

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-185


LT/O-3E (retired)

FINAL DECISION

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter “Board”) 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 September 10, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).¹

This final decision, dated September 25, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

INTRODUCTION

The applicant, a former temporary lieutenant (LT/O-3E), was medically retired from the Coast Guard in August 1985 after 19 years, 11 months, and 4 days of honorable active duty service. He has asked the Board to direct the Coast Guard to change his retirement date to September 20, 1985, or later, so that his record reflects 20 years of active service.

The applicant’s request stems from his desire to become eligible for “concurrent receipt” of U.S. Department of Veterans Affairs (VA) disability compensation and Coast Guard retired pay. Historically, concurrent receipt was barred under 38 U.S.C. §§ 5304–05. Veterans eligible for both forms of payment were required to select one or the other, and this remains the case for most military retirees. In the 2004 National Defense Authorization Act, however, Congress authorized concurrent receipt for retirees with a 50 percent or higher VA disability rating. *See* 10 U.S.C. § 1414, as amended by Pub. L. No. 108-136, div. A, tit. VI, § 641, 117 Stat. 1392, 1511 (2003)).² For members retired under

¹ The applicant’s DD Form 149 (Application for Correction of Military Record) was originally received by the Board on April 26, 2022. The application was not considered complete and reviewable, however, until the applicant’s personnel records were obtained in September 2024.

² The 2004 NDAA phased in concurrent receipt over a 10-year period from 2004 to 2014.

10 U.S.C. Chapter 61 – “disability” or “medical” retirees, like the applicant – § 1414(b) authorized concurrent receipt only for those who met both criteria (i.e., a 50 percent or higher VA rating and 20 years of creditable active service at the time of medical retirement).³ Immediately following his retirement, the applicant was granted a 20 percent rating by the VA. His rating was not increased to 50 percent or higher until 2021, at which point he learned he was ineligible for concurrent receipt because his creditable service at retirement was 26 days less than 20 years. As such, the applicant is requesting that the Board, in effect, add the additional 26 days needed for concurrent receipt eligibility to his total active service time.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 20, 1965. After rising to the rank of Chief Yeoman, he accepted an appointment as a warrant officer, and later as a temporary lieutenant.

The applicant injured his left knee in 1974 which necessitated surgeries in 1974 and 1976. Although he returned to duty, he was referred to a Medical Evaluation Board (MEB) in April 1984, which found him not fit for duty (NFD) and referred him to a Central Physical Evaluation Board (CPEB). In an April 1984 rebuttal to the MEB findings, the applicant emphasized the severity of his left knee symptoms, and stated as follows: “I greatly desire to complete what I have started that being at least a twenty year career. It is requested that I be permitted to remain on active duty until 20 September 1985 at which time I will complete my 20 years.” In an accompanying endorsement, the Commander of the Coast Guard’s Eighth District (where the applicant was stationed) explained that the applicant’s duties were sedentary in nature and did not require him to use his legs to any great extent.

A CPEB met in May 1984 and found the applicant NFD, assigned a combined 30 percent rating – 20 percent for the left knee, 10 percent for the right knee, and 0 percent for hypertension – and indicated “YES” for the question whether the applicant “has between 18 and 20 years active duty and in the opinion of the CPEB ... meets the medical requirements for retention [per Coast Guard policy].” In a June 1984 decision, the Chief of the Officer Personnel Division advised the Physical Disability Evaluation Division that the applicant’s “request for retention on active duty until completion of twenty years active service is approved.” The CPEB’s report was then transmitted to the applicant on July 3, 1984, and on July 9, the applicant accepted its findings and recommended disposition conditional upon approval of his attached request for retention, in which he concurred with “the authorization to remain on active duty to September 1985 in order to complete my

³ Although not relevant for the Board’s purposes, the Board notes that § 1414(b)(1) includes a caveat: disability retirees with 20 or more years of service are still subject to offset of their retired pay under 38 U.S.C. §§ 5304-5305, but only to the extent that the amount of their disability retirement pay exceeds the amount of retired pay to which they would have been entitled if they had received a regular – rather than a medical – retirement.

twenty years of service.” He then expressed disagreement, however, with the 10 percent rating assigned by the CPEB for his left knee condition and requested reevaluation. In this regard, he stated he was “deeply concerned about the laxity and instability” of the knee and that despite two surgeries, the knee had deteriorated significantly, precluding athletics and impairing walking and other basic activities.

