DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-146

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on July 2, 2004, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated March 17, 2005, is 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 asked the Board to correct her record by changing her discharge date from January 24, 1989, to February 1, 1989. The applicant alleged that following the birth of her daughter she should have been given 30 days of postnatal leave prior to being discharged. She gave birth on January 2, 1989, and was discharged on January 24, 1989. She alleged that she discovered this error in her record on May 12, 2004.

SUMMARY OF THE APPLICANT'S RECORD

On July 13, 1987, the applicant enlisted in the Coast Guard for a term of four years. At the time, she had no children. In the spring of 1988, she became pregnant. On June 2, 1988, the applicant was counseled that when she became a single parent, she could not allow her "parental responsibilities to interfere with her availability for worldwide assignment." On July 20, 1988, the applicant completed a separation physical. There are no documents in the record that shed light on the discharge

proceedings, nor is there any evidence that the applicant objected to the proposed discharge.

On January 2, 1989, the applicant gave birth to her daughter. On January 24, 1989, the applicant was discharged from the Coast Guard by reason of convenience of the government,[1] in accordance with Article 12.B.12. of the Coast Guard Personnel Manual. Her DD Form 214 indicates that she received an honorable discharge, a separation code of KDG,[2] an RE-3B[3] reenlistment code, and the narrative reason for separation was "convenience of the government." On her discharge date, she signed an administrative remarks (page 7) acknowledging that she was in receipt of her discharge documents and that she was not being recommended for reenlistment due to dependency. She served on active duty for 1 year, 6 months, and 12 days.

On January 25, 1989, the applicant enlisted in the Coast Guard Reserve for a period of three years. However, the applicant alleges that she could not find a Coast Guard station that would let her drill. Her record indicates that she did not drill or otherwise earn points. Moreover, she was only credited with membership points through January 24, 1993. The applicant's military obligation ended on July 12, 1995.

VIEWS OF THE COAST GUARD

On November 15, 2004, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Command (CGPC) and recommended that the Board deny the applicant's request. The JAG argued that the applicant failed to submit a timely application and failed to show why it was in the best interest of justice to excuse the delay.

In addition, the JAG argued that the applicant offered no evidence that the Coast Guard committed any error or injustice when it discharged her. CGPC noted in its memorandum that the applicant's commander had the discretion to grant postnatal leave for up to 42 days, but was not required to do so. CGPC also noted that there is nothing in the record to show that the applicant requested sick leave for postnatal recovery or that the command intended to grant her 30 days of leave following the birth of her child. Moreover, the JAG argued that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully,

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[1] Commander (CGPC) may authorize or direct enlisted members to separate for the convenience of the Government for a number of reasons, including a member's non-availability for worldwide assignment. Personnel Manual, Article 12.B.12.

[2] KDG is used to denote a voluntary discharge when as the result of parenthood or custody of minor children, the member is unavailable for worldwide assignment. COMDTINST M1900.4C, Chapter 2.C.4.

[3] RE-3B means that the member is eligible for reenlistment except for a disqualifying factor (parenthood or custody).

and in good faith. *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

However, in the course of reviewing the applicant's records, the JAG and CGPC determined that the applicant was not properly credited for membership points earned in the Coast Guard Reserve between January 25, 1993, and July 12, 1995. Accordingly, the JAG and CGPC recommended that the applicant's record be changed to credit her for the 30 points earned during that period.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 19, 2004, the Chair sent a copy of the views of the Coast Guard to the applicant and invited her to respond within 30 days. No response was received.

APPLICABLE LAW

Article 12.B.12.a.7. of the Coast Guard Personnel Manual authorized the Commandant to discharge members at the convenience of the government for "[a] member's inability to perform prescribed duties, repeated absenteeism, or non-availability for worldwide assignment." Article 12.B.12. required that a member discharged for the convenience of the government be given an honorable or general discharge, as appropriate under Article 12.B.2.

Article 7.A.5.h. of the Personnel Manual stated that district commanders and commanding officers could grant up to 42 days (cumulative) of postnatal recovery leave without approval of the Commandant.

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:

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 or should have discovered the alleged error in her record. 10 U.S.C. § 1552. The applicant signed and received her discharge documents on January 24, 1989. The Board finds that the applicant knew or should have known her discharge date when she signed her DD Form 214. The applicant did not provide an explanation why she waited nearly 16 years to seek a correction of her discharge date. Thus, her application was untimely.

3. Pursuant to 10 U.S.C. § 1552, the Board may waive the three year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should consider the reason for the delay and conduct a cursory review of the merits of the case. *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992). The applicant has not explained her delay.

4. Under Article 12.B.12.a.7. of the Personnel Manual, the applicant received an honorable discharge at the convenience of the government because her status as a single parent apparently interfered with her availability for worldwide assignment. There is no evidence in the record that the Coast Guard committed any error or injustice in discharging her 22 days after she gave birth to her daughter. The Personnel Manual states that Commanders *may* grant up to 42 days of sick leave for postnatal recovery, but there is nothing in the applicant's record to indicate that she requested any sick leave following the birth of her child, nor is there any evidence that the command denied her request, assuming such a request was made.

5. Given the long delay and the consequent loss of any evidence that might have illuminated the circumstances surrounding the applicant's leave status following the birth of her child, the Board finds insufficient reason to waive the statute of limitations with respect to her discharge date from active duty. Her request should be denied.

6. After careful review of the applicant's record, the JAG and CGPC found that the applicant's record failed to show that she was awarded membership points (15 points for each year in the Reserves) during the period of January 25, 1993, through July 12, 1995. They recommended that the Board order this correction *sua sponte*.[4]

7. Although the applicant's request for a correction of her discharge date should be denied for untimeliness, primarily due to the apparent lack of merit, the Coast Guard has found, and the record reveals, a different error in her record. She was not credited with membership points between January 25, 1993, and July 12, 1995. The applicant did not object to the Coast Guard's proposed correction of her record. Therefore, the Board should order this correction.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

[4] Sua Sponte. (Latin). Of his or its own will or motion; voluntarily; without prompting or suggestion. Black's Law Dictionary 1592 (4th ed. 1968).

ORDER

The application of former SN XXXXXXXXXXXXX XXXXXXX, USCG, for the correction of her military record is denied. However, the Coast Guard shall issue the applicant a corrected Statement of Retirement Point Credits (CGHQ-4973A), reflecting the reserve membership points she acquired between January 25, 1993, and July 12, 1995.