

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2000-070

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 February 14, 2000, upon receipt of a complete application for correction of the applicant's military record from his widow.

This final decision, dated December 14, 2000, 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 captain in the Coast Guard. He died on active duty on ██████████ due to a massive heart attack. At the time of his death, he was married and had one minor child.

The applicant's widow, as next of kin, asked the Board to correct her husband's record to show that he was medically retired, pursuant to an imminent death proceeding, with a 100% disability rating, and that he elected to participate in the survivor benefit plan so that she and the minor child would be entitled to "special [survivor] benefits".

The events leading up to the applicant's death are not in his military record, but a synopsis of those events has been provided by the Chief Counsel in the views of the Coast Guard, which are discussed below.

Views of the Coast Guard

On September 12, 2000, the Board received comments from the Chief Counsel of the Coast Guard, recommending that relief be granted to the applicant. He offered the following summary of events:

At 6:50 PM on ██████████ [the applicant] collapsed while working in his office at Coast Guard Headquarters, Washington D.C. His collapse was directly observed by an employee of building services and maintenance and immediately reported to building security. Immediately

thereafter, building security reported [the applicant]' collapse to concerned entities and individuals including Coast Guard Headquarters Command Center (Flag Plot); Headquarters Support Command; and the District of Columbia Emergency Medical Authorities.

At approximately 7:30 PM, [the applicant] was transported to George Washington University Hospital and was pronounced dead by a medical doctor at 7:57 PM.

Appropriate Coast Guard authorities never requested an expedited review by a Central Physical Evaluation Board.

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 in a death imminent case within the Physical Disability Evaluation System (PDES). In the instant case, although acting in the best immediate medical interest of the member, the Headquarters Support Command failed to initiate a timely request for an expedited review prior to the applicant's death. The Chief Counsel concluded this omission was error.

The Chief Counsel stated that if the applicant's command had initiated a death imminent request by telephone, there was sufficient time to have placed him on the temporary disability retired list (TDRL). In reaching this conclusion, the Chief Counsel relied on a letter from Commander, Coast Guard Personnel Command, dated July 20, 1998, which was submitted in another case, BCMR Docket No. 1998-114. The Chief Counsel offered the following quote from that letter:

[I]f [the command] had initiated an expedited review immediately by telephone . . . I am certain [the member] would have been [retired] within 20 minutes or less of the request. My certainty is based on experience in the past two and half years presiding over approximately 20 imminent-death expedited disability reviews. I am also certain that given the chance to act on behalf of the [member], [the assigned legal counsel] would have selected [the most beneficial] SBP [survivor benefit plan]. . ."

The Chief Counsel stated that the Coast Guard's error created an injustice by depriving the applicant's surviving spouse of the benefits afforded members medically retired on active duty. Therefore, the Chief Counsel recommended that the Board grant relief by correcting the applicant's record to show that he was medically retired with a 100% disability. He further recommended that the applicant's military counsel be given the opportunity to elect an SBP option after consulting with the applicant's widow.

Applicant's Response to the Views of the Coast Guard

On September 13, 2000, 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 applicant's widow requested that the applicant's record be corrected to show that he was medically retired in an imminent death proceeding so that she and the minor child would have the "special benefits" that are available for members in that status.

3. 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.

4. The failure of the applicant's command to immediately request an expedited CPEB review (imminent death proceeding) 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 surviving widow and minor child.

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]

[REDACTED] or correction of his military record is granted. The applicant's record shall be corrected to show that prior to his death on [REDACTED] an expedited review of his case was held by the CPEB, and that the CPEB found that he should be medically retired with a 100% disability rating after suffering a massive heart attack. His record shall be further corrected to show that his legal counsel made an SBP election on his behalf. Before selecting any such SBP election under this order, the legal counsel shall consult with the applicant's widow. 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.