By letter dated August 10, 1984, the applicant was informed that the Commandant had approved the CPEB findings, and that while he was found NFD, the applicant would be retained on active duty for one year from the date of the letter (thus, to August 10, 1985). The letter stated that “[r]enewal of this retention authorization until approximately 30 September 1985, to allow completion of 20 years of service for retirement, will be considered subject to review of the physical examination required by [Coast Guard policy].” At that time, according to the letter, the applicant’s Commanding Officer (CO) would “ensure that [he was] scheduled for this examination, in the format of an Initial Medical Board, during June 1985.” The Commandant’s letter further stated that the medical examination findings would then be submitted to a CPEB for full evaluation of all medical conditions, including the applicant’s request for a reevaluation of the left knee condition.

Later in August 1984, the applicant was ordered to report for assignment to Coast Guard Headquarters in Washington, D.C., after spending the last several years stationed in New Orleans, Louisiana.

In April 1985, a MEB was convened, and the applicant underwent a general medical examination. His continuing left knee issues, along with right knee and right shoulder pain, headaches, cervical spine spondylosis, and hypertension, were noted. The physician who performed the exam initially marked the applicant qualified to perform all duties ashore and at sea.

In a letter dated May 13, 1985, the applicant was informed that upon the completion of his physical disability evaluation, he would be processed for retirement on August 10, 1985, in accordance with the August 1984 letter (described above).

In July 1985, the applicant submitted correspondence rebutting the April 1985 MEB findings. Therein, he stated that following his initial MEB, he had been given a “one year waiver of mandatory retirement on a physical disability in order to complete ... twenty years of active duty” to be followed by a review of the ratings for his medical conditions in the summer of 1985. The applicant proceeded to discuss the significant impairment caused by his left knee and other conditions, and to question the finding by the MEB physician – who he explained had not actually examined him – that he was fit for sea and shore duty. The applicant ultimately requested that the MEB “be considered in conjunction with the 1984 board.” In a separate letter, the applicant’s CO at Coast Guard Headquarters in Washington endorsed the applicant’s rebuttal and noted that the applicant’s current

duties were sedentary and office-based and did not require extensive physical use of his legs.

A CPEB convened on July 24, 1985. It found the applicant NFD and assigned a 50 percent combined rating. For all questions in the section of its report reserved for addressing issues specific to retention of members with at least 18 but less than 20 years of service, the CPEB marked “N/A.”

On August 1, 1985, the applicant accepted the CPEB findings and waived appearance at a formal board. On his acceptance form, he did not select the option to make his acceptance conditional on approval of a request for retention.

The CPEB findings were approved on August 15, 1985. The applicant was detached from the Coast Guard on August 23, 1985, and placed on the permanent disability retired list effective August 24. His separation documents reflect 19 years, 11 months, and 3 or 4 days of active service.⁴

In a May 16, 1986, rating decision, the applicant was granted service connection for his left knee condition, a right shoulder condition, and hypertension. The VA assigned a 20 percent combined rating effective August 24, 1985, the date of the applicant’s retirement.

In a May 7, 2021, letter, the VA confirmed that the applicant was in receipt of a 60 percent combined rating.

APPLICATION

In his submission to the Board, the applicant asserted that it was never his intention to retire at 20 years of service, and that he had hoped to compete for promotion to Lieutenant Commander before he was referred to a MEB in early 1984. He emphasized that in August 1985, there was “no such thing as dual compensation,” i.e., no concurrent receipt, so reaching 20 years of service did not have a significant financial impact. He asserted, however, that if he had received counseling before separation about the “financial disaster” that would befall his family as a result of falling short of 20 years of service, he would have simply challenged the second CPEB’s findings in August 1985 to allow the medical retirement process to run beyond September, and thus beyond 20 years of service.

⁴ Because there is no single discharge document reflecting the applicant’s total active service at retirement, this figure must be calculated by adding the figures from documents that account for multiple service periods. In making this calculation, the Board has found no official guidance as to whether 30 or 31 should be used for the number of days per month when adding two periods of more than 15 days (i.e., 23 days and 11 days, in the applicant’s case). Thus, it is unclear whether the applicant is credited with 19 years, 11 months, and 3 days or 19 years, 11 months, and 4 days of service.

