

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-002

[REDACTED]
[REDACTED] BM1/E-6 (former)

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on September 19, 2018, and assigned it to [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated December 6, 2019, 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 was temporarily retired from active duty due to a disability on April 5, 2011; placed on the Temporary Disability Retired List (TDRL); and then transferred to the Permanent Disability Retired List (PDRL) on July 5, 2013. She asked the Board to issue her a new DD 214 showing that she was permanently retired on July 5, 2013, instead of being placed on the TDRL on April 5, 2011. She argued that she should receive a new DD 214 showing that she was permanently retired because her current DD 214 shows only that she was placed on the TDRL and does not reflect her permanent retirement. In support of her application, she submitted the following documents:

1. Her DD 214 for the period March 23, 2004, through April 11, 2011 which shows that she was placed on the TDRL on April 11, 2011.
2. A letter from the Department of Veterans' Affairs (DVA) dated August 29, 2018, stating that she was found totally and permanently disabled due to a service-connected disability effective August 27, 2012.

The applicant stated that she discovered the alleged error in her record on August 29, 2018, shortly after being hired as a civilian employee of the Coast Guard. She stated that she was told that the status of her discharge had never been updated to reflect her permanent disability.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on March 23, 2004, and advanced to the rank of BM1/E-6. On January 24, 2011, an Informal Physical Evaluation Board (IPEB) recommended that she receive a 60% disability rating for Meniere's Syndrome and stated that she was unfit for continued duty. On April 5, 2011, she was separated from active duty and placed on the TDRL.

The applicant's DD 214 documenting her service from 2004 to 2011 states the following:

- Block 23, type of separation: "Retirement/Resume Retirement";
- Block 24, character of service: "Honorable";
- Block 25, separation authority: COMDTINST M100.6A 12.C.10;
- Block 26, separation code: SFK, denoting placement on the TDRL due to a temporary disability;
- Block 27, reenlistment code: RE-2, denoting ineligibility due to retired status; and
- Block 28, narrative reason for separation: "Disability, Temporary."

On February 28, 2013, a Physical Evaluation Board (PEB) reported that the applicant's disabilities were of a permanent nature and prevented her from performing the duties required of her rank.

On April 26, 2013, Commander, Personnel Services Center (PSC) notified the applicant that she had been found unfit for duty and would be permanently retired. She indicated on one of the two enclosures provided by PSC that she accepted the findings and declined the opportunity to consult with counsel regarding the PEB's report.

On July 10, 2013, Commander, PSC notified the applicant that she had been moved from the TDRL to the PDRL effective as of July 5, 2013. (These documents were sent to the applicant with the Coast Guard's advisory opinion.)

VIEWS OF THE COAST GUARD

On April 9, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case in accordance with the findings and analysis provided in a memorandum submitted by Commander, PSC. The JAG also stated that the applicant is not entitled to receive another DD 214 after being removed from the TDRL because DoD¹ policy and Coast Guard policy state that members do not receive another DD 214 when they are removed from TDRL and permanently retired. The JAG also noted that the Coast Guard's actions with regards to the applicant were consistent with the Board's decision in BCMR Docket No. 2014-210, in which the Board stated that a member removed from the TDRL is not eligible to receive an updated DD 214.

¹ Department of Defense Instruction 1336.01, which has been adopted by the Coast Guard, states that a DD 214 should not be prepared for personnel being removed from the TDRL.

APPLICABLE LAW AND POLICY

Article 8.A.4 of COMDTINST M1850.2D, Physical Disability Evaluation System, states the following with regard to members on the TDRL:

Temporary retirement status implies no inherent right for retention on the TDRL for the entire 5-year period provided by 10 U.S.C. §1210. Upon review of a periodic physical examination and a determination that the member's condition is of a permanent nature and stable, an IPEB or FPEB may recommend removal of the member's name from the TDRL by separation with severance pay, permanent disability retirement, or a finding of Fit for Duty, as appropriate.

Article 1.D.2.a. of COMDTINST M1900.4D, the Commandant's instruction for preparing DD 214s, states that “[a]ll entries [on the DD 214], unless specified otherwise are for the current period of active duty only from the date of entry as shown in block 12a through the date of separation as shown in block 12b.”

Article 1.B.3 of COMDTINST M1900.4D states that a DD 214 will NOT be issued to members “who are being removed from the [TDRL].”

The Separation Program Designator (SPD) Handbook states that the narrative reason for separation corresponding to separation code SFK is “Disability, Temporary.” The explanation provided states, “mandatory retirement required by law due to temporary physical disability.” The corresponding reenlistment code is RE-2, which means the veteran is ineligible for reenlistment because of her retired status.

PREVIOUS BOARD DECISION

In BCMR Docket No. 2014-210, the Board denied a member's request to change Block 28 (Narrative Reason for Separation) of the DD 214 that he received when he was placed on the TDRL. The Board noted that Coast Guard policy states that members will not receive a DD 214 when they are removed from the TDRL and permanently retired.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 15, 2019, the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within 30 days. The BCMR did not receive a response.

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. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. The applicant received her DD 214 stating that she had been retired for “Disability, Temporary” in 2011. She

was transferred from the TDRL to the PDRL in 2013 but stated that she did not discover the alleged error on her DD 214 until August 29, 2018, when someone told her that her DD 214 did not reflect her permanent retirement. Although the applicant should have been familiar with the contents of her DD 214 and so known of the alleged error in 2013, it is possible that she failed to realize in 2013 that her DD 214 continued to say “Disability, Temporary” even though she had been moved to the PDRL. In light of the applicant’s claim, the Board finds that the preponderance of the evidence shows that the application was timely filed within three years of her discovery of the alleged error. Therefore, the application is timely.

3. The applicant asked the Board to issue her a new DD 214 correcting Block 28 to show that she was permanently retired. When considering allegations of error and injustice, the Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is correct as it appears in her record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² 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.”³

4. The applicant has not proven by a preponderance of the evidence that the narrative reasons for separation on her DD 214 should be changed from “Disability, Temporary” to “Disability, Permanent.” Pursuant to Article 1.D.2.a. of COMDTINST M1900.4D, a DD 214 is supposed to be accurate as of the date of separation from active duty, and the applicant was separated from active duty in 2013, when she was placed on the TDRL. Moreover, Article 1.B.3 of COMDTINST M1900.4D states that members who are removed from the TDRL are not issued new DD 214s. Instead, they receive the notification letter from Commander, PSC, stating that they have been removed from the TDRL, and the applicant has already received a copy of the letter stating that she was removed from the TDRL and permanently retired with the advisory opinion.

5. Accordingly, the applicant’s request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of former BM1 [REDACTED] USCG, for correction of her military record is denied.

December 6, 2019

