

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1997-142

FINAL DECISION

ANDREWS, Attorney Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10 of the United States Code. It was commenced upon the BCMR's receipt of the applicant's application on June 17, 1997.

This final decision, dated November 19, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant was a xxxxxxxxxxxxxxxx in the Coast Guard Reserve during World War II. He asked the Board for "eye and dental care." The Board interpreted this as a request to correct his record to show service-connection for certain optical and dental problems so that he might receive increased benefits from the Department of Veterans Affairs (DVA).

APPLICANT'S ALLEGATIONS

In his application to the Board, the applicant alleged that he had had teeth extracted and other dental work while serving on active duty between 194x and 194x. In support of his application, the applicant submitted five letters.

The first letter, dated April 1951, is from the chief of the dental service for the Veterans Administration. He informed the applicant that service-connection had been granted for problems with his number 2 and number 15 teeth.

The second letter, dated November 24, 1954, is from a Veterans Administration adjudication officer, who informed the applicant that he must supply the exact date of the dental treatment he claimed to have received from the U.S. Public Health Hospital in xxxxxxxxxx, in order for the adjudication officer to search the hospital's records.

The third letter is the applicant's response to the adjudication officer, dated December 29, 1954. The applicant stated that he could not remember the exact dates of his treatment. He recalled between eight and ten visits while he was stationed in xxxxxxxx from April 1942 to March 1945. He was sure that he never went to the hospital in xxxxxxxx. The applicant suggested that the Veterans Administration check his Coast Guard records.

In the fourth letter, dated March 8, 1955, the adjudication officer informed the applicant that no additional medical records could be found by the U.S. Coast Guard.

In the fifth letter, dated May 28, 1993, the applicant wrote to the Commandant that he had never been informed by his recruiting officer or his commanding officer that he was entitled to health care or eye care. He asked that service-connection be granted for his eye care.

The applicant stated that the date of discovery of this error was "unknown." As an explanation for the delay of his application, he stated, "I believe there was a fire that destroyed military records years ago."

SUMMARY OF THE APPLICANT'S MEDICAL RECORDS

The applicant enlisted in the Coast Guard Reserve on April 8, 194x, and was immediately ordered to active duty. The report of his enlistment physical shows that he was then missing five teeth, his gums were "normal," and his vision was 20/20 in the right eye and 20/15 in the left.

On March 1, 1945, the applicant underwent a physical examination prior to going on sea duty. The record shows five teeth missing and 20/25 vision in both eyes.

On March 22, 1945, the applicant underwent an eye exam. The doctor found "hyperopic astigmatism"¹ and "incipient presbyopia."² His uncorrected

¹ "Hyperopic astigmatism" is an unequal curvature of the refractive surfaces of the eye which complicates farsightedness. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 25TH ED. (1974).

² "Presbyopia" means farsightedness due to aging. *Id.*

vision was 20/25 in both eyes. With corrective lenses, his vision was 20/15 in both eyes. The doctor noted that the applicant could not read without corrective lenses.

The applicant had a dental examination on May 22, 1945. On May 28, 1945, his teeth were x-rayed, and he received alloy fillings in his number 2D and 15R teeth. On November 9, 1945, the applicant had another dental examination. The dentist reported no further problems or treatments.

The applicant's tonsils were removed on November 14, 194x, just prior to his discharge. His medical records indicate that he had suffered three incidents of tonsillitis while on active duty.

On November 28, 194x, the applicant underwent a physical examination prior to separation. The report of the examination indicates that he was missing five teeth, his gums were "normal," and his vision was 20/30 in the right eye, 20/20 in the left eye, and 20/20 in both eyes with corrective lenses. The doctor determined he was fit for duty and qualified for separation.

The applicant received an honorable discharge at the end of his enlistment on November 30, 194x. On that day, he signed a statement, which included the following language:

MEDICAL TREATMENT AND HOSPITALIZATION:

(a) United States Public Health Service:

If Medical Relief is needed at time of discharge, it will be furnished by the U.S. Public Health Service providing application is made in person, within three days subsequent to discharge.

(b) Veterans Administration Facility:

You are entitled to medical treatment through Veterans Administration for any service incurred or aggravated disability. You may also receive treatment through this source for other disabilities if you are financially unable to pay for such needs and will sign a statement to that effect.

VIEWS OF THE COAST GUARD

On April 2, 1998, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request for untimeliness or for failure of proof.

The Chief Counsel stated that the applicant's "request is untimely by about 50 years." The Chief Counsel cited the applicant's correspondence with the Veterans Administration in the 1950s and his letter to the Commandant in 1993 as evidence that more than three years have passed since the applicant learned of the limitations of his dental and optical benefits. Moreover, the appli-

cant did not provide any justification for the delay of his application. Therefore, the Chief Counsel argued, the Board should conduct only a cursory review of the record to determine whether it would be in the interest of justice to waive the Board's three-year statute of limitations. Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992).

The Chief Counsel further stated that the applicant presented "no evidence of error or injustice affecting his record." Regarding the applicant's suggestion that some of his records may have been destroyed by fire, the Chief Counsel stated that there is no evidence of this. Finally, the Chief Counsel stated, the applicant's "eligibility for post service eye care and dental care is properly a matter for determination by the Department of Veterans Affairs."

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code.

2. An application to the Board must be filed within three years of when the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The record shows that, on March 8, 1955, a Veterans Administration adjudicator informed the applicant that no medical records could be found that would entitle the applicant to the increased benefits he had sought. Therefore, the Board finds that the applicant filed his application more than 40 years after he first learned of the nonexistence or loss of any medical records he believes should be in his file. Thus, his 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 determine whether it is in the interest of justice to waive the statute of limitations, the Board should conduct a cursory review of the merits of the case. Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992).

4. The applicant alleged that he is entitled to, but is not receiving, certain unspecified dental and eye care benefits from the successor to the Veterans Administration, the Department of Veterans Affairs. He claimed that his dental and visual problems arose while he was on active duty from April 8, 194x through November 30, 194x. He believes some of his medical records have been lost. The applicant also alleged that he was never instructed about his entitlement to veterans' medical benefits.

5. On November 28, 194x, the applicant signed a statement that informed him of his entitlement to medical benefits for service-connected disabilities. The applicant's file contains medical records detailing vaccinations, several bouts of tonsillitis, a tonsillectomy, several dental appointments, an optical examination and prescription, and three complete physical examinations. There is no indication that any records have been lost. In addition, the records show that no tooth extractions were performed while the applicant was on active duty. Moreover, the applicant offered no explanation for the more than 40-year delay between the time he discovered that medical records he believes should exist are not in his file and the time of his application.

6. Without evidence that the Coast Guard has committed an error or injustice, the Board will not waive the statute of limitations.

7. If the applicant believes that his records as they now exist entitle him to increased dental and eye care benefits, his remedy lies with the Department of Veterans Affairs.

8. Therefore, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application for correction of the military record of former XXXXXXXX, USCGR, is hereby denied.

George Kuehne, Jr.

Michael K. Nolan

Coleman R. Sachs