

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

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Application for the Correction  
of the Coast Guard Record of:

**BCMR Docket No. 2023-042**

  
LT (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 applicant's completed application on May 24, 2023, and prepared the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated November 14, 2024, 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 Lieutenant (LT/O-3), asked the Board to change her discharge date from August 1, 2022 to November 14, 2022 to cover extended medical needs for post orthopedic surgery and a traumatic brain injury (TBI) sustained prior to separation. The applicant requested that the discharge date be changed to cover the time needed to fully recover and rehabilitate after these active duty injuries.

The applicant claimed that every administrative effort was made to grant a medical extension to her separation date.<sup>1</sup> The applicant argued that she followed all directions given through the chain of command, Servicing Personnel Office (SPO), Pay and Personnel Center (PPC), and Office of Personnel Management (OPM), but was unable to resolve the medical extension request. She claimed that her medical appointments were delayed due to loss of TRICARE coverage and she eventually had to pay out of pocket to avoid serious health complications related to a reconstructed appendage that needed several post-op appointments to remove a cast and surgical pins as well as ongoing physical rehabilitation to restore normal function and strength. The applicant claimed she had to postpone a permanent change of station (PCS) move to her home of record until November 15, 2022 due to her physical condition and the need to be physically present to attend medical appointments in the area.

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<sup>1</sup> The evidence of record reflects that efforts to amend the applicant's separation date were not undertaken until after the approved separation date of August 1, 2022.

The applicant argued that she was prematurely discharged due to an administrative failure to grant a proper medical extension. She sustained several injuries that required surgical correction to her left hand as well as neurological monitoring after a third TBI, which prompted medical personnel to place her in a not fit for full duty and stay in quarters status for several weeks leading up through the discharge date.

The applicant claimed that she and her command submitted several requests to PPC and OPM to approve a medical extension, but were denied. The applicant argued that the SPO processed the discharge without a cleared medical duty status. The applicant claimed that due to the nature of the discharge, she was no longer eligible to receive TRICARE, was unable to work or move forward with a move until November 15, 2022, and the Department of Veterans Affairs (VA) was unable to provide the immediate care needed. The applicant argued she received conflicting direction from PPC regarding OPM actions that needed to be taken in order to retain active duty status. The applicant alleged SPO administrative personnel failed to process paperwork in time to make changes to the previously approved discharge date of August 1, 2022.

In support of her application, the applicant submitted a personal statement; a December 1, 2022 statement from Lieutenant Commander (LCDR) DQ; email correspondence between herself, her chain of command, PPC and OPM; a memorandum, subject: request for amendment to separation date, dated September 13, 2022; and her medical records detailing her treatment following the in-service injuries.

In an April 30, 2023 personal statement, the applicant detailed her injuries while on temporary duty (TDY) orders playing rugby for the Coast Guard rugby team. The applicant stated that several appointments were scheduled with her primary care physician, orthopedic surgeon, and a neurologist through October and November, well past her August 2022 separation date.

The applicant claimed that her administrative office was unresponsive and failed to amend her discharge paperwork prior to August 1, 2022 to grant a required medical extension. The applicant contended this triggered PPC to contact a different SPO to take over her discharge, but they instead expedited the process and backdated her discharge to August 1, 2022. The applicant alleged that she was notified of this action and given separation orders and a DD Form 214 to review on August 15, 2022 (after her approved separation date of August 1, 2022), while still being on stay in quarters and recovering from surgery. The applicant claimed all post operation appointments scheduled after August 15, 2022 were cancelled due to lost TRICARE coverage and eligibility. The applicant argued that, while her command tried extensively to get her paperwork corrected, they were unsuccessful.

The applicant detailed the conflicting guidance her and her command received from OPM and PPC to change her authorized separation date. The applicant claimed that, after providing PPC direction for the required OPM action needed to grant the requested medical extension, OPM refused to take action accordingly. The applicant alleged that OPM advised her to seek medical help from the VA, which did not provide immediate coverage or help with post-surgical operations post discharge. The applicant claimed the removal of the surgical pins from her hand was delayed until September 14, 2022. The applicant claimed she completed home rehabilitation to regain most of the function and strength in her hand. The applicant argued that, to this day, she is still living

with the irreversible damages caused to her physical and mental health from these injuries.

