

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

---

Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2017-194**



---

**FINAL DECISION ON RECONSIDERATION**

This proceeding was conducted according to the provisions of section 10 U.S.C. § 1552, 14 U.S.C. § 425, and 33 C.F.R. § 52.67. The Chair docketed the case after receiving the completed application and records on June 1, 2017, and assigned it to staff member [REDACTED] to prepare the decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 1, 2018, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**BACKGROUND: BCMR DOCKET NO. 2011-094**

In BCMR Docket No. 2013-142 (see enclosed) the applicant, who had been released from active duty on February 25, 2012, and was serving in the Individual Ready Reserve at the time, asked the Board to amend her discharge to show that she was discharged a month later on March 25, 2012; to direct the Coast Guard to assign her an individual to ensure that her outstanding medical expenses would be covered by TriCare; and to direct the Coast Guard to expedite her case through the Physical Disability Evaluation System (PDES). After the Coast Guard responded to her initial request, she also asked that she be reinstated on active duty up to the present date through the end of her PDES processing and to receive back pay and allowances.

The applicant was enrolled in an Occupational Medical Surveillance and Evaluation Program due to her exposure to benzene and hazardous waste and in August 2011 she had a routine physical which showed abnormal liver results. A follow-up appointment in September showed that her liver was “much improved but still slightly elevated, mild hematuria.” The applicant began terminal leave in January 2012, as her enlistment was ending in February and she did not wish to reenlist. On February 6, 2012, the applicant had her pre-separation physical examination. The doctor released her without limitations but noted she had ongoing issues including a microscopic hematuria. The doctor noted that the hematuria and a few other conditions should be followed up on, and he ordered lab tests. The applicant was seen again on February 15, 2012, for a follow-up, and the doctor noted that the applicant needed a complete work-up to rule out causes for the hematuria on her liver. The applicant did not reenlist on active

duty and she signed a Reserve enlistment contract so that she became a member of the Reserve on February 26, 2012. She was placed into the Individual Ready Reserve (IRR) instead of the Selected Reserve (SELRES). Thereafter, the applicant accrued thousands of dollars in medical bills that she believed would have been covered by the Coast Guard, but were not because she was in the IRR instead of SELRES. In February 2013, lesions were found on her liver and the Coast Guard initiated the PDES process. This process was finalized by the time the Board made their decision in BCMR Docket No. 2013-142.

The Coast Guard recommended granting the applicant's original requests for relief, but not her amended request. The Board amended her discharge to show that she was discharged on July 29, 2012, which is the date she was found fit for duty despite her medical conditions on a Report of Medical Examination. The Board also awarded her back pay and allowances due as a result of this change. The Board stated the following regarding her PDES request:

The applicant asked the Board to retain her on active duty up through the end of her current PDES processing, but she has not proven by a preponderance of the evidence that she was unfit for duty on July 29, 2012. Although she had been diagnosed with hematuria, that condition is not disqualifying for retention under Chapter 3.F. of the Medical Manual, and her physician had found her fit for duty. Therefore, the Board finds that the relief recommended by the Coast Guard should be granted except that the date of discharge should be July 29, 2012, and the date of enlistment in the Reserve and affiliation with the SELRES should be July 30, 2012.

The Board also ordered the Coast Guard to correct her record to show that she entered the SELRES instead of the IRR as of July 30, 2012, making her eligible for medical coverage immediately after leaving active duty. She was also issued a Notice of Eligibility as of July 30, 2012, so that subsequent medical referrals for conditions incurred in the line of duty would be covered by TriCare. Lastly, the Board ordered that her record be corrected to show that she performed regular drills for points but not pay from July 30, 2012, until the date she actually began drilling for pay.

### **SUMMARY OF APPLICANT'S REQUEST FOR RECONSIDERATION**

In her request for reconsideration, through counsel, the applicant asked the Board to change her discharge date to reflect a discharge date consistent with the completion of her PDES and to grant her back pay and allowances. She made many of the same arguments she made in her original application. The only new argument concerns Article 1.B.11. from the Military Separations Manual, COMDTINST M1000.4, which states that "an active duty member whose enlistment expires while he or she suffers from a disease or injury incident to service and not due to his or her own misconduct and who needs medical care or hospitalization may remain in the Service after the normal enlistment expiration date." It goes on to state that an "untimely separation of a member subject to a physical evaluation board proceeding may prejudice the case because the law requires making necessary physical disability determinations while the member is entitled to receive basic pay." The applicant noted that in the Coast Guard's advisory opinion to BCMR Docket No. 2013-142, PSC had stated that the applicant had left active duty at her own request. She argued that while this was technically true, it was based on a lack of information. She argued that she "should have been advised as to the seriousness of the medical conditions and the right to be placed on medical hold" per the regulation quoted above. The applicant

claimed that she made her decisions with “blinders on” with a “lack of information.”<sup>1</sup> She stated that no rational person with lesions on her liver would forgo medical treatment and assume the costs of surgery in their personal capacity. She asserted that had she known of the above regulation, she would have remained on active duty medical hold pending the completion of her PDES processing and medical procedures. The applicant did not submit any new evidence in support of her application.

### VIEWS OF THE COAST GUARD

On November 16, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny the requested relief. The JAG stated that the applicant has requested substantially the same relief in her original request, it was thoroughly reviewed and analyzed by the Coast Guard and the Board, and she was granted substantial relief that she was owed. The Board found at that time, per finding number 8, that she was not entitled to a discharge date that would reflect the same date as the completion of her PDES processing.

