut and stitches on his scalp aboard the CGC [REDACTED] in 1963 to be credible because it knows of no reason why he would have lied to his doctor about it in 1973. To grant the requested relief, however, the Board would have to order the Coast Guard to fabricate a 1963 medical record. Doing so could theoretically cause the DVA to assign the applicant a higher disability rating, but in doing so, the Board would also be attempting to substitute the DVA’s more experienced judgment of the probative value of the 1973 Report of Medical History with the Board’s less experienced judgment of such matters. The Board declines to do so. Although the Board finds the 1973 Report of Medical History to be credible evidence that the applicant received a cut and stitches in his scalp aboard the CGC [REDACTED] in 1963, the Board finds insufficient grounds for fabricating a 1963 medical record of the cut and stitches. However, a copy of this decision should be entered in the applicant’s military record, which the DVA may review and consider.

6. Accordingly, the applicant’s request should be denied because he has not proven by a preponderance of the evidence that his record contains an error or injustice that the Board should correct,⁶ but a copy of this decision will be entered in his Coast Guard military record.

(ORDER AND SIGNATURES APPEAR ON PAGE)

³ 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)).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁵ 33 C.F.R. § 52.24(b).

⁶ Under 10 U.S.C. § 1552(a), the Board must correct only those errors and injustices that it finds to be “necessary” to correct.

ORDER

The application of former [REDACTED], USCGR, for correction of his military record is denied, but a copy of this decision shall be entered in his military record.

March 13, 2015

