

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction  
of Coast Guard Record of:



BCMR Docket  
No. 33-96

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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on December 5, 1995, upon the BCMR's receipt of the applicant's request for correction of her record.

The final decision in this case, dated November 15, 1996, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**Prior BCMR Decision**

The current proceeding follows an earlier proceeding before the BCMR. The earlier proceeding was commenced on July 1, 1994 and was closed on June 23, 1995. The underlying facts in both proceedings were the same, but the relief requested and the legal issues in the earlier case were very different.

In the earlier application, the applicant requested that a particular OER be removed from her record on the ground that she "was medically unsuitable for assignment due to closed head injuries." The Board found that she failed to provide persuasive evidence that she was unfit for sea duty during the period of that OER. The application was therefore denied.

**Applicant's Request for Relief in Present Application**

The applicant submitted her current application to the BCMR after she was discharged from the Coast Guard. She was discharged on October 31, 1995 with 10 percent combined disability for dementia associated with brain trauma (including any percentage attributable to aggravation).

She alleged that she should have been rated at 30 percent and placed on the Temporary Disability Retired List (TDRL). She stated that "[her] condition definitely (sic) warrants more than a 10% rating."

She submitted, with her current application, a copy of the report of her May 5,

1995 Initial Medical Board (IMB) and a copy of the report of her August 7, 1995 Central Physical Evaluation Board (CPEB). The IMB diagnosed her condition as "Minimal right hemi-motor syndrome S/P closed head injury." It found that she "is expected to perform adequately in her current assigned duties but could not have any future shipboard duty." It recommended that she be referred to the CPEB for adjudication. The CPEB report diagnosed her as having "dementia associated with brain trauma," concluded that she is not fit to perform the duties of her grade. The CPEB found that her combined percentage of disability was 10 percent.

#### **Views of the Department of Veterans Affairs**

On November 9, 1995, the DVA concluded that the applicant's disability was service-connected and that her "[s]tatus post closed head injury [was] 30% disabling" from November 1, 1995. The DVA found medical records that show a head injury from an automobile accident while she was a [REDACTED] followed by her falling [REDACTED]. According to the DVA, the evidence warrants a 30 percent evaluation "for definite impairment of social and industrial adaptability."

On January 11, 1996, the DVA concluded that the applicant's disability had increased in severity. The DVA found that her closed-head injury, "which was 30% has increased to 50% disabling." The DVA also stated that the "evidence shows considerable impairment of social and industrial adaptability." The DVA also found that her "post tracheostomy" was service-connected, but that the condition is less than 10% disabling and therefore non-compensable.

#### **Views of the Coast Guard**

To avoid further delay, the Coast Guard did not make any recommendation with respect to the disposition of this case. More than seven months elapsed before the BCMR and the Coast Guard were able to obtain needed records from the Department of Veterans Affairs.

### **FINDINGS AND CONCLUSIONS**

The Board makes the following findings of fact and conclusions of law on the basis of the applicant's military record and submissions, the Coast Guard's submission, and applicable law:

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code.
2. The applicant was discharged from the Coast Guard, on October 31, 1995, with a 10 percent disability rating for a closed head injury. On November 1, 1995, the Department of Veterans Affairs (DVA) concluded that her disability was 30

percent. On January 11, 1996, the DVA increased that evaluation. On that date, the DVA concluded that she was 50 percent disabled.

3. The applicant has requested an oral hearing on her application to have her Coast Guard disability rating increased. The Chairman has decided, pursuant to § 52.31 of the Board's rules, to recommend disposition on the merits without a hearing. The Board concurs in that recommendation.

4. The Court of Federal Claims has stated that "[d]isability ratings by the Veterans Administration and by the Armed Forces are made for different purposes. The Veterans Administration<sup>1</sup> determines to what extent a veteran's earning capacity has been reduced as a result of specific injuries or combination of injuries (10 U.S.C. § 1201). The Armed Forces, on the other hand, determine to what extent a member has been rendered unfit to perform the duties of his office, grade, rank, or rating because of physical disability (10 U.S.C. § 1201 . . .). Accordingly, Veteran's Administration ratings are not determinative of the issues involved in military disability retirement cases." Lord v. United States, 2 Cl.Ct. 749, 754 (1983).

5. The applicant did not introduce any evidence to the effect that the Coast Guard's 10 percent disability rating for a closed head injury was erroneous.

6. The application should be denied because the applicant has not established that the Coast Guard committed an error or injustice with respect to her disability rating.

**[ORDER AND SIGNATURES ON FOLLOWING PAGE]**

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<sup>1</sup> Now the Department of Veterans Affairs.

ORDER

The application of former  
correction of her military record is denied.

... USCG for

