

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No.1998-114

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was commenced on September 4, 1998, when the applicant's widow filed this application for correction of the applicant's military record.

This decision, dated June 30, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, now deceased, was a ██████████. He died on active duty on ██████████ due to a massive pulmonary embolism. At the time of his death, he had over 20 years of active duty service and was married with three minor children.

The applicant's widow, as next of kin, asked the Board to correct her husband's record to show that he was medically retired with a 100% disability and that he elected to participate in the survivor benefit plan (SBP) for the benefit of his three minor children.

On ██████████ at approximately 0800 ██████████ the applicant requested medical assistance from his command. He complained of shortness of breath and dizziness. The command responded with an ambulance to provide medical assistance.

The applicant's widow submitted a statement from the Coast Guard Headquarters Command Center Personnel watch officer on duty the morning the applicant died. The watch officer stated that at approximately 0805 he was notified of the need for a possible imminent death proceeding under the physical disability evaluation system (PDES), in the case of the applicant. The watch officer contacted the senior disability evaluation system legal counselor and advised him of the situation. The watch officer stated that the legal counselor told him that "if circumstances were to

lead the command to request an expedited review due to [the applicant's] imminent death, he would elect on [the applicant's] behalf full SBP for the children only. With [the applicant's widow] entitled to Dependent Indemnity Compensation from the VA, the legal counselor felt that [SBP for the children] would maximize benefits to the family in the event of the [applicant's] death."

According to the watch officer, the applicant's command did not ask for an imminent death proceeding until approximately 0915. This was approximately 10 minutes after the applicant had died.

The duty officer further stated as follows:

If [the applicant's command] had initiated an expedited review immediately by telephone through Flag Plot, as required, rather than crafting a message request, I am certain [the applicant] would have been placed on the Temporary Disability retired List at 100% disabled within 20 minutes or less of the request. My certainty is based on [my] experience in the past two and a half years of presiding over approximately 20 imminent death expedited disability reviews. I am also certain that given the chance to act on behalf of [the applicant], [the legal counselor] would have elected full SBP, with the children designated as sole beneficiaries.

### Views of the Coast Guard

On May 20, 1999, the Board received comments from the Chief Counsel of the Coast Guard. The Chief Counsel recommended that the applicant's request be granted. He stated the following:

The record presented indicates that the Coast Guard did, in fact, make an error by failing to promptly conduct a Central Physical Evaluation Board (CPEB) for applicant's husband prior to his death under the death imminent expedited review process. "But for" the delay, the applicant's husband would have been medically retired and his assigned military attorney would have selected the [SBP] option selection for his children. Therefore the Board should grant relief.

The Chief Counsel stated that Article 4.A.10 of the Physical Disability Evaluation System Manual (PDES) requires the commanding officer (CO) of a critically injured or ill member to initiate an expedited review request via telephone to the Flag Plot Duty officer at Coast Guard Headquarters. Instead of initiating a request via telephone, the applicant's command appeared to have erroneously determined that a message was required to initiate the expedited review process. This error delayed the start of the proceedings until after the applicant's death.

The Chief Counsel stated that if the applicant's command had initiated a death imminent request by telephone, the applicant could have been placed on the temporary disability retired list (TDRL) within twenty minutes of the request. As part of the imminent death proceeding the applicant would have been appointed a legal counselor who would have been able to elect SBP for the minor children. The Chief Counsel stated that the Coast Guard's error in this case creates an injustice because the error deprived the legal counselor from making an SBP election for the applicant's minor children.

### **Applicant's Response to the Views of the Coast Guard**

On approximately May 21, 1999, a copy of the views of the Coast Guard was mailed to the applicant's widow with an invitation for her to respond. She did not submit a response.

### **APPLICABLE REGULATIONS**

Article 18.F.2. of the Personnel Manual states that the "purpose of the [SBP] is to establish a survivor benefit program for military personnel in retirement to complement the survivor benefits of social security. The Plan provides all career members of the Uniformed Services who reach retirement eligibility an opportunity to leave a portion of their retired pay to their survivors at a reasonable cost."

Article 4.A.10. of the PDES states the following:

Expedited Review [of physical disability] cases. Laws relating to the retirement or separation of military personnel because of physical disability were enacted primarily to maintain a vital and fit military organization. These laws were designed to provide for the retirement or separation of members determined to be unfit to perform the duties of their office, grade, rank, or rating because of physical disability. Since retirement provides special benefits, a member in danger of imminent death, if possible, should not be denied benefits that a survivor with disabilities would receive. The Coast Guard has no legal authority to retroactively retire members who have already died. "

Article 10.A.10.c. states that "[a] command request for expedited review shall be initiated via telephone to the Flag Plot Duty Officer at Coast Guard Headquarters."

Article 4.A.10.f.(2) states that legal counsel shall be assigned to a member in danger of imminent death at the earliest possible time.

Article 4.A.10.(5)(b) of the PDES states that if applicable, legal counsel shall ensure that the evaluatee's SBP elections, record of emergency data designations, and SGLI amount and beneficiaries are current.

## FINDINGS AND CONCLUSIONS

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

1. The BCMR has jurisdiction of this application pursuant to section 1552(b) of title 10, United States Code. It was timely.

2. The Board finds that the Coast Guard committed an error by not immediately requesting via telephone that the CPEB hold an expedited disability review proceeding to determine whether the applicant, who faced imminent death, should have been placed on the TDRL, as required under the PDES. The Board is satisfied by the evidence and the lack of any objection from the Coast Guard that the applicant would have been placed on the TDRL with a 100% disability rating.

3. The failure of the applicant's command to immediately request an expedited CPEB review created an injustice in the applicant's record by denying him placement on the TDRL and by denying his legal counsel the opportunity to make an SBP election on behalf of the applicant's minor children.

4. The evidence supports a finding by the Board that the applicant's legal counsel in an imminent death proceeding would have elected full SBP for the three minor children. The applicant's widow, in her application to the Board, requested that the applicant's record be corrected to show that he was medically retired and that he elected full SBP for their three minor children.

5. The Coast Guard concurs in this grant of relief.

6. Accordingly, the applicant's request should be granted.

[ORDER AND SIGNATURES ON NEXT PAGE]

**ORDER**

The application of [REDACTED] for correction of his military record is granted. The applicant's record shall be corrected to show that prior to his death on April 20, 1998, an expedited review of his case was held by the CPEB, that the CPEB found that he should be medically retired with a 100% disability rating for massive pulmonary embolism, and that his legal counsel made the election for full SBP benefits for the applicant's three minor children. The applicant's record shall be further corrected to show that the CPEB's findings and recommendations were approved by the necessary Coast Guard authorities prior to the applicant's death. [REDACTED]