The applicant also emphasized that in his initial April 1984 retention request, he had asked to remain on active duty to complete 20 years of service. In his application, he contended that he “never received a response” to this request before being retired in August 1985.

The applicant further asserted that family considerations had impacted his decision to accept the CPEB’s findings in August 1985. Specifically, he explained that he had four school-age children at the time, and because he had been moved from his duty station in Louisiana to Washington for the one-year period before his retirement, he felt rushed to get his family back to Louisiana in time for his children to start school in September.

The applicant also stated that over the years following his retirement, he had had numerous additional left knee surgeries, with an eleventh procedure being contemplated. He stated that he had pursued additional VA benefits at different times, but that the urgency to do so was limited by the longstanding policy offsetting VA disability compensation and military retired pay. He explained that when he finally received a 60 percent rating from the VA, he was informed by a Coast Guard Pay and Personnel Center (PPC) staff member in November 2021 that he was ineligible for concurrent receipt because he had not completed 20 years of service.

VIEWS OF THE COAST GUARD

The Coast Guard provided its views in memoranda prepared by the Personnel Service Center (PSC) and a Coast Guard Judge Advocate (JA) in June and July 2025, respectively.

The Coast Guard initially interpreted the applicant’s request to be that his medical retirement be changed to a “20-year longevity retirement.” Regarding the applicant’s contention that he received inadequate counseling about the impact of being retired before 20 years of service, the Coast Guard argued that it was unreasonable to expect the Coast Guard to have provided such counseling in 1985 when concurrent receipt was not passed into law until 2004. Thus, the Coast Guard argued, any lack of counseling on this issue could not be considered an error.

The Coast Guard also argued that the applicant’s submission was “unreasonably untimely.” In this regard, the Coast Guard acknowledged the applicant’s argument that he had discovered the error or injustice in question in 2021. The Coast Guard noted, however, that the applicant had been aware of his denied request to remain on active duty until his 20-year retirement date since at least 1985. In addition, the Coast Guard noted that concurrent receipt was authorized in 2004, approximately 17 years before the date of the applicant’s alleged discovery of the error or injustice underlying his request. Under these circumstances, the Coast Guard argued that relief should be denied, as there was inadequate documentation available, and the applicant’s records had been “lost to the winds of time.”

APPLICANT'S RESPONSE

The Board provided the applicant with the Coast Guard's views on July 28, 2025, and afforded him the opportunity to submit a response within 30 days. No response was received by the Board.

APPLICABLE LAW AND POLICY

During the time period relevant to this case, the version of the Coast Guard Personnel Manual, COMDTINST M1000.6A issued in 1982 (hereinafter "*PERSMAN*") was in effect. Most relevantly, *PERSMAN* Chapter 17 addressed disability retirement and severance procedures. It provided as follows:

Section A--RETENTION ON ACTIVE DUTY OF PERSONNEL NOT FIT FOR DUTY

17-A-1 POLICY

- a. This section prescribes procedures under which certain active duty members of the Coast Guard, who are eligible for retirement or separation because of physical disability, may be retained on active duty in a limited assignment status upon approval of their application for waiver.
- b. The primary objective of this program is to conserve human resources by effective utilization of needed skills or experience. A member who is not fit for duty (NFD) has no inherent legal or vested right to be continued on active duty, and disapproval of a request for retention has no bearing on the disposition of a case processed under the provisions of Commandant Instruction M1850.2 (series).
- c. Each case involving a request for retention on active duty in a limited assignment status shall be considered individually. Decisions shall be based on the needs of the Service.
- d. A member found unfit for duty by reason of physical disability, but who is retained on active duty, will normally, upon completion of 20 years service, be processed for physical disability separation or retirement.
- e. Members, particularly those with over 20 years of active duty service, shall not be retained on active duty unless their retention is justified as being of value to the Coast Guard. Such members shall not be retained solely to increase their monetary benefits.
- f. Members who are unfit for duty will not be retained on active duty unless they so request.
- g. A member retained on active duty under the provisions of this section will not be penalized for such service. At the time of ultimate retirement or separation, the member's physical condition will be reevaluated and documented to reflect whether the impairment(s) have remained the same, increased in severity, improved or have been cured. At this time, the case will be referred to the Central Physical Evaluation Board (CPEB). Since the NFD finding has been established by a previous board, a member whose condition has remained the same or has increased in severity will be found NFD since the basis for that finding is still present. A member whose condition has improved, or has been cured will be reevaluated under current standards with respect to medical impairments which may be present and their effect as disabilities on the member's performance of duties.

