


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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2019-098**

  
YN1 (Former)

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**FINAL DECISION**

This proceeding was conducted according to 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 March 16, 2019, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 3, 2020, 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 Yeoman Petty Officer First Class (YN1/pay grade E-6) who was honorably discharged on January 11, 1999, asked the Board to correct his military record to show that he is entitled to severance pay and to correct his DD-214 to list all of his unaccounted sea service.

The applicant alleged that he was medically retired from the Coast Guard on January 11, 1994. He pointed to the fact that Block 23 (type of separation) of his final DD-214 states that he was retired. To further support his allegation, the applicant provided a Certificate of Retirement. He argued that because he was medically retired, he should be receiving severance pay.

The applicant stated that he learned of the errors in his record on January 28, 2019. He explained that at the time he received his DD-214, there were a lot of distractions in his life and he did not notice the errors. However, upon listening to the President discuss veterans' issues, he looked into his paperwork and is now asking the Board to correct the errors.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on February 2, 1976. Following recruit training, he was enrolled in "A" School to become a Yeoman.

On November 8, 1979, the applicant was honorably discharged from the Coast Guard. Block 18.f. (foreign and/or sea service this period) of his DD-214 shows that he had completed 10 months and 17 days of sea service. The following day, the applicant reenlisted for three years.

On February 2, 1982, the applicant was honorably discharged from the Coast Guard and reenlisted in order to be eligible for a Selective Reenlistment Bonus. Block 12.g. (sea service) of his DD-214 shows that he completed 10 months and 17 days of sea service. The following day, the applicant reenlisted for four years.

On February 2, 1986, the applicant extended his enlistment for one year. When that extension expired, the applicant extended his enlistment for an additional four years. His updated end of enlistment date was February 2, 1991. There is no DD-214 in the applicant's record to account for the period from February 3, 1982, to January 31, 1991. The applicant reenlisted on February 1, 1991, for an unknown period of time.

On August 31, 1993, a Coast Guard Physical Evaluation Board convened to evaluate the applicant. The Formal Physical Evaluation Board (FPEB) determined that the applicant was not fit for duty by reason of physical disability. The applicant was assigned a 30% disability rating based on a diagnosis of being Human Immunodeficiency Virus (HIV) positive. On November 9, 1993, the Coast Guard Physical Review Council concurred with the findings of the FPEB and recommended that the applicant be placed on the Temporary Disability Retired List (TDRL). This recommendation was approved by the Office of Personnel.

On January 11, 1994, the applicant was placed on the TDRL. The applicant received a DD-214 documenting his active duty from February 1, 1991, to January 11, 1994. The type of separation was "retired" and the narrative reason for separation was "placed on the Temporary Disability Retired List". Block 12.g. (sea service) showed that he completed 0 days of sea service. That same day, he received a Certificate of Retirement.

On October 20, 1992, the applicant received a letter from the Coast Guard Pay and Personnel Center (PPC) regarding the adjustment of his creditable sea service time. The letter states that the applicant's total creditable sea duty was 3 years, 6 months, and 23 days. The Statement of Creditable Sea Service Worksheet broke down his sea service as follows:

<b>From</b>	<b>To</b>	<b>Total Time</b>
August 13, 1977	April 12, 1978	00 years, 08 months, 00 days
April 13, 1978	June 23, 1978	00 years, 02 months, 11 days
September 05, 1984	September 6, 1984	00 years, 00 months, 02 days
March 15, 1987	June 15, 1987	00 years, 03 months, 01 days
July 12, 1987	December 20, 1989	02 years, 05 months, 09 days

The letter asked the applicant to review their findings and to alert PPC if he believed the adjusted sea service time was incorrect. The record contains no response by the applicant.

On a TDRL Evaluation Summary dated May 21, 1998, the applicant's physician noted that the applicant was HIV positive and had no known opportunistic infections. The physician determined that the applicant was qualified for worldwide duty subject to Air Force Policy restrictions.

