

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-090

XXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

ANDREWS, Deputy Chair:

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The BCMR docketed the applicant's request for correction on June 9, 2003.

This final decision, dated March 25, 2004, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct the records of the Defense Manpower Data Center (DMDC) Defense Enrollment Eligibility Reporting System (DEERS) to show that he was a member of the selected reserve (SELRES) beginning on February 1, 2002, rather than a member of the Active Guard and Reserve (AGR). The applicant stated that upon his release from a period of active duty on January 31, 2002, he returned to the SELRES. However, in the DEERS, his status was erroneously entered as being in the AGR. As a result, he was made ineligible for the Reserve TriCare Dental Program from February 1 through June 30, 2002.

The applicant alleged that he learned of the situation in August 2002, when he was notified by the TriCare Dental Program contractor, United Concordia, that his claim had been denied. Thereafter, he contacted DEERS and was advised to apply to the BCMR.

The applicant alleged that he contacted his last command, which advised him to contact the Coast Guard's Human Resources Service & Information Center (HRSIC).

HRSIC confirmed his status as a member of the SELRES during the period in question and "made several unsuccessful attempts at getting the DEERS record corrected, both with DMDC and the [United Concordia]. All efforts have failed. As of the date of this request, the DEERS still reflects my status as AGR for the period This request remains my only available course of action."

In support of his allegations, the applicant submitted a copy of his discharge form DD 214, which shows that on January 31, 2001, the applicant was released into the SELRES upon completing a period of extended active duty.

VIEWS OF THE COAST GUARD

On October 22, 2003, the Judge Advocate General of the Coast Guard recommended that the Board deny the applicant's request for relief because, he stated, the Coast Guard no longer has a DEERS record for the applicant that can be corrected.

The Judge Advocate General alleged that the applicant "seeks correction of a 'record' that no longer exists. The [DEERS] exists to verify eligibility for military health care. Information from the Coast Guard's computers is fed into this database on a regular basis. Once the information is updated, previous status information is deleted. Due to Applicant's retirement on 01 July 2002, no entries currently exist in DEERS regarding his status during the relevant time period; therefore, there is nothing for the Coast Guard to correct."

The Judge Advocate General further stated that the "Coast Guard's records support Applicant's assertions regarding his status as a member of the SELRES during the period 01 February 02 to 30 June 2002. Applicant should be able to use his DD-214 and/or copies of his orders to prove his eligibility for benefits under the Reserve TriCare Dental Program for the period in question."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 27, 2003, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. On November 17, 2003, the applicant responded. He stated that the Coast Guard's position leaves him in a "Catch-22 situation" because the solution proposed by the Judge Advocate General "is not possible." The applicant alleged that he has provided a copy of his DD 214 to DEERS and has had the Coast Guard Personnel Service Center work with DEERS "all to no avail." He alleged that he was repeatedly told that applying to the BCMR for a correction of the record was the only solution.

The applicant alleged that, while the Coast Guard may no longer have the relevant record, DEERS clearly has a record of what the Coast Guard erroneously reported to DEERS at the time of his release into the SELRES.

SUPPLEMENTAL VIEWS OF THE COAST GUARD

On February 17, 2004, in response to an inquiry by the BCMR staff, the Judge Advocate General stated that he certified that the applicant was a member of the SELRES from February 1 to June 30, 2002. He stated that, "[a]lthough it is impossible for the Coast Guard to go back and enter this information into DEERS retroactively, it is undisputed that this is the information DEERS should have displayed during the relevant time period." Therefore, the Judge Advocate General asked that "the third parties responsible for administering the Reserve TriCare Dental Program (TDP) allow the retroactive creation/correction of any documents necessary to accurately reflect Applicant's true status and allow Applicant the use of those benefits to which he was entitled." He stated that he would not object if the Board granted such relief.

FURTHER SUBMISSIONS BY THE APPLICANT

On February 19, 2004, the applicant submitted copies of various documents concerning the denial of his claim for dental work performed on June 24, 2002. These include a copy of a letter dated August 8, 2003, which he received from United Concordia after he had appealed the denial of his claim and submitted a copy of his DD 214 to show that he was a member of the SELRES. In the letter, United