17-A-2 CRITERIA

- a. The Commandant will consider retaining on active duty in a limited assignment status members who, although unfit because of physical disability, meet the following criteria:
 - (1) Member possess a special skill for which there is a specific Service need.
 - (2) Member's physical conditions are such that they can perform duty requiring their special skill.
 - (3) Their retention will not be detrimental to their health nor a hazard to their associates.
 - (4) The disability is stabilized and is not likely to require frequent absence from duty.
- b. Members who have at least 18 but less than 20 years service at the time they are found unfit for duty, or members who are retained on active duty under paragraph a. of this article who attain 18 years of service, will be retained on active duty until they complete 20 years of service if they meet the following criteria:
 - (1) They can perform useful service in an established billet for their grade, specialty or rating.
 - (2) Their retention will not be detrimental to their health nor a hazard to their associates.

17-A-3 PROCEDURE

- a. The following procedures have been implemented in Chapter 3 and Chapter 4 of Commandant Instruction M1850.2 (series), Physical Disability Evaluation System.
 - (1) Members may append a request for retention on active duty to their Medical Board at the time they sign the Form CG-4920 acknowledging the medical board findings. The request for retention then will be forwarded along with the Medical Board. Concurrent action will be taken on their request by Commandant (G-P) and the Central Physical Evaluation Board, and a coordinated reply transmitted with the CPEB findings for the acceptance or rejection of the member. This procedure is intended for, but not limited to, those members that are within 6 months of eligibility for a normal 20 year retirement.
 - (2) Members who have not previously requested retention on active duty, but who subsequently are found NFD by the CPEB, may request retention on active duty. If they desire, the members may make an acceptance of the CPEB findings conditional upon approval of the retention request.
 - (3) In the case of those members having greater than 18 years but less than 20 years of active duty, who have not requested retention as described in subparagraph (1) above, the CPEB will append to any NFD finding a specific opinion as to whether or not the member meets the medical requirements for retention established in this chapter. This provision is intended to encourage members who are approaching eligibility for a normal 20 year retirement to conditionally accept the CPEB findings and request retention on active duty.
- b. Members found NFD by a Formal Physical Evaluation Board (FPEB) may submit a request for retention on active duty. The request shall be forwarded with the Physical Evaluation Board report.
- c. When the Physical Review Council (PRC) or the Physical Disability Appeal Board (PDAB) has determined that a member is NFD, the member may request retention on active duty.
- d. A member desiring retention on active duty should, under all circumstances, submit a letter request. The letter shall be addressed to Commandant (G-PE) or (G-PO), and shall be suitably endorsed with regard to applicable criteria contained in article 17-A-2 a. or b. The letter request shall be forwarded with the Medical Board report, the CPEB forms or the FPEB report, whichever is applicable. If the request is initiated subsequent to the foregoing disability board actions, it shall be submitted directly to Commandant (G-PE) or (G-PO) with a copy to Commandant (G-KD). Original copies of request for

retention received by Commandant (G-KD) shall be forwarded to Commandant (G-PE) or (G-PO) for action.

- e. Commandant (G-P) shall determine whether to retain the member, or to proceed with physical disability retirement or separation proceedings. The determination will be made in accordance with the policy contained in article 17-A-1 and 17-A-2.
- f. In addition to any other notification, Commandant (G-P) will respond to all requests for retention by letter. When retention on active duty is approved the requirements for periodic evaluation, renewal and termination of retention when NFD will be specified.