The applicant provided a timeline of events. The timeline recounts the injuries and in-service treatment she received, which are detailed in the summary of the record below. Additionally, the applicant reported that, on September 14, 2022, the pins were removed and final Xray completed on her left ring finger. Physical therapy was ordered for six to eight weeks to regain full range of motion and strength in the left hand. The applicant reported she had a follow up appointment with a neurologist on October 27, 2022, for continued post-concussive symptoms.

In a December 1, 2022 statement, LCDR DQ, who oversaw the Engineer Section in which the applicant worked prior to separation, noted that the applicant originally planned to transition from active duty to the reserves after completion of her obligated service. When she completed a separation physical in February 2022, the applicant had no medical conditions warranting a medical extension. LCDR DQ stated that, after the separation physical and while on official orders, the applicant sustained an injury requiring medical care.

LCDR DQ claimed that Base Medical, which was aware the applicant would be separating from active duty, did not request a medical extension prior to separation. LCDR DQ believed this lapse occurred because the injury was sustained after the separation physical or there was an assumption the applicant would be eligible for TRICARE's Transitional Assistance Management Program (TAMP). However, the applicant did not meet eligibility requirements for this program. LCDR DQ noted that, because she was not selected for a reserve commission and instead separated from service, the applicant no longer had TRICARE coverage. LCDR DQ claimed that, as the applicant's new supervisor, he failed to make this connection.

LCDR DQ argued that a significant factor in the inability to adjust the applicant's discharge date to allowed for continued medical care was that she received her official discharge authorization weeks after her actual discharge date. As such, LCDR DQ claimed the Personnel Service Center (PSC), OPM, PPC, and Base Medical were unable, or unwilling, to adjust a separation date that had passed.

The applicant also provided email correspondence dated in early September 2022 between herself, her command, PPC, and OPM. On September 6, 2022, the applicant emailed PSC-OPM seeking direction regarding her separation. She stated that her command "had reached out previously to someone in OPM in regards to making some amendments to [her] separation authorization." The applicant stated she had "been bounced between" her SPO, HSWL, OPM, and PPC for several months in efforts to get her separation authorization changed for a needed medical extension. The applicant stated that her command had submitted a trouble ticket with PPC first; however, PPC indicated they needed OPM authorization before they could act. On September 6, 2022, PSC-OPM responded that they "[would] not retroactively extend [the applicant] beyond a separation date that has since been finished." Conversely, in a September 9, 2022 email, PPC stated that the situation with the applicant's discharge would need to be resolved with PSC-OPM assistance.

The applicant also provided a memorandum, subject: request for amendment to separation date, dated September 13, 2022, from her to PSC-OPM-1 requesting her separation date be

amended to October 30, 2022 or as soon thereafter as possible for continued medical care.

### SUMMARY OF THE RECORD

On May 18, 2016, following graduation from the U.S. Coast Guard Academy, the applicant was appointed as an Ensign/O-1 in the Coast Guard.

On February 11, 2022, the applicant submitted an unqualified resignation based on completion of required active service. The separation authorization was approved by PSC on March 4, 2022, pending acceptance and approval by the Secretary of the Department of Homeland Security on behalf of the President. On July 5, 2022, the Secretary approved the applicant's voluntary resignation. The separation authorization notes the applicant's last day of active service would be August 1, 2022.

From June 16 through 27, 2022, the applicant was on TDY orders to play rugby with the Coast Guard rugby team. On June 19, 2022, the applicant sustained a closed fracture to the left ring finger while playing rugby. On June 25, 2022, the applicant sustained a head injury (concussion with loss of consciousness) while playing rugby. This was her third concussion in 12 months.

A July 1, 2022 treatment record notes the applicant reported symptoms of nausea, lack of appetite, and decreased concentration following the June 25, 2022 head injury. The treatment record notes a diagnosis of post-concussive syndrome and recommended five days of complete brain rest. A July 11, 2022 treatment record notes the applicant was referred for further evaluation regarding her headaches and memory problems.