On August 12, 1998, the Coast Guard Central Physical Evaluation Board (CPEB) determined that the applicant was fit for full duty. The CPEB recommended that he return to duty. On September 10, 1998, the applicant accepted the CPEB's findings and recommendations and waived his right to a formal hearing before a Formal Physical Evaluation Board.

On October 28, 1998, the applicant received a letter from Coast Guard Personnel Command (CGPC-epm-1) informing him that the CPEB had determined that he was fit for duty. The applicant was permitted to reenlist as a Yeoman, First Class, within fifteen days from the date on which the letter was postmarked. If the applicant did not reenlist, the applicant would be removed from the TDRL and discharged. The applicant acknowledged receipt of this information with his signature.

On March 19, 1999, the applicant received a letter from CGPC-epm-1 notifying him that he had been discharged by reason of Convenience of the Government on January 11, 1999. Enclosed in the letter was the applicant's Honorable Discharge Certificate and Honorable Discharge Button.

On May 10, 1999, the applicant sent a letter to CGPC-epm-1. He explained that he was out of town during the time-period allotted for him to reenlist. Since the fifteen-day time-period had expired, the applicant's pay had been terminated. The applicant requested that he be allowed to reenlist in the Coast Guard.

On June 16, 1999, CGPC-epm-1 responded to the applicant's letter. The applicant was authorized to reenlist at the nearest recruiting office. There is no record indicating that the applicant ever reenlisted.

On August 23, 2002, the applicant sent CGPC-epm-1 a letter regarding the way the Coast Guard had handled his removal from the TDRL. On October 24, 2002, the applicant received a response from CGPC-epm-1. The letter stated that the Coast Guard did not have any record of the applicant's attempt to reenlist after June 16, 1999. The Coast Guard determined that it had provided the applicant a fair opportunity to reenlist by waiving the normal time limit requirement and providing him a second opportunity to reenlist. As such, the Coast Guard did not authorize another waiver of the time limit to apply for reenlistment. In response to the applicant's concerns regarding the way the Coast Guard had handled his removal from the TDRL, CGPC-epm-1 stated the following:

As your letter states, you were placed on the TDRL in 1994. This action was taken in accordance with the policy in effect for HIV positive members at that time. The Coast Guard's statement in 1994 that you would receive a disability retirement pension for the remainder of your life was based on the medical belief prevalent at that time that the condition of HIV positive persons would never improve and eventually worsen. Thankfully, medical advances permitted the armed services to change their policy to allow symptom-free HIV positive members to return to active duty, provided they wanted to and continued to meet other eligibility requirements for reenlistment.

### **VIEWS OF THE COAST GUARD**

On August 26, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant alternative relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is not timely. However, PSC acknowledged that the applicant's sea service was not properly captured on any of his DD-214s. According to the applicant's Statement of Creditable Sea Service Worksheet, PSC determined that the amount of sea service not accounted for on his DD-214s was 02 years, 08 months, and 12 days. PSC recommended capturing the remainder of the applicant's sea service by issuing a standard correction form (DD-215) to his final DD-214. Specifically, PSC recommended correcting Block 12.a. (date entered AD this period) from "February 01, 1991" to "February 3, 1982" which was the effective date of the applicant's reenlistment. PSC also recommended correcting Block 12.g. (sea service) from 0 days to "02 years, 08 months, and 12 days".

PSC stated that the applicant was properly discharged on January 11, 1999. According to a Coast Guard memorandum dated October 24, 2002, it was the medical belief at the time he was placed on the Temporary Disability Retired List (TDRL) that he would receive a disability retirement pension for the remainder of his life. PSC argued that this is presumed to be the reason why the applicant was issued a retirement certificate. However, while the applicant was on the TDRL, medical advances permitted the applicant to be deemed fit for duty. Therefore, the applicant could have permanently retired after serving 20 years in the Coast Guard if he had reenlisted during the time-period allotted, but he did not.