17-A-4 PERIODIC EVALUATIONS AND RENEWALS

- a. Approvals for retention on active duty will be granted for periods not to exceed one year. Prior to the end of the one year period, the member shall undergo a physical examination and reevaluation of the specified condition(s), which were the basis for the NFD findings, in order to determine whether termination of retention on active duty, continued retention or a return to a full duty status is warranted. Annual examinations shall be prepared in Medical Board format with particular emphasis on any changes in the conditions for which the member was initially found NFD, prognosis and ability to continue in a FLO status if further retention is approved. The examination shall be forwarded to Commandant (G-PE) or (G-PO) as appropriate. The member's commanding officer shall insert the words "Retention Waiver Reevaluation" across the top of the Medical Board cover sheet. The commanding officer also shall attach a copy of the retention authorization then in effect and append an endorsement similar to that provided for in article 17-A-3 d. in the event that continued retention is being requested.
- b. The Commandant (G-P) shall make a determination in accordance with the policy contained in article 17-A-1 and the criteria in article 17-A-2. The decision will be to grant an additional period of retention, or to proceed with disability retirement or separation proceedings.
- c. When retention on active duty is to be terminated, it is important that a thorough exam in the format of an Initial Medical Board be conducted to determine whether the evaluatee's original condition has changed, and to identify any new impairments. This Initial Medical Board shall be submitted to the CPEB so that final adjudication can be started in the disability process.
- d. There is no requirement for reevaluation of disability or a new Medical Board if the period of retention is to be less than 6 months from the date that the CPEB or FPEB initially found the member NFD.

17-A-5 TERMINATION OF ACTIVE DUTY WHEN NOT FIT FOR DUTY

- a. Any member retained on active duty under the provisions of this section whose continued retention has been disapproved by Commandant (G-P), shall be processed in accordance with Commandant Instruction MI850.2 (series) for disability separation or retirement.
- b. Any member retained on active duty under the provisions of this section who request termination of this limited duty status shall be processed in accordance with Commandant Instruction MI850.2 (series).

SECTION B--FINAL ACTION ON PHYSICAL EVALUATION BOARDS

17-B-1 AUTHORITY TO TAKE FINAL ACTION

- a. In the Physical Disability Evaluation System, final action consists of the approval of specific proposed findings and a disposition involving an active duty or temporary disability retired member and provides the authority to implement the approved disposition.
- b. Authority to take final action for the Coast Guard on Central Physical Evaluation Board, Formal Physical Evaluation Board, Physical Review Council and Physical Disability Appeal Board recommendations,

findings, dispositions or modifications thereto is reserved to the Commandant and such other officers designated in Headquarters Instruction 5402.3 (series) Subj: Delegation of Authority, as follows:

- (1) Commandant — All cases involving flag officers.
 - (2) Commandant, Vice Commandant or Chief of Staff — Specific cases in which the Chief, Office of Personnel has acted as the President, Physical Disability Appeal Board.
 - (3) Chief, Office of Personnel — All other cases.
- c. Findings, dispositions or modifications thereto, made in accordance with the provisions contained in COMDTINST M1850.2 (series), Physical Disability Evaluation System, are only recommendations. They are subject to modification by competent authority, until made final by the Commandant or such officers as may be designated herein.

17-B-2 FINAL ACTION PROCEDURE

- a. Officers authorized to take final action on Physical Evaluation Board cases may:
- (1) Approve the recommended findings and disposition of disability boards appropriately transmitted in accordance with COMDTINST M1850.2 (series) for final action; or,
 - (2) Accept and approve a minority report or any other recommendation or make independent substitute findings and/or disposition; or,
 - (3) Refer the case to any board in the PDES for development of additional information or further consideration of any aspect of the case, stating the reasons therefor.
- b. When the Commandant or his designee proposes to accept a minority report or other recommendation or makes independent substitute findings and/or disposition which would either affect the ultimate disposition of the evaluatee as defined in paragraph 5-M-1.c of COMDTINST M1850.2 (series) or decrease the evaluatee's temporary or permanent disability retired pay, the evaluatee shall first be afforded an opportunity to submit a rebuttal in the manner prescribed in Section 5-L of COMDTINST M1850.2 (series), provided that the evaluatee has not previously been afforded an opportunity to submit a rebuttal on the same question.

17-B-3 FINAL ACTION WHEN FIT FOR DUTY

- a. If the recommendation "fit for duty" is approved, the evaluatee will be so informed by Commandant (G-P) and will return to duty. This does not limit the application of other laws, or regulations providing for retirement or discharge for any other reason.
- b. If the evaluatee is on the temporary retired list, Section 8-F of COMDTINST M1850.2 (series) will apply.

17-B-4 FINAL ACTION WHEN NOT FIT FOR DUTY

- a. If an evaluatee is found "not fit for duty" because of a condition which is not a disability (see Section 2-A, COMDTINST M1850.2 (series)), the evaluatee will be separated without benefits.
- b. If an evaluatee has both a condition that is not a disability, and also a ratable disability, the evaluatee is entitled to benefits only if the ratable disability, considered alone, is determined to render the evaluatee not fit for duty. c. If an evaluatee meets the provisions of Section 5-B of COMDTINST M1850.2 (series), orders shall be issued for the evaluatee's separation with severance pay or retirement, as applicable.

