

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

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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 156-96

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**FINAL DECISION**

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on September 6, 1996, upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated November 7, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.<sup>1</sup>

**Applicant's Request for Relief**

The applicant was [REDACTED] in the Coast Guard until [REDACTED] when he was medically retired upon the finding of the Central Physical Evaluation Board [CPEB]. The CPEB found him 100% disabled as a result of chronic fatigue syndrome, with depression, constant and severe.

The applicant asked the BCMR to remove a particular officer evaluation report (OER) from his military record. The OER that he asked to have removed was that for the period June 1, 1993 to September 1, 1993 (disputed OER). The applicant's primary objection was to the following comment in block 3h and 9f of the disputed OER:

Normal aggressiveness at keeping supervisor informed declined significantly with regard to sick leave status. Did not notify supervisor when sick in quarters status initially recommended by medical facility,

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<sup>1</sup> The Board is obligated to decide cases within 10 months of the receipt of a completed application. The applicant in this case requested and was granted a two-month extension of the deadline, so that he could respond to the Coast Guard's advisory opinion. The request extended the 10-month deadline.

nor did he present the "medical department's recommendation" to GRUCOM [Group Commander] for approval as required by PERSMAN [Personnel Manual] Art 7-a-1(h). This was especially important since medical status delayed PCS transfer. Took it upon self to direct PERSRU to delay transfer. Continued to fail to keep supervisor & GRUCOM informed through 2 subsequent NNFD/sick in quarters medical recommendations. When confronted, attempted to shift blame to PERSRU & others. After counseling, promised to keep supervisor informed of status. When final follow-up appointment completed and Doctor advised he was "medically cleared for PCS [Permanent Change of Station]," he convinced Doctor to recommend delay in departure by 1 week; although in Doctor's words, "there [was] no medical contra-indication to transfer." Still did not inform supervisor or GRUCOM of status or intended departure date.

Demonstrated poor judgment in his failure to keep his supervisor and the GRUCOM informed of his medical status which delayed his PCS transfer.

The reporting officer gave the applicant a "2" on block 12, on a scale of "1" to "7," on the disputed OER. This mark rated the applicant by comparison with officers of the same grade whom the reporting officer has known in the course of his career. The reporting officer stated in block 11, however, that he had observed the applicant "for only a relatively short period of time."

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

On February 10, 1997, the Coast Guard Personnel Command [CGPC] recommended that no relief be granted to the applicant. The CGPC found that the disputed OER did not, as alleged by the applicant, contain "inaccurate and incomplete information regarding [the applicant's] medical status and condition."

The CGPC pointed out that the applicant's draft of an OER reply to the disputed OER "was never submitted" even though it formed the basis of the application for correction.

On August 11, 1997, the Board received the Coast Guard's advisory opinion from the Chief Counsel of the Coast Guard. The Chief Counsel, like the CGPC, recommended that relief be denied.

The Chief Counsel said that the applicant had not proved error or injustice on the part of the Coast Guard because the applicant did not "show a misstatement of a significant hard fact or a clear violation of a statute or regulation." The Chief Counsel asserted that the statements in the disputed OER are presumed to be fair

and correct, unless an applicant presents specific evidence to rebut that presumption.

The Chief Counsel said that for a lieutenant commander in the Coast Guard "to fail to fully advise his supervisor regarding medical conditions which affect his fitness for duty is itself a significant performance problem."

### **Response of Applicant to Coast Guard Views**

In his response to the views of the Coast Guard<sup>2</sup>, the applicant identified his medical condition. He said that he suffered from chronic fatigue syndrome disease and that this disease resulted in his being medically discharged from the Coast Guard. In his original submission (August 29, 1996), he claimed that his group commander must have been aware of his medical condition because he received a weekly medical status report of the unit and because the applicant reported weekly for blood tests. He said that it is unfortunate that he must now prove his character after demonstrating for 22 years that he was an honorable and loyal member of the Coast Guard.

### **APPLICABLE LAW**

#### **Article 10-A-4g.(3), Coast Guard Personnel Manual**

Members of the rating chain shall not:

.....

(c) Engage in medical or psychological speculation, or mention any medical diagnosis.

### **FINDINGS AND CONCLUSIONS**

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

1. The Board has jurisdiction of the case pursuant to section 1552 of title 10, United States Code.

2. The proceeding is timely. The application for correction was received by the Board on September 6, 1996, and the date of the alleged error and injustice was September 9, 1993. Applications received within three years after the alleged error or injustice are timely

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<sup>2</sup> A Physical Evaluation Board later found him 100 % disabled.

3. The disputed OER contains commentary about his medical condition and medical status. The supervisor said, for example, that the applicant's normal aggressiveness at keeping his supervisor informed declined with regard to sick leave status.

4. Article 10-A-4g.(3)(c) provides that none of the members of a rating chain may engage in "speculation" as to the medical condition of a reported-on officer. The applicant's rating chain avoided speculation as to the nature of the disease and medical diagnosis. It focused instead on the applicant's failure to keep the group commander informed as to his medical status and condition.

5. The applicant did not suffer an injustice when the supervisor and the reporting officer indicated that he failed to report on his medical condition. The lengthy insert in block 3h. did not violate Article 10-A-4g.(3)(c). It did not constitute an error or injustice.



6. The applicant did not establish that he provided sufficient information on his medical status or condition. Medical reports on the unit and weekly blood tests do not constitute reports by the applicant.

6. The applicant received a very low mark ("2") on block 12, the comparison scale. The applicant has not established that this mark is an error or injustice.

7. The application should be denied.

[ORDER AND SIGNATURES ON SUCCEEDING PAGE]

ORDER

The application to correct the military record of   
 USCG, is denied.