The JAG reiterated PSC's allegation that the applicant was properly discharged from the Coast Guard. As such, the applicant was not entitled to severance pay. The JAG argued that the applicant would have been entitled to severance pay only if the Physical Disability Evaluation System determined that he was disabled, the disability was less than 30%, and he had served less than 20 years in the Coast Guard. However, the applicant was removed from the TDRL and was determined to be fit for duty without limitation. Since the Coast Guard determined that he was fit for duty, there was no need to offer him a medical retirement. The JAG argued that the applicant was given an opportunity to return to active duty, and he was properly discharged after he did not reenlist.

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

On September 3, 2019, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. In his response, the applicant reiterated that Block 12.g. of his DD-214 should be corrected to reflect all of the sea service that he accrued while in the Coast Guard.

The applicant argued that the information regarding his separation on his DD-214 is illegible. He requested that this information be made legible.

The applicant stated that he did not reenlist in the Coast Guard because events beyond his control prohibited his reenlistment. To reenlist, he had to have a physical examination. However, the applicant did not have transportation to get to his appointment. He also did not have medical insurance and was unable to pay for the physical examination. He alleged that he informed the recruiter of his situation but that he was not offered any help.

After he was discharged, the applicant managed to find employment. Eventually, he contacted the Department of Veterans Affairs (VA) and was given a physical examination. The VA determined that he needed a hip replacement due to Avascular Necrosis, a complication of HIV. He alleged that had he been given proper examinations by the Coast Guard, this condition would have been known and he would have been considered for disability retirement. He argued that the Coast Guard was negligent in his medical assistance. He stated that he was not justly treated due to the lack of research and consideration at the time. He asked the Board to correct his record to show that he is entitled to disability retirement pay.

### APPLICABLE LAW AND POLICY

Chapter 1 of the COMDTINST M1900.4D. discusses instructions for the preparation of a DD-214 in relevant part:

A. Criteria for Issuance: The DD 214 is issued to members who change their military status among active duty, reserve, or retired components or are separated/discharged from the Coast Guard to civilian status.

B. Ineligible Personnel: The DD214 will NOT be issued to members:

- ...
3. Who are being removed from the temporary disability retired list (TDRL).

Chapter 1.E. of the COMDTINST M1900.4D. discusses instructions for completing blocks on a DD214 in relevant part:

Block 12g. Sea Service. Enter the years, months, and days of sea service from the date entered in block 12a through the date entered in block 12b. The sea service computation entered in this block will be sea service performed which qualifies the member for payment under the Career Sea Pay Law.

Department of Defense Directive 6485.1 regarding the Human Immunodeficiency Virus dated March 19, 1991, discusses the policy on HIV in relevant part:

D. Policy: It is DoD policy to retire or separate AD or Reserve Service members infected with HIV-1 who are determined to be unfit for further duty, as implemented in DoD Directive 1332.18, "Separation from the Military Service by Reason of Physical Disability," February 25, 1986.

Chapter 4.A.6.h. of the Coast Guard Personnel Manual in effect at the time of the applicant's discharge discusses the assignment policies for members who are Human Immunodeficiency Virus (HIV) Antibody Positive in relevant part:

Members who are HIV antibody positive and demonstrate immunologic deficiency, neurologic involvement, progressive clinical or laboratory abnormalities associated with HIV, as well as those

diagnosed as having AIDS Related Complex or Acquired Immune Disease are disqualified for retention in the Coast Guard. Listed below are procedures to be followed:

1. Any member who is HIV antibody positive must have an Initial Medical Board, regardless of symptoms or clinical laboratory findings, for appropriate disposition or assignment.
2. Any members who is HIV antibody positive but asymptomatic are unfit for worldwide deployment. However, those members may receive an assignment from CGPC to remain on active duty in a non-deployable billet.

