

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-114



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 March 8, 2017,¹ and assigned it to staff attorney [REDACTED] to prepare the draft decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 15, 2017, 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 her military medical record so that it documents an injury to her left knee while she was in basic training in 1980. Her medical records state that she injured her right knee during training. The applicant alleged that she injured herself while she was climbing out of a swimming pool and her left knee slid into the pool drain and became stuck. She stated that her records are in error because she never injured her right knee. She claimed that she discovered the alleged error in 2015 when an employee at the Department of Veterans' Affairs (DVA) informed her that her records indicate an injury occurred to her right knee. The applicant stated that it took her so long to discover the error because she had been attempting to file for disability, but every time she was told that the DVA did not have her records. In support of her allegations, the applicant submitted copies of her military medical records, which are included in the summary of the record below.

SUMMARY OF THE RECORD

The applicant served in the Coast Guard between June 2, 1980, and December 31, 1981. While serving on active duty, she underwent numerous physical examinations and was treated for various ailments. Her discharge request notes that she had visited military medical facilities eighteen times over the course of one year.

¹ The applicant's DD 149 was received on February 4, 2016, and her case was docketed on March 8, 2017, upon receiving the necessary military records from Archives and medical records from the DVA. 33 C.F.R. § 52.21.

A Chronological Record of Medical Care documents the applicant's visit to the Training Center Cape May medical facility on July 2, 1980. The notes state the following:

PT was seen in Cape May training pool w/ her R knee wedged in the gutter of the pool x 10 minutes. PT was getting out of pool when her R knee slid in the gutter of the pool. PT patella was wedged tightly in side of pool. No edema or erythema present. Petrolatum was applied & R knee slid out slowly. PT was brought over to dispensary to be seen by m.o.

The applicant was seen on numerous other occasions during her remaining time on active duty. None of the remainder of her medical records during her active duty time make any reference to a knee injury.

On November 30, 1981, the applicant received a pre-separation physical. She was found to have no disqualifying defects. Her lower extremities were marked as "normal." The applicant was discharged for convenience of the government on December 31, 1981.

Since the applicant's discharge, she has been seen many times at DVA medical facilities. Her medical records document the following visits during which her knee was discussed:

- July 25, 1985: "C/O [complaining of] while in service she got her left knee caught in swimming pool drain in 1980 – been having trouble w/ that knee off & on since 1980 – she has been having swelling & pain in left knee for two days this time."
- June 10, 1986: "Veteran c/o L knee pain & edema. Difficult to walk. Wants leg checked... L knee...slight tenderness inflam. No effusion no instability." An X-ray was ordered on both knees due to "c/o pain & swelling left knee." The radiologic report noted that both knees "appear[ed] normal."
- March 6, 1992: "C/o swelling to L knee x 2 wks, spider bite to L knee 5 wks ago... L knee – got stuck in swimming pool drain, took 7 people to extract it. Painful again 2 wks ago."
- March 11, 1992: A letter from an orthopedic consultant states that the applicant had been seen for pain in her left knee, which she injured in the military. She had stated that her knee was in pain and woke her up in the night. The doctor noted that the applicant had "a "very tender mass over the medial joint line of that left knee." The doctor noted that there was no gross instability and that the applicant had full range of motion. He stated that there was a "firm and possibly cystic feeling mass." He found that the applicant's symptoms were "consistent with internal derangement of the knee...possibly a torn medial meniscus and synovial cyst." The doctor recommended physical therapy.
- February 21, 1996: Notes from an orthopedic appointment note "[symptoms] of cyst lateral meniscus L knee." Progress notes state "cyst lateral meniscus L knee" per the orthopedist. A radiological consultation report dated February 22, 1996, states "no bone or joint abnormality is present."
- July 11, 1996: History of "L knee pain x 16 years [from] trauma. Her L leg was caught in a swimming pool drain. Pt has not had any surgery done on it and have [sic] been taking extra strength Tylenol... Pain [increases with] activities. [No history] of arthritis." The applicant had an MRI done on her knee the same day. The notes state a "minimally displaced fracture of the proximal fibula is present. No other abnormalities are noted."
- September 9, 1996: A letter from Advanced Medical Imaging Center states that the applicant had "a separated cyst anterior and contiguous to the anterior horn of the lateral meniscus."
- September 30, 1996: "C/o cyst & torn ligament L knee."
- September 26, 2012: The applicant was seen at the local Emergency Department with complaint of "headache and pain to her L knee...Has no injury or trauma to her L knee but related h/o cyst into her L knee for which she is being evaluated at the [DVA]."

- June 22, 2015: The applicant was seen by a social worker. The notes state “Veteran reports she has placed a service connection claim for her knee and has been filing for over twenty years. Veteran indicated she has requested her medical records only received 7-8 pages.”
- September 3, 2015: The applicant was seen for vocational rehabilitation assessment. She noted that she was physically limited in her ability to bend “due to a cyst on her left knee.”
- January 14, 2016: The applicant was seen by her primary care physician. She reported “some errors on her claim (? wrong knee indicated on her records) and some long standing problems related to her claim.”

VIEWS OF THE COAST GUARD

On August 4, 2017, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC) and recommended denying relief.

PSC stated that the application is not timely because it was not submitted within three years of the applicant’s discharge, and no justification was provided for the untimeliness. As to the merits of her request, PSC stated that the record of medical care from July 2, 1980, the date of her injury, states that she injured her right knee after it was lodged in a swimming pool gutter. This record makes no mention of her left knee and in fact mentioned her right knee multiple times. Although the applicant argued that because she experienced left knee pain after her discharge that her medical records are erroneous, PSC argued that the applicant did not provide sufficient evidence to overcome the presumption of regularity afforded to her medical records and therefore recommended that the Board deny relief.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 17, 2017, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within 30 days. No response was received.

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 her record.² The applicant was seen for a knee injury sustained in a swimming pool on July 2, 1980, and she was discharged from the Coast Guard in 1981. The Board notes that the applicant told a social worker in 2015 that she had been unsuccessfully filing a “service connection claim” for her knee injury for “over twenty years.” This shows that the applicant knew that her Coast Guard medical records showed no injury to her left knee—the alleged error in her record—at least as early as 1995. Therefore, her application is untimely.

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

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 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. Regarding the delay of her application, the applicant claimed that she discovered the alleged error in 2015 when a DVA employee brought the issue to her attention. The Board finds that the applicant’s explanation for her delay is not compelling because she failed to show that anything prevented her from seeking correction of the lack of documentation of a left knee injury in her Coast Guard medical record more promptly.

5. A cursory review of the merits of this case indicates that the applicant’s claim cannot prevail. The medical record from the date of the injury, July 2, 1980, states multiple times that she had injured her right knee at a pool. She was discharged in 1981 with no further complaints about either knee. A few years later, in 1985, she complained of pain in her left knee and attributed it to her injury at the pool in 1980. The applicant’s Coast Guard medical records showing that she injured her right knee at the pool are presumptively correct, however,⁶ and there is no evidence aside from the applicant’s own post-discharge claims to show that she injured her left knee while on active duty. 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 APPEAR ON PAGE)

³ 10 U.S.C. § 1552(b).

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 SR [REDACTED], USCG, for correction of her military record is denied.

December 15, 2017

