DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

[redacted]

BCMR Docket
No. 66-96

FINAL DECISION ON REQUEST FOR RECONSIDERATION

[redacted] Chairman:

This proceeding, BCMR No. 66-96, has been conducted pursuant to the provisions of section 1552 of title 10, United States Code, and section 52.67 of title 33 of the Code of Federal Regulations. It was commenced on January 29, 1996, upon the BCMR's receipt of the applicant's request for reconsideration of the final decision in BCMR No. 142-94.

This final decision on the request for reconsideration, dated January 31, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

PRIOR FINAL DECISION

The applicant, a [redacted] pay grade E-5), was honorably discharged by the Coast Guard on March 15 , 1994.

On June 27, 1995, the applicant was granted substantial relief by the Board in BCMR 142-94, with the approval of the Deputy General Counsel. The Board ordered the removal of his performance evaluation marks for the period ending February 22, 1993; restoration of the applicant to active duty; removal of all references to his discharge from the Coast Guard under the RIF (reduction in force) program; and removal from his record of the DD Form 214 indicating that he had been discharged on March 15, 1994. The relief granted him did not include any monetary compensation.

REQUEST FOR RECONSIDERATION

The current application requests monetary relief, in addition to the relief already granted, as "reimbursement and compensation" for the applicant's wrongful discharge from the Coast Guard in 1994.

First, my storage fee's total came to approx 2,116. 00 dollars. . . .

Second, I attended [redacted] Technical Institute, for correctional officer training. My school fee's total came to about 500.00 dollars. . .

Third, I had consulted with two attorney's concerning the wrongful discharged (sic). . . . Both attorney 's were approx 1,000 dollars. . .

Fourth, because of my misfortune, and the falsehood discharge, that was inflicted upon me for two years, I am requesting 70,000.00 dollars. . .

In addition, I also had gas expenses traveling to Washington, D.C. "three times." I was trying to consult with someone about suspending the discharge. . . . I also had to spend a large amount of money on certified letters, stamps, etc. the approx cost of miscellaneous materials were 600.00 dollars.

The total amount claimed by the applicant in the request for reconsideration was $70,004.22.

REGULATION REGARDING RECONSIDERATION

Section 52.67 of the regulations of the Board for Correction of Military Records of the Coast Guard sets forth the requirements for reconsideration of a final decision of the Board.

Under this regulation, 33 CFR § 52.67, a request can be reconsidered only if the applicant presents evidence or information that was not previously considered by the Board; that could result in a determination other than that originally made; and that could not have been presented to the Board prior to its original determination in the exercise of reasonable diligence. A request can also be considered if the Board or Secretary "committed legal or factual error" that could have resulted in a determination other than that made.

Paragraph (a) of § 52.67 of the BCMR's rules provides that "[r]econsideration of an application for correction of a military record shall occur if an applicant requests it and the request meets the requirements set forth in paragraph (a)(1) or (a)(2) of this section."

Under paragraph (a)(1), reconsideration shall occur if the applicant presents "evidence or information that was not previously considered by the Board" that could result in a determination other than the one originally made. Evidence or information may only be considered if it could not have been presented to the Board in its original determination if the applicant has exercised "reasonable diligence" (emphasis added). Under (a)(2), reconsideration shall occur if the applicant presents evidence that the Board "committed legal or factual error" in the original proceeding that could have resulted in a different determination.

Paragraph (b) directs the Chairman to determine whether to docket a request for reconsideration. It provides that if neither of the (a)(1) or (a)(2) requirements is met, "the Chairman shall not docket such request."

Paragraph (c) provides the "[t]he Board shall consider each application for reconsideration that has been docketed."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusion on the basis of the applicant's military record and submissions; the Coast Guard's submissions; the final decision in BCMR No. 142-94; and applicable law:

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

2. The applicant's application is for reconsideration of the decision in BCMR No. 142-94, by the addition of a claim for monetary damages that was not asked for in the earlier proceedings.

3. There are three requirements for reconsideration of an application under § 52.67 of the Board's rules:

> a. The first is that the applicant presents evidence or information that was not previously considered by the Board, or that the Board committed legal or factual error in the preceding determination or in the original determination;
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> b. The second is that the new evidence or information or the legal or factual error "could have resulted in a determination other than that originally made;" and
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> c. The third is that the new evidence or information "could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence."

4. The applicant has not met the requirements of standard (c). The new information (the monetary claims) could have been presented to the Board prior to its determination in BCMR No. 142-94 if the applicant had exercised reasonable diligence.

5. The applicant was discharged from the Coast Guard on March 15, 1994 at the rank and in the pay grade of RM2. In the proceeding that is here being reconsidered, BCMR No. 142-94, the applicant's record was substantially corrected, except that no monetary claims for compensation was directed to be

paid because, inter alia, no such monetary claim was presented by the applicant.

6. No new evidence or information has been introduced which could have resulted in a determination other than that made in BCMR No. 142-94 nor has the applicant shown any legal or factual error on the part of the Board.

7. The Board has considered docketed application BCMR No. 66-96 in light of § 52.67, and it has found that the application fails to meet the standard for reconsideration set forth above.

8. Accordingly, the request for reconsideration should be denied.

ORDER

The request of [redacted] USCG, for additional relief has been considered and is herewith denied. The request does not meet the standard for consideration under § 52.67.

[redacted]