

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-178



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on June 1, 2017, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 27, 2018, 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 former [REDACTED] who was discharged on April 18, 1977, asked the Board to correct his record by changing his discharge to a medical retirement. He stated he has recently received a 30% disability rating for a service-connected disability by the Department of Veterans Affairs (VA). He argued that the VA's rating should qualify him for a medical retirement effective on the date of his discharge, April 18, 1977.

Regarding the timing of his application, the applicant stated that he discovered the alleged error or injustice on June 29, 2017, but gave no explanation for this date of discovery. In support of his application he provided many documents, some of which are described below in the Summary of the Record.

SUMMARY OF THE RECORD

On February 25, 1977, the applicant underwent a pre-separation physical examination. The examination report notes that the applicant suffered from "pain left wrist, left elbow for 4 weeks. X-ray (neg)." The report also states that the applicant was physically qualified to perform all duties of his rate at sea, ashore, and overseas.

On March 29, 1977, the applicant was found not fit for duty due to his left hand. A Clinical Record note from the same date states the following: "Release of surgeon canal and carpal tunnel

performed in OR [Operating Room] – Dr. [M]. Plan: elevation, ice, ROM [range of motion] of fingers. NFFD [Not fit for duty] – Ortho 10 days. ... Codeine RX 10 days surgeon – Dr. [M].”

On April 18, 1977, the applicant was advised that he had been found “physically fit for separation from active duty” on a form titled Termination of Health Record. The form states that the “defects listed on report of medical examination do not disqualify [the applicant] from performance of [his] duties or entitle [him] to disability benefits from the Coast Guard. To receive a disability pension from the Coast Guard, [he] must be found unfit to perform [his] duties before [he is] separated.” He was advised that he could apply to the VA for disability benefits. The applicant signed this document and indicated that he agreed with the findings and did not want to submit a rebuttal.

The applicant was honorably discharged on April 18, 1977, after a total of six years and ten days of active duty service. He signed his DD Form 214.¹ An administrative entry in his record states that he was discharged “due to expiration of enlistment.” He received an RE-4 reenlistment code (ineligible for reenlistment). The applicant signed this document, stating that he acknowledged that had “been informed of and underst[ood] the reasons why [he was] not being recommended for reenlistment.” The applicant indicated that he did not want to receive a separate document explaining his discharge and reenlistment code.

On June 29, 2016, the VA granted the applicant a 30% disability rating for “left carpal tunnel syndrome and ulnar neuropathy status post surgical release (claimed as left arm nerve damage).” The VA stated that this disability was found to be “directly related to military service” and that the effective date of the grant was March 21, 2016, the date that the applicant’s claim was received.

VIEWS OF THE COAST GUARD

On November 3, 2017, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is not timely and therefore should not be considered beyond a cursory review. PSC argued that the applicant has not proven by a preponderance of the evidence that the finding of fit for full duty at the time of his discharge was in error or unjust. That the applicant was later found to have a service-connected diagnosis of left carpal tunnel syndrome and ulnar neuropathy status does not prove that he was not fit to perform the duties of his grade or rank at the time of his separation nearly forty years before the VA’s determination. PSC also pointed out that the applicant’s Termination of Health Record explicitly states that the defects listed did *not* disqualify him from performance of his duties or entitle him to disability benefits. PSC therefore recommended that the Board deny relief.

¹ A DD 214 is prepared to document a member’s release or discharge from a period of active duty.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 21, 2017, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. On December 19, 2017, a VA Regional Office responded on the applicant's behalf and stated that the applicant disagreed with the Coast Guard's advisory opinion. The applicant stated that following the surgery he underwent shortly before his discharge, he was unable to use his left arm or hand "for any significant lifting or activities that require[d] repetitive motions" and noted that he still has this limitation today. He stated that as a result he was temporarily assigned to a radar station where he handled "small amounts of paperwork." The applicant claimed that despite his "exemplary record" he was barred from reenlisting. He asserted that in "the absence of evidence pointing to another explanation, it seems reasonable to infer that he was not allowed to re-enlist ... because his service-connected physical disability (carpal tunnel) limited his usefulness." The applicant claimed that he was therefore forced out of the Coast Guard due to the medical condition that he has now received a 30% disability rating for from the VA. He requested that the Board grant his request and award him a medical retirement.

APPLICABLE REGULATIONS

The Physical Disability Manual, CONDTINST M1850.2, Chapter 2.C.2.i. states that the "existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the [VA] 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 him or her unfit for military duty. ... Such a member should apply to the [VA] for disability compensation after release from active 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 submission 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.² The applicant was discharged in 1977 due to the expiration of his enlistment and knew at the time that he had recently undergone surgery on his wrist. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1977, and his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ 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

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

³ 10 U.S.C. § 1552(b).

and the potential merits of the claim based on a cursory review”⁴ 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.”⁵

4. The applicant stated that he discovered the alleged error or in justice on June 29, 2017, but did not explain how he discovered the error or injustice on this date or his delay in filing his application. The Board finds that the applicant failed to show that anything prevented him from seeking correction of the alleged error or injustice within three years of his discharge in 1977.

5. A cursory review of the merits of this case indicates that that the claim cannot prevail. The record contains no evidence that substantiates the applicant’s allegations of error or injustice in his official military record, which is presumptively correct.⁶ The records show that the applicant was discharged due to the expiration of his enlistment and that before his discharge, he was found fit for duty and signed a form agreeing that he was fit for duty and declining to rebut this finding. The records also show that the applicant was offered a written explanation of his discharge and reenlistment code at the time of his discharge and declined to request one. The applicant asked the Board to change his Narrative Reason for Discharge based on a finding of disability by the VA forty years after his discharge. The VA found in 2016 that his “left carpal tunnel syndrome and ulnar neuropathy status post surgical release” was service-connected because he had had surgery in his left wrist for carpal tunnel and the VA rated the condition as 30% disabling, but this was not the reason for which he was discharged. As noted in Article 2.C.2.i. of the Physical Disability Manual, the existence of a ratable condition under the VA’s system does not itself provide justification for military retirement. The fact that the VA found the applicant to be disabled by a service-connected condition in 2016 is not evidence that he was disabled by the condition in 1977 or that the Coast Guard erred or committed an injustice under its own rules by administratively discharging him at the end of his enlistment. Based on the record before it, the Board finds that the applicant’s claim cannot prevail on the merits.

6. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁶ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

ORDER

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

July 27, 2018