On July 8, 2022, the applicant was seen by orthopedics for her left ring finger and a surgical procedure was recommended. On July 15, 2022, the applicant underwent a closed reduction and percutaneous pinning of the left ring finger middle phalanx fracture. A July 18, 2022 treatment record reflects the applicant was placed on convalescence leave for nine days. Also on July 18, 2022, the applicant was placed in a limited duty status, which included no boat or sea duty, deployment, climbing, lifting the left arm for six weeks, or law enforcement activity, for 45 days. On July 27, 2022, the applicant was directed to complete occupational therapy for her left hand with a frequency of two times per week for four to six weeks.

On August 9, 2022, the applicant's separation was executed, effective August 1, 2022.

### VIEWS OF THE COAST GUARD

On April 12, 2024, a judge advocate (JA) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC) as well as provided additional comments.

The Coast Guard JA agreed with PSC's assessment that the applicant should be granted relief by changing their separation date from August 1, 2022 to November 14, 2022 in order to have medical care expenses covered for treatment of service-related injuries. The Coast Guard argued

that the applicant's command bore the responsibility of notifying CG-PSC-OPM and delaying her separation.<sup>2</sup> The JA argued that there are no provisions in COMDTINST M1000.4 requiring an officer who is scheduled to separate to notify CG PSC-OPM-1 that serious disease or injury has intervened, and that they are requesting an appropriate delay.

The Coast Guard argued that, had the applicant's command notified CG-PSC-OPM-1 of their injury and requested reasonable delay, the applicant's separation could have been delayed until after they completed medical treatment. The Coast Guard argued that this is true even if CG-PSC-OPM-1 was notified after the member's separation was approved by the Secretary of Homeland Security, as this approval does not include a date. The Coast Guard argued that CG-PSC-OPM establishes the terminal date for resigning officers and supplies them with the Separation Authorization pending final acceptance by the Secretary of Homeland Security. Per COMDTINST M1000.4, Article 1.A.4.c, CG-PSC-OPM may approve separation dates up to 12 months from the date of the request should the needs of the Service require. The Coast Guard noted that the applicant's request to resign is dated February 11, 2022, which allowed for an approved separation date of up to February 11, 2023 at the latest. The Coast Guard argued that COMDTINST M1000.4, Article 1.A.9.d. allows for possible extensions in 30-day increments thereafter for officers in the Physical Disability Evaluation System (PDES) or with serious disease or injuries.

The Coast Guard argued that the applicant's requested separation date of 14 November 2022 is the date by which she convalesced, received all treatment needed while on active duty, and would have been ready for separation. The Coast Guard argued that the applicant has proven an error or injustice because had CG PSC-OPM-1 been notified and a delay in separation been requested before the applicant was released, the applicant could have remained on active duty until they fully convalesced from their service-related injuries and would have been entitled to medical care expense coverage for the same.

The Coast Guard recommended granting the following relief: Change the applicant's separation date to November 14, 2022, which will result in the payment of backpay and allowances as well as eligibility for reimbursement of medical expenses for the period August 1, 2022 through November 14, 2022. When seeking medical expense reimbursement, the applicant should be required to provide medical care expense documentation and proof that the payment was made or that payment is still due. Additionally, the Applicant must provide the Coast Guard with tax documentation indicating her earnings from August 1, 2022 through November 14, 2022 once discharged from the Coast Guard so that those earnings are properly deducted from amounts owed her for the retroactive payment of pay and allowances.

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

On May 21, 2024, the BCMR sent the applicant a copy of the Coast Guard's

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<sup>2</sup> COMDTINST M1000.4 Military Separations (August 2018), Art. 1.A.9.d. ("If an officer enters the Physical Disability Evaluation System (PDES) or serious disease or injury intervenes before a scheduled separation or release, *the command shall inform Commander (CG PSC-OPM-1) and (CG PSC-PSD-mr) expeditiously by message or memorandum, which if necessary shall include a request for an appropriate delay in the officer's separation or release date...*" (emphasis added)).

recommendation and invited her to submit a response. The applicant's response to the advisory opinion was received on October 11, 2024. The applicant indicated she had no objection to the Coast Guard's recommendation.

### APPLICABLE LAW AND REGULATIONS

COMDTINST M1000.4, Military Separations (August 2018), provides the policies and procedures for separations and retirements for all Coast Guard military personnel.