17-B-5 EFFECTIVE DATE OF DISABILITY RETIREMENT OR SEPARATION

- a. When temporary or permanent disability retirement or disability separation is directed, the effective date of such retirement or separation normally shall be 10 working days following the date of the Commandant's action. However, the separation or retirement date may be delayed for not more than 6 months if a member has requested, in accordance with the provisions of Section 17-A hereof, retention on active duty and the member's request has been approved. In all other areas in which requests for retention on active duty have been approved, final action will be held in abeyance until there has been final reconsideration of recommended findings and disposition as provided for in article 17-A-1.g.
- b. In the case of commissioned officers, the Coast Guard must make every effort to evaluate a member's physical disability prior to a mandatory retirement or discharge date. However, except as provided in article 12-C-6.b for chief warrant officers, if every effort has been made to meet the mandatory date, but it proves impossible to complete physical disability processing then retention of the member beyond the mandatory date for a period which is absolutely necessary to complete the physical disability determination may be authorized by Commandant (G-P).
- c. Enlisted members, whose enlistment expires prior to completion of the evaluation of their physical status, may be retained with their consent for a period not to exceed 6 months in accordance with the provisions of article 12-B-11.f. They may be retained without their consent for a period not to exceed 30 days in accordance with the provisions of article 12-B-11.i.(3).
- d. Whenever evaluatees, for personal reasons, desire retirement or discharge at the earliest possible date, they may submit a request to that effect in writing to Commandant (G-P). An evaluatee, in such a case, shall request that retirement or discharge be effected without delay upon completion of review and final action on the record of proceedings of the Physical Evaluation Board or Central Physical Evaluation Board, or Formal Physical Evaluation Board, as applicable. See Section 5-L of COMDTINST M1850.2 (series). Commanding officers of evaluatees shall advise Commandant (G-P) by message immediately upon receipt of the evaluatee's request.

17-B-6 RETIREMENT OR SEPARATION FOR OTHER REASONS

Evaluatees who meet all qualifications for physical disability retirement but who are also qualified for retirement or separation for other reasons may, prior to the effective date of retirement, request that the Commandant take no action on the record of proceedings of the Physical Evaluation Board in their case in order that they may request and be retired or separated for reasons other than physical disability. (See articles 12-B-11.f and 12-C-3.c.)

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record, his submissions, the Coast Guard's submission, and applicable law and policy:

Preliminary Matters

1. The Board has jurisdiction under 10 U.S.C. § 1552(a), as the applicant is seeking a correction of an alleged error and/or injustice in his military records. The applicant has exhausted his 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.

2. The applicant requested a hearing before the Board via video or telephone. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁵

3. The Board may “correct any military record . . . when [it] considers it necessary to correct an error or remove an injustice.” 10 U.S.C. § 1552(a)(1). “Error” means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations. *See Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (“‘Error’ means legal or factual error.”); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) (“It is a familiar rule of administrative law that an agency must abide by its own regulations.”). “Injustice,” when not also error, is treatment by the military authorities that “shocks the sense of justice.” *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976). The Board has authority to determine whether an injustice exists on a “case-by-case basis.” Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

4. “The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by a preponderance of the evidence.” 33 C.F.R. § 52.24(b). Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties “correctly, lawfully, and in good faith.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). In cases involving personnel decisions, “the military is entitled to substantial deference in the governance of its affairs.” *Dodson v. United States*, 988 F.2d 1199, 1204 (Fed.Cir.1993).

Availability of Personnel Records

5. With his submission to the Board, the applicant included 22 pages of supporting documents. These included 19 pages from his official military personnel file (OMPF) and service treatment records (STRs), and 3 pages of VA correspondence. The Board subsequently obtained a physical copy of the applicant’s full OMPF from the National Personnel Records Center with additional relevant documents. The “Summary of the Record” section above draws from both the documents submitted by the applicant and other documents found in the full OMPF. When the Coast Guard provided its views to the Board in July 2025, it referenced and attached only the initial 22 pages of records submitted by the applicant. Thus, it appears that the full OMPF was not available to the Coast Guard at the time it prepared its views for submission to the Board. It is unclear whether the Coast Guard’s position in this case would have been different if it had been able to review the

⁵ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because Board proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

full OMPF. Under these circumstances, in order to avoid further delay, the Board will proceed with its adjudication of the application rather than seek additional input from the Coast Guard.