### 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.<sup>1</sup> The record shows that the applicant signed his DD-214 and was placed on the Temporary Disability Retired List (TDRL) on January 11, 1994. The record also shows that the applicant received a letter informing him that he was being removed from the TDRL and honorably discharged on January 11, 1999. His DD-214 also showed his amount of sea service. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1999, 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.<sup>2</sup> 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"<sup>3</sup> 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."<sup>4</sup> Pursuant to these instructions, the Board finds as follows with regards to the applicant's request for a medical separation and disability severance or retired pay:
  - a. The applicant clearly knew no later than 1999 that he had been found fit for duty and was not going to receive disability separation or retired pay, and he has not justified his long delay.
  - b. The applicant argued that he should have been medically retired or discharged instead of administratively discharged because he later received a hip replacement due to having Avascular Necrosis, which is a complication of the HIV infection. He argued that had he received a proper examination, the Coast Guard would have determined that he was unfit for duty and issued him a medical retirement. However, the applicant has submitted no medical evidence to support his argument that he was not fit for duty in 1998. The applicant's TDRL Evaluation Summary dated May 21, 1998,

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<sup>1</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>2</sup> 10 U.S.C. § 1552(b).

<sup>3</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>4</sup> *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

shows that the doctor determined that he was qualified for worldwide duty subject to policy restrictions. According to the Coast Guard Personnel Manual in effect at the time of the applicant's discharge, members who were HIV antibody positive were eligible to remain on active duty in a non-deployable billet. Based on the applicant's physical evaluation and the Coast Guard's policy regarding HIV, the CPEB determined that he was fit for duty. The Board finds no reason to excuse the untimeliness of this claim or to waive the statute of limitations. The request should be denied.

c. The information contained in the applicant's final DD-214 regarding his separation is correct. 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 on January 11, 1994, when he 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, CGPC, explaining that they have been removed from the TDRL. On March 19, 1999, the applicant received a copy of this letter informing him that he was removed from the TDRL and honorably discharged by reason of Convenience of the Government.

4. With regard to the applicant's sea service, however, the JAG stated that the Coast Guard has verified the applicant's military record is incorrect, and so the Board will excuse the untimeliness of this request and consider the issue on the merits. The JAG determined that the applicant has a gap in service on his DD-214s and that this gap caused the applicant's sea service time to be incorrect. The applicant's final DD-214 fails to capture the applicant's service from February 3, 1982, through January 31, 1991. The Coast Guard has agreed to correct the applicant's final DD-214 by issuing a DD-215 correcting Block 12.a. (date entered AD this period) from February 01, 1991, to February 3, 1982. Additionally, the DD-215 shall account for the applicant's sea service that he completed from February 3, 1982, until he was placed on the TDRL. The DD-215 should correct Block 12.g. (sea service) to 02 years, 08 months, and 12 days. The Board notes that according to the Statement of Creditable Sea Service Worksheet, the applicant's initial DD-214 should have stated 10 months and 11 days of sea service rather than 10 months and 17 days. Additionally, the Board notes that the applicant's second DD-214 should have stated 0 days of sea service since the applicant did not accrue any sea service during that enlistment. However, since the applicant did in fact accrue 02 years, 08 months, and 12 days of sea service after February 3, 1982, his corresponding DD-214 should reflect this service. The Board agrees that the Coast Guard shall issue a DD-215 correcting the applicant's record as recommended by the JAG.

5. The applicant's allegation that his final DD-214 is illegible is warranted. The Special Additional Information section of his DD-214 is entirely indecipherable. The Board finds that in addition to correcting Blocks 12.a. and 12.g. on a DD-215, the Coast Guard should legibly reprint the information in the Special Additional Information section on the DD-215.

6. The applicant's allegation that he should not have received a Certificate of Retirement is also warranted. As PSC noted, this certification was sent to the applicant prematurely based on the medical belief at the time the applicant was placed on the TDRL. The Board finds that any documentation of this certificate in the applicant's military record should be removed.

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



**ORDER**

The application of former YN1 [REDACTED] xxx xx XXXX, USCG, for correction of his military record is granted, in part. The Coast Guard shall issue the applicant a DD-215 to accompany his final DD-214 and make the following changes:

1. Block 12.a. (date entered AD this period) shall be changed from February 01, 1991, to February 3, 1982;
2. Block 12.g. (sea service) shall be changed from to show 02 years, 08 months, and 12 days;
3. The information in the Special Additional Information section shall be legibly printed.

The Coast Guard shall also remove any copy or documentation of a Certificate of Retirement from the record.

All other requests are denied.

April 3, 2020

