

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-002

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 October 21, 1998, by the filing of an application for relief with the Board. However, the application was not complete until the Board received the applicant's military record on February 26, 1999.

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

The applicant requested that his military record be corrected to change the reason for his discharge from "weight control failure" to physical disability.

The applicant enlisted in the Coast Guard on July 25, 1995. He was discharged on June 3, 1997, with an honorable discharge, by reason "weight control failure", with a JCR (weight control failure) separation code, and a RE-3F reenlistment code.

EXCERPTS FROM RECORD AND SUBMISSIONS

The applicant stated that the reason for his discharge is unjust. He requested that it be changed so that he can receive veterans education benefits. The applicant claimed that he "was involuntarily separated due to weight standards and feel[s] that this was a physical disability to perform certain duties."

The applicant further stated, as follows, in a letter dated October 6, 1998:

I had been injured as well as having an emotional strain of my mother being diagnosed with breast cancer. I was unable to keep my weight down during convalescence time. My ship was being decommissioned and they released me because according to Coast Guard standards, I could not be reassigned overweight. I was told upon release that I would be entitled to VA benefits.

The applicant submitted a statement from his executive officer (XO) while he was on active duty. He stated that the applicant was unable to meet the Coast Guard's weight control standards. He stated that an injury to the applicant's ankle and to his back contributed to his difficulty in meeting the weight control standards. The XO further stated that "unfortunately, these [injuries] were not judged as being overriding factors and [the applicant] was processed for discharge."

Applicant's Military Record

The applicant's military record contains an administrative remarks (page 7) entry dated March 6, 1996 advising the applicant that he was 21 pounds overweight. He was further advised that he was required to lose 21 pounds by July 31, 1996. He was counseled that if he failed to comply with the weight requirement by July 31, 1996, he would be recommended for discharge.

On December 12, 1996, the applicant received another page 7 entry advising him that he had been assigned a 2 in the Health and Well-being dimension on his enlisted performance evaluation of the same date. The page 7 entry further stated that the applicant was on the weight control program and did not meet weight standards.

Views of the Coast Guard

On November 15, 1999, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board deny relief to the applicant.

The Chief Counsel stated that the applicant was properly discharged under the authority of Article 12.B.12 of the Personnel Manual. He further stated that Coast Guard regulations do not permit a physical disability separation for failure to meet weight standards. The Chief Counsel stated that the Coast Guard did not commit an error or injustice in this case.

The Chief Counsel stated that Physical Disability Evaluation Manual [PDES] excludes overweight as a condition on which a physical disability can be based. Accordingly, the applicant could not receive a physical disability separation because he was overweight.

Applicant's Response to the Views of the Coast Guard

On November 19, 1999, the Board sent the applicant a copy of the advisory opinion, with an invitation for him to respond. He did not submit a response.

APPLICABLE REGULATIONS

Article 2.A.7 of the PDES states that "[c]ertain conditions and defects may cause an evaluatee to be unfit for continued duty and yet not be physical disabilities within the meaning of the law, thereby subjecting the evaluatee to administrative separation. These conditions include but are not limited to: . . . overweight. . . .

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 BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant has not demonstrated that the Coast Guard committed an error or injustice by discharging him due to "weight control failure." He has not disputed the fact that he was overweight and that he had been placed on weight probation.

3. According to the PDES, being overweight may be disqualifying for continued active duty, but it is not considered a physical disability. Therefore, the applicant could not receive a discharge by reason of physical disability with respect to his weight.

4. The applicant and the XO alluded to some other injuries the applicant incurred while on active duty. However, the applicant did not present sufficient evidence that he sustained any injuries on active duty of a nature that would have led to a discharge by reason of physical disability. If the applicant feels that he was unfairly denied a disability discharge because of the ankle and back injuries, he may submit a new application to the Board by June 2, 2000.

5. Accordingly, the applicant has failed to prove that the Coast Guard committed an error or injustice in his case. Eligibility for veterans education benefits is determined by the Department of Veterans Affairs. That Department's refusal to grant benefits to the applicant does not mean that the Coast Guard committed an error or injustice when it discharged the applicant due to "weight control failure."

ORDER

The application of
military record is denied.



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