Timeliness

6. Applications must be filed with the Board within three years of the applicant's discovery of the alleged error or injustice underlying the application. *See* 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22. The alleged error and/or injustice in this case is the Coast Guard's decision, in August 1985, to discharge the applicant before he reached 20 years of active service. On his application form, the applicant indicated that he discovered this error/injustice in November 2021 when he was advised by the PPC that he was ineligible for concurrent receipt of VA compensation and military retired pay. If November 2021 is considered the date of discovery, the application – first received in April 2022 – is timely. If August 1985 is considered the date of discovery, the application is untimely.

7. The Board may excuse untimeliness if it is in the interests of justice to do so.⁶ 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” to determine whether the interests of justice support 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.”

8. The applicant's VA rating was increased to 60 percent (from an unspecified rating below 50 percent) in May 2021. Under these circumstances, it is plausible that the applicant was not aware of the eligibility criteria for concurrent receipt, and would not have scrutinized his records and associated the Coast Guard's 1985 decision with an error/injustice, until 2021. In addition, for the reasons discussed below, the Board's cursory review of the application's merits indicates that relief is warranted. Under these circumstances, the Board finds that even if it is assumed that the date of discovery of the error/injustice in this case was August 1985, the interests of justice warrant a waiver of the statute of limitations. Accordingly, the Board will conduct a full review of the application's merits.

Analysis

9. The applicant has requested that the date of his medical retirement be changed to September 20, 1985, or later.

10. By way of recap, the applicant was found NFD by a MEB in April 1984. He responded by requesting to be retained until at least September 20, 1985, in order to reach

⁶ 10 U.S.C. § 1552(b).

20 years of service. This request was granted in June 1984, with the decision specifically authorizing retention to the 20-year mark. A CPEB then issued findings – including that the applicant was NFD – which were accepted by the applicant in July 1984 with the understanding that he was authorized to serve to 20 years. *Then*, the applicant was informed on August 10, 1984, that his retention was, instead, for a one-year period ending on August 10, 1985. This notification stated that extension up to 20 years of service would be addressed during a reevaluation process in mid-1985. This reevaluation, in the form of a MEB, occurred in April 1985. The applicant responded to the MEB findings – including an apparently erroneous finding that he *was* fit for service – in July 1985 by asserting that he had been granted retention allowing him to serve to 20 years and requesting that the April 1985 MEB be considered together with the prior boards. A CPEB then convened later in July 1985, found the applicant NFD, and marked “N/A” for all questions on its report intended to assess retention issues involving members with between 18 and 20 years of service. The applicant accepted the CPEB’s findings and was retired with 19 years, 11 months, and 4 days of service.

11. The Coast Guard cannot be faulted for failing to provide guidance in 1985 based on amendments to federal laws that were not enacted until 2004. Upon review, however, the Coast Guard’s processing of the applicant’s retirement appears to have been inconsistent with its then-existing policy in a number of respects.

12. First, *PERSMAN* § 17.A.2.b. stated the Coast Guard’s general policy that members with at least 18 years of service found NFD would be retained to 20 years as long as they could “perform useful service,” and retention would not be “detrimental to their health nor a hazard to their associates.” In this case, endorsements authored by the applicant’s COs in New Orleans and Washington, D.C. in April 1984 and July 1985, respectively, show the applicant was performing useful service in a sedentary office environment. There is no indication of a decline in the applicant’s ability to perform useful service between his initial MEB in April 1984 and his retirement. There is likewise no indication that the applicant’s retention posed any threat to his or others’ health or safety.