Regarding Article 1.B.11. of the Military Separations Manual, the JAG stated that the applicant has already been granted relief under this article. Her original enlistment expired on February 25, 2012, and due to her medical treatment the Board granted relief by retaining the applicant on active duty until July 29, 2012. That was the date that the Report of Medical Examination was finalized and the applicant was found fit for duty. The JAG noted that she was not separated at that time, but instead was transferred to the Reserve to begin drilling.

The JAG noted that the applicant also pointed out the section of Article 1.B.11. which states that “untimely separation of a member subject to a physical evaluation board proceeding may prejudice the case because the law requires making necessary physical disability determinations while the member is entitled to receive basic pay.” The JAG stated that this section was not applicable to the applicant because she was not undergoing evaluation by a physical disability evaluation board while she was on active duty. She was found fit for duty on July 29, 2012, which was her last day of active duty after the Board corrected her record. It was not until February 2013 that the lesions were found on her liver and the Medical Board was initiated. At that point, Article 1.B.11. no longer applied to the applicant because she was a reservist in the SELRES and not on active duty.

In response to the applicant’s claim that she essentially had detrimentally relied on misrepresented information from the Coast Guard and that had she known the severity of her medical condition, she would not have transferred to the Reserve, the JAG argued that there was no evidence that the applicant was not properly advised of her medical conditions at any time or that the finding of fit for duty on July 29, 2012, was in error. The JAG pointed out that on August 21, 2012, the applicant herself noted on her application for transfer from the IRR to SELRES that she did not have any medical conditions that would affect her ability to serve in the Reserve. The JAG argued that the applicant has already been granted the proper relief and that

---

<sup>1</sup> *Covington v. DHHS*, 750 F.2d 937, 943 (Fed. Cir. 1984).

she has not proven that any additional relief is warranted. The JAG therefore recommended denying relief.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On November 21, 2017, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within thirty days. No response was received.

### **APPLICABLE LAW AND POLICY**

The Military Separations Manual, COMDTINST M1000.4, Article 1.B.11.f.(1)(a) states:

An active duty member whose enlistment expires while he or she suffers from a disease or injury incident to service and not due to his or her own misconduct and who needs medical care or hospitalization may remain in the Service after the normal enlistment expiration date with his or her consent.

Article 1.B.11.f.(1)(c) states “an untimely separation of a member subject to a physical evaluation board proceeding may prejudice the case because the law requires making necessary physical disability determinations while the member is entitled to receive basic pay.”

### **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 over this matter under 10 U.S.C. § 1552. The application was timely filed.<sup>2</sup>

2. The Board's decision in BCMR Docket No. 2013-142 made a specific finding that the applicant did not prove by a preponderance of the evidence that she was unfit for duty on July 29, 2012. She did not prove that she should have been retained on active duty through the end of her PDES processing. That is why the Board at that time found that her discharge should be changed to July 29, 2012, to align with the date of her Report of Medical Examination.

3. The applicant now asks for reconsideration under Article 1.B.11.f.(1)(a) of the Military Separations Manual. She argued that she should have been retained through the end of her PDES processing because of this article. However, the article uses the permissive word “may” and does not require the Coast Guard to keep the described class of members on active duty. The section at issue states that a member “who needs medical care or hospitalization *may* remain in the Service” (emphasis added) indicating that this process is at the discretion of the Coast Guard. The JAG argued that any errors that may have been committed under this section were corrected by the Board's actions in BCMR Docket No. 2013-142. The Board agrees. The applicant's record now shows that she was on active duty until July 29, 2012, which is when she was found fit for full duty per the Report of Medical Examination. As she was found fit for full

---

<sup>2</sup> Title 10 U.S.C. § 1552(1)(3)(D).

duty, she was also fit for separation and there were no grounds for retaining her on active duty based on her medical condition at the time.

4. The applicant pointed out that Article 1.B.11.f.(1)(c) of the Military Separations Manual states that “an untimely separation of a member subject to a physical evaluation board proceeding may prejudice the case because the law requires making necessary physical disability determinations while the member is entitled to receive basic pay.” The Board agrees with the Coast Guard that this reasoning did not apply to the applicant in 2012 because she was fit for duty and not undergoing PDES processing.

5. The applicant also claimed that she made her decision not to reenlist on active duty with “blindness” on because she was unaware of her condition. However, the applicant was diagnosed with hematuria during an examination in August 2011. She did not begin her pre-separation medical screenings until February 2012, which as BCMR Docket No. 2013-142 pointed out, she should have begun six months before her discharge date. She waited until less than three weeks before her enlistment ended to undergo the examination instead of providing the full six months “which would have provided time for proper discharge processing and prevented the lack of insurance coverage she experienced.”<sup>3</sup> Moreover, the applicant’s doctor is presumed to have properly advised her of her condition in February 2012, and he ordered lab tests and expressly noted in her record that he had told her she would need to do some additional follow-up on her liver and some other medical conditions. Although the applicant argued that no rational person with lesions on her liver would have voluntarily left active duty, the lesions were not diagnosed until February of 2013, by which time she had already opted not to reenlist.

6. The applicant has not presented any new evidence for the Board to consider on reconsideration. She made one new legal argument which she did not make in her original application. The regulation that she cited, however, is permissive and not mandatory. The Coast Guard is not required to retain on active duty every member with a medical condition that could become serious and warrant PDES processing at some point in the future. The Department of Veterans Affairs was created to handle such events. The Board finds that the applicant has failed to prove by a preponderance of the evidence that an error or injustice exists in her record as it stands since being corrected.

7. Accordingly, the applicant’s request should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

---

<sup>3</sup> BCMR Docket No. 2013-142.

**ORDER**

The application of [REDACTED], USCGR, for correction of her military record is denied.