**Art. 1.A.4.c. Deadline.** An officer may submit an unqualified request to resign (See Article 1.A.5.a. of this Manual.) not more than two years in advance but in sufficient time to reach Commander (CG PSC-OPM) six months before the requested resignation date. Exceptions to these time limits may be granted in hardship cases. Due to shortages that may occur in specialized communities, depending on the timing of resignation requests, approved separation dates may be up to 12 months from the date of the request should the needs of the Service require.

**1.A.4.d. Acceptance.**

(1) A resignation has no effect until competent authority accepts it. Upon receiving and acknowledging a request for resignation, Commander (CG PSC-OPM) establishes the terminal date and supplies the officer with **the separation authorization** pending final acceptance by the Secretary of Homeland Security on behalf of the President. (Emphasis in original).

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**1.A.9.d. Physical Disability Evaluation System (PDES).** If an officer enters the Physical Disability Evaluation System (PDES) or *serious disease or injury intervenes before a scheduled separation* or release, *the command shall inform Commander (CG PSC-OPM-1) and (CG PSC-PSD-mr) expeditiously by message or memorandum*, which if necessary shall include a request for an appropriate delay in the officer's separation or release date. Delays of not more than 30 days will be granted at a time. (Emphasis added).

**1.A.9.e. Delaying Separation.** An officer's separation for hospitalization, medical observation, or PDES processing may be delayed only if the officer involved consents. If the officer withdraws that consent in writing, Commander (CG PSC-OPM) shall separate the officer not later than 60 days from the date such notice was received (14 U.S.C. §295).

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### 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 and regulation:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in her Coast Guard military record. The Board finds that the applicant has exhausted her administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued. The Board finds that the application is timely because it was filed within three years of the alleged error or injustice.<sup>3</sup>

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<sup>3</sup> 10 U.S.C. § 1552(b).

2. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.<sup>4</sup> Error means either legal or factual error.<sup>5</sup> Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.<sup>6</sup> When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>7</sup> 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."<sup>8</sup>

3. The Board finds that the applicant has demonstrated by a preponderance of the evidence the existence of an error or injustice warranting the requested relief. The Board finds the applicant's conditions that originated from the June 19 and June 25, 2022 in-service injuries, specifically the left ring finger fracture and TBI, remained in an acute stage and were not yet stabilized by the time of the August 1, 2022 separation. The record reflects the applicant was placed on a limited duty status for 45 days and directed to complete four to six weeks of physical therapy following the surgery on her hand two weeks before the August 1, 2022 separation date. Further, the applicant was still undergoing treatment related to the TBI. As noted in the Coast Guard advisory opinion, the Board finds that it was the applicant's command, not the applicant, who bore the responsibility of notifying CG-PSC-OPM and delaying her approved separation so that she could complete required medical treatment.<sup>9</sup> The record reflects that the command failed to notify PSC-OPM in a timely manner of the applicant's serious injury, as required by policy.

4. Further, in light of the evidence of record, the Board concurs with the Coast Guard advisory opinion that the appropriate separation date should have been November 14, 2022. The Board finds that this is the date by which the applicant convalesced, received all treatment needed while on active duty, and would have been ready for separation. Accordingly, the applicant's request for relief should be granted.

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

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<sup>4</sup> 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

<sup>5</sup> *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

<sup>6</sup> *Id.*

<sup>7</sup> 33 C.F.R. § 52.24(b).

<sup>8</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanden v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>9</sup> COMDTINST M1000.4, Art. 1.A.9.d.

**ORDER**

The application of former LT [REDACTED], USCG, for the correction of her military record is granted. The Coast Guard shall correct the applicant's record to reflect a separation date of November 14, 2022, which will result in the payment of backpay and allowances as well as eligibility for reimbursement of medical expenses for the period August 1, 2022 through November 14, 2022.

When seeking medical expense reimbursement, the applicant shall provide medical care expense documentation and proof that the payment was made or that payment is still due. Additionally, the applicant shall provide the Coast Guard with tax documentation indicating her earnings from August 1, 2022 through November 14, 2022 once discharged from the Coast Guard so that those earnings are properly deducted from amounts owed her for the retroactive payment of pay and allowances.

November 14, 2024