13. Next, *PERSMAN* § 17.A.4.a. provided that prior to the end of an initial one-year retention period, members would undergo an examination and reevaluation focused specifically on determining whether continued retention was warranted. When providing the evaluation results and his or her endorsement to the Commandant, the member’s CO was to insert a cover sheet with the words “Retention Waiver Reevaluation,” and attach a copy of the retention authorization then in effect. The Commandant would then determine whether to continue or terminate retention. In this case, the applicant’s April 1985 reevaluation did not address his ability to continue providing useful service at all, or otherwise discuss a potential extension of his one-year retention authorization. There is also no indication that the MEB was flagged as a retention reevaluation case. Nor is there any indication that the Commandant or other authorities processing the applicant’s case in 1985 were provided, or were aware of, the August 10, 1984, retention authorization and its

specific guidance that the applicant's request for continued retention from the end of the initial one-year period through September 1985 would be addressed later, in accordance with policy. In addition, the Board notes that instead of a determination being reached on continued retention following the MEB, and before the CPEB stage – as appears to have been required by the policy – the applicant's reevaluation was treated more like a normal MEB and forwarded to a CPEB for adjudication.

14. Based on the foregoing, the Board finds that the applicant's April 1984 request for retention to 20 years of service (to September 20, 1985) – and thus beyond the initial one-year period permitted by the policy – remained pending at the time his reevaluation commenced in April 1985. To the extent it could be argued that the request was not affirmatively reiterated, and thus did not remain pending, the Board notes that pursuant to *PERSMAN* § 17.A.3.a.(3), when a member with between 18 and 20 years of service being evaluated by a CPEB had not requested retention, such CPEB was to append a "specific opinion as to whether or not the member meets the medical requirements for retention" to its report. This requirement was intended to "encourage members who are approaching eligibility for a normal 20-year retirement to conditionally accept the CPEB findings and request retention on active duty." Thus, even assuming, *arguendo*, that no retention request was pending when the second CPEB convened in July 1985, this would have required the CPEB to specifically address the issue anyway, which it did not, having instead marked "N/A" in all relevant sections of its report.

15. The applicant accepted the CPEB results in August 1985 without conditioning that acceptance on a retention request. As he has explained, at the time in August 1985, he faced a tight deadline to move from Washington back to New Orleans in time for his children to begin school that September. Thus, he took what he thought was the most prudent course, which was to accept the CPEB results.

16. While it may be true that the applicant did not reiterate his retention request in response to the July 1985 CPEB findings, in the Board's opinion, he should not have been placed in the position of having to do so. That is because, again, in the applicant's circumstances, *PERSMAN* Chapter 17 contemplated a reevaluation and adjudication of the issue of continued retention prior to the CPEB stage. This is consistent with the August 1984 letter notifying the applicant that the issue would be considered without any particular action needed on his part. And again, even if the Coast Guard had considered the applicant's request lapsed as of August 10, 1985, the policy required the CPEB to include a specific opinion addressing the issue, and it did not do so.

17. More generally, the Coast Guard's policy contained a clear presumption in favor of retaining members nearing retirement until they had reached 20 years of service. Although not stated directly in Chapter 17, the Board infers that the policy was intended to recognize members who had served for nearly two decades, and to honor the expectations of those members of reaching the status and benefits that the milestone of 20 years of

service provides, so long as they continued to be able to provide useful service. The Board also notes that when he requested extension in 1984, the applicant made clear that the purpose of his request was his strong desire to reach 20 years of service. Viewed in this light, it is difficult to understand the Coast Guard's decision to grant the request for a one-year period, and then retire the applicant 26 days short of the goal he specified in the request it had granted.

18. The Board's review of the applicant's OMPF is devoid of any negative information whatsoever during his 20-year career as an enlisted member and commissioned officer. The record establishes that the applicant continued to provide valuable service to the Coast Guard up until his retirement despite significant pain in his left knee and multiple other joints caused by in-service injuries. The Board also notes that despite the absence of a significant financial incentive for reaching 20 years of service at the time he was presented with the option of a medical retirement, the applicant fought to continue serving in the Coast Guard, even though it meant being assigned to Coast Guard Headquarters, far from his family's home for a majority of the last years of his career.

19. Granting of constructive service to 20 years will not be warranted in every case in which a member who served 18 years or more applies to the Board. After careful consideration of the particular facts of this case, however, the Board finds that a change of the applicant's retirement date is necessary to correct an injustice. Accordingly, the Board will direct the Coast Guard to change the date of the applicant's medical retirement to September 30, 1985, to ensure that 20 or more years of active service are reflected by the record.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of retired temporary LT/O-3E [REDACTED] is granted. The Coast Guard shall take all necessary actions to change the date of the applicant's medical retirement to September 30, 1985.

September 30, 2025

