

**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. 2021-048**

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SA (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 April 15, 2021, 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 22, 2022, 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 Seaman Apprentice (SA/E-2) who was honorably discharged in 1996, asked the Board to correct his record by changing his DD-214 from "honorably discharged, disabled," to "medically discharged."

The applicant stated that when he was in the Coast Guard, he sustained a spinal injury that required surgery. He also alleged that he was diagnosed with Post-Traumatic Stress Disorder (PTSD) by a licensed psychiatrist. The applicant was subsequently found not fit for duty and discharged. The applicant argued that his DD-214 should be changed because he was denied eligibility for Tricare from the Department of Veterans Affairs (VA). The applicant alleged that the VA requires that his DD-214 state that he was medically discharged for him and his wife to be eligible to receive benefits.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on November 14, 1994. Shortly after enlisting, he was stationed at a Coast Guard base on the West Coast.

On February 8, 1996, the applicant underwent an initial medical board for a back injury. He was referred to a Central Physical Evaluation Board (CPEB).

On April 18, 1996, the applicant was appointed counsel to assist him in arriving at a decision regarding the findings and recommended disposition of the CPEB.

On September 30, 1996, the applicant's counsel asked the initial medical board to reconsider the applicant's case. Specifically, the applicant's counsel asked the medical board to increase the applicant's disability rating for a lumbosacral strain to at least 20%. The applicant's problems associated with the lumbosacral strain included pain, muscle spasms and cramps, decreased range of motion, and paraesthesia/pain/muscle problems radiating down into his buttocks and legs. Further, the applicant's counsel asked the medical board to include a diagnosis of either PTSD or depression at a disability rating of at least 10%.

On October 2, 1996, a CPEB convened regarding the applicant's case. The CPEB determined that the applicant was unfit for continued duty because of a lumbosacral strain and an adjustment disorder with depressed mood. The CPEB indicated that the applicant's disability was not the result of willful neglect, intentional misconduct, or unauthorized absence by the applicant; was incurred while the applicant was entitled to basic pay; and was the proximate result of performance of active duty or inactive duty training or incurred in the line of duty during war or national emergency. The CPEB assigned the applicant a 20% disability rating and recommended separation with severance pay.<sup>1</sup>

On October 4, 1996, the applicant consulted with his counsel regarding accepting or rejecting the CPEB's findings and recommended disposition.

Later that day, the applicant accepted the CPEB's findings and recommended disposition and waived his right to a formal hearing before a Physical Evaluation Board.

On October 16, 1996, the Advancements and Separations Division of the Enlisted Personnel Management Branch of the Personnel Service Center sent a message traffic to the applicant's station. The message directed the applicant's station to discharge him in accordance with 12.B.15. of the Coast Guard Personnel Manual and to indicate a separation code of JFL.

On November 14, 1996, the applicant was discharged in accordance with Article 12.B.15. of the Coast Guard Personnel Manual. His DD-214 shows "discharged" as the type of separation; "honorable" as the character of service; "disability, severance pay" as the narrative reason for separation; RE-3P (eligible for reenlistment except for disqualifying factor: physical disability) as his reenlistment code; and JFL (involuntary discharge directed by established directive resulting from physical disability with entitlement to severance pay—retirement not authorized) as his separation code. Block 18 of the applicant's DD-214 shows that he received \$3922.80 of disability severance pay.

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<sup>1</sup> Active duty members may be separated with severance pay due to a disability incurred in the line of duty that is rated less than 30%. 10 U.S.C. § 1203.

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

On October 4, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the application was not timely filed. Regarding the merits of the case, PSC argued that the applicant failed to show that the Coast Guard committed an error or injustice. PSC stated that the applicant was found unfit to perform the duties of his rating by a CPEB and assigned a disability rating of 20%. PSC argued that in accordance with the Coast Guard Personnel Manual, the applicant was properly discharged with severance pay. PSC stated that a member who is discharged with severance pay is not eligible to receive Tricare for himself or his dependents.

The JAG reiterated that the application was not timely filed. Regarding the merits of the case, the JAG argued that the applicant was properly discharged in accordance with Coast Guard policy. The JAG stated that the applicant, with advice from counsel, accepted the CPEB's findings and recommendation that he be separated with severance pay. The JAG stated that the applicant's DD-214 accurately reflects that he was discharged due a disability and that he was provided severance pay.

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

On October 6, 2021, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

### **APPLICABLE LAW AND POLICY**

The Commandant Instruction for the Release or Discharge from Active Duty Manual, DD-214, COMDTINST M1900.4D, states the following regarding Block 23 of a member's DD-214:

Block 23. Type of Separation. Enter the type of separation effected: "DISCHARGED", "RELEASED FROM ACTIVE DUTY", "RETIRED", "RESIGNED", "COMMISSION REVOKED", or other as appropriate. Be specific, but do not enter the reason or character of separation.

The Separation Program Designator (SPD) Handbook, which is Enclosure 2 to the DD-214 Manual, COMDTINST M1900.D, states that one of the authorized narrative reasons for separation for members being discharged under Article 12.B.15. of the Personnel Manual is "disability, severance pay" for members who receive an involuntary discharge directed by established directive resulting from physical disability with entitlement to severance pay and retirement is not authorized.

### **FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions based on 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>2</sup> The applicant was discharged in 1996 and received and signed his DD-214 showing his narrative reason for separation. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1996, 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>3</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>4</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>5</sup> Pursuant to these requirements, the Board finds the following:

a. The applicant waited more than twenty-four years to submit an application to the Board. The applicant provided no explanation for his delay in seeking correction of his DD-214 and no compelling argument that it is in the interest of justice for the Board to excuse his delay.

b. A cursory review of the merits of this case shows that the applicant’s claim lacks potential merit. The applicant asked the Board to change an entry on his DD-214 from “honorably discharged, disabled,” to “medically discharged.” There is nothing in the applicant’s DD-214 that states “honorably discharged, disabled,” so the Board interprets his application as a request to change either his type of separation or his narrative reason for separation on his DD-214. However, the applicant failed to show that his type of separation or narrative reason for separation are erroneous. On October 2, 1996, the CPEB found that the applicant was unfit to perform his duties by reason of a physical disability, assigned him a 20% disability rating, and recommended that he be separated with severance pay. Shortly thereafter, the applicant was properly discharged in accordance with Article 12.B.15. of the Coast Guard Personnel Manual. The applicant’s DD-214 correctly shows his type of separation as “discharged.” The applicant has not provided any evidence to show that “medically discharged” is a proper type of separation. Further, the applicant’s DD-214 correctly shows that his narrative reason for separation is “disability, severance pay.” According to the SPD Handbook, the proper narrative reason for separation for members who are discharged as a result of a physical disability with entitlement to severance pay is “disability, severance pay.” The term “medically discharged” is not an approved narrative reason for separation. The applicant also failed to show that his type of separation or narrative reason for separation are unjust. The applicant argued that his DD-214 should be changed so that he can be eligible to receive Tricare benefits from the VA. However, the applicant did not provide any evidence that changing his type of separation or narrative reason for separation to “medically discharged” would make him eligible for Tricare benefits. The disputed record is

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<sup>2</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>3</sup> 10 U.S.C. § 1552(b).

<sup>4</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>5</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

presumptively correct,<sup>6</sup> and the record contains no evidence that substantiates his allegations of error or injustice in his official military record.

4. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations to conduct a thorough review of the merits. The applicant's request should be denied.

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

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<sup>6</sup> 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 SA [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

April 22, 2022

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