

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-016

██████████
MK3/E-4 (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 applicant's completed application on October 18, 2019, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 21, 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, who was placed on the Temporary Disability Retired List (TDRL) on January 15, 1996, and medically discharged with severance pay on January 15, 2001, alleged that the type of discharge on his DD 214 is incorrect. He stated that his DD 214 shows that he was temporarily retired and argued that he should receive a new DD 214 showing that he was honorably discharged and showing his total time served. He stated that he needs his DD 214 corrected because he is getting ready to retire from his job with the ██████████ but cannot buy back his military time because his DD 214 states that he is temporarily retired.

In support of his request, the applicant submitted a copy of his DD 214 for the period July 29, 1992, through January 15, 1996, which shows that he was placed on the TDRL on January 15, 1996. The applicant stated that he discovered the alleged error in his record on August 28, 2019, but did not explain why he did not discover the alleged error earlier.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 29, 1992, and advanced to the rank of MK3 (E-4). On December 15, 1995, the Central Physical Evaluation Board (CPEB) recommended that he receive a 30% disability rating for lumbosacral and strain sciatic nerve paralysis and stated that he was unfit for continued duty. On January 15, 1996, he was separated from active duty and placed on the TDRL. The applicant's DD 214 documenting his service from 1992 to 1996 states the following:

- Block 23, type of separation: “Retirement”
- Block 24, character of service: “Honorable”
- Block 25, separation authority: Article 17-B-6, COMDTINST M1000.6A
- Block 26, separation code: SFK, denoting placement on the TDRL due to a temporary disability
- Block 27, reenlistment code: RE-3P;¹ and
- Block 28, narrative reason for separation: “Temporary Physical Disability Retirement.”

On March 20, 2001, the Physical Evaluation Board (PEB) convened and found that the applicant’s disabilities were of a permanent nature but less than 30% disabling, which is required for a disability retirement. The PEB recommended that he be medically discharged with severance pay, and this recommendation was approved on April 17, 2001.

On April 19, 2001, Commander, Coast Guard Personnel Command (CGPC) notified the applicant in a letter that he had been found unfit for duty and was being medically discharged with severance pay effective January 15, 2001.² A copy of this letter and other supporting documents were sent to the applicant with the advisory opinion of the Coast Guard.

VIEWS OF THE COAST GUARD

On May 6, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant’s request but grant alternative relief. The JAG stated that the applicant is not entitled to receive another DD 214 after being removed from the TDRL because Department of Defense³ policy and Coast Guard policy state that members do not receive another DD 214 when they are removed from TDRL. 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.

The JAG disagreed with the applicant’s assertion that his type of discharge in Block 23 on his DD 214 is erroneous. The JAG noted that Block 23 currently states "Retirement" and argued that at the time of his initial separation and placement on the TDRL, “which is a form of retirement,” this was correct because Coast Guard policy permits discharge authorities to annotate this block with "Retirement" "or other [type of discharge] as appropriate." However, the JAG stated that the Coast Guard has historically listed the type of separation as "retirement" or "retired" in Block 23 and "temporary disability retirement" (or the like) in the narrative reason block in TDRL cases, as was done here. Therefore, the JAG argued, it was not erroneous for the Coast Guard to characterize Applicant's separation from active duty and placement on the TDRL as a "retirement," nor does it shock the sense of justice.

¹ A reenlistment code of RE-3P means the member is eligible for reenlistment except for a disqualifying factor (physical disability), and must have a waiver to reenlist.

² In 2001, veterans were removed from the TDRL by statute after 5 years. 10 U.S.C. § 1210 (2001). This period has recently been reduced to 3 years.

³ Department of Defense Instruction 1336.01 states that a DD 214 is not prepared for personnel being removed from the TDRL.

Although the JAG recommended denying the request, he recommended that the Board correct two errors on the applicant's DD 214 because blocks 27 and 28 are incorrect. Block 27 currently lists the RE code as RE-3P and Block 28 shows the narrative reason for separation as "temporary physical disability retirement." The JAG argued that under the Separation Program Designator (SPD) Handbook, the correct narrative reason for the SFK separation code is "disability, temporary" and the only available RE code is RE-2. Therefore, the JAG argued that blocks 27 and 28 of the Applicant's DD 214 should be amended to show the correct narrative reason for separation and corresponding RE code.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 21, 2020, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The BCMR did not receive a response.

PREVIOUS BOARD DECISIONS

In BCMR Docket Nos. 2014-210, 2018-226, and 2019-002, the Board denied requests from three members to change Block 28 (Narrative Reason for Separation) of the DD 214 that they received when they were placed on the TDRL and subsequently permanently separated. In all three cases, the Board noted that Coast Guard policy states that members will not receive another DD 214 when they are removed from the TDRL.

APPLICABLE LAW AND POLICY

Article 8.A.4 of COMDTINST M1850.2C, 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.B.3 of COMDTINST M1900.4D, the Commandant's instructions for preparing the DD 214, states that a DD 214 will NOT be issued to members who are being removed from the TDRL.

COMDTINST M1900.4D states that the Type of Separation in Block 23 shall indicate one of the following: "DISCHARGED," "RELEASED FROM ACTIVE DUTY," "RETIRED," "RESIGNED," "COMMISSION REVOKED," or other as appropriate. The instruction explicitly states to not enter the reason or character of separation in Block 23.

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 his retired status.

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 and signed his DD 214 in 1996 and was notified on April 19, 2001, that his disability discharge would be effective as of January 15, 2001. Although he stated that he discovered the alleged error on August 28, 2019, the preponderance of the evidence shows that he knew that his DD 214 stated that he had been temporarily retired in 1996 and knew that he had been discharged in 2001. Therefore, the preponderance of the evidence shows that the application was not timely filed. However, because the JAG has identified errors on the applicant's DD 214 that should be corrected, the Board will waive the statute of limitations and review the case on the merits.
3. The applicant asked the Board to issue him a new DD 214 correcting Block 23 to say something other than "Retirement." 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ 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."⁵
4. The applicant's request to have another DD 214 issued correcting Block 23 and reflecting his "total years served" should be denied. Pursuant to Article 8.A.4 of COMDTINST M1850.2D, Physical Disability Evaluation System, he was found to be unfit for duty and a recommendation was made for him to be removed from the TDRL and discharged. Pursuant to Article 1.B.3 of COMDTINST M1900.4D, the applicant is not entitled to a new DD 214 following his removal from the TDRL because Coast Guard policy states that a new DD Form 214 will not be issued to members who are being removed from the TDRL. Instead, like the applicant, disabled veterans receive a letter notifying them of their removal from the TDRL and either their disability discharge or their transfer to the Permanent Disability Retired List. This official letter is to be presented along with their DD 214.
5. The Coast Guard recommended that the Board grant alternative relief by correcting blocks 27 and 28 on the applicant's DD 214. The Board agrees. Block 27 of his DD 214 currently lists his reenlistment code as RE-3P and Block 28 currently lists the narrative reason for separation as "temporary physical disability retirement." The Board notes that pursuant to the SPD Handbook, the correct narrative reason for the SFK separation code is "disability, temporary" and the author-

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ized RE code is RE-2. Therefore, Block 27 should be corrected to show RE-2, and Block 28 should be corrected to show “disability, temporary.”

6. The applicant’s request to change Block 23 on his DD 214 should be denied, but as noted in the findings above, his DD 214 contains other errors which should be corrected. Therefore, the Board should order the Coast Guard to issue the applicant a DD 215 correcting Block 27 on his DD 214 to show RE-2 and correcting Block 28 to show “disability, temporary.” All other requests should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former MK3 [REDACTED], USCG, for correction of his military record is denied, but alternative relief is granted as follows:

The Coast Guard shall issue him a DD 215 to correct his DD 214 so that

- the reenlistment code in Block 27 shall be RE-2; and
- the narrative reason for separation in Block 28 shall be “disability, temporary.”

All other requests are denied.

August 21, 2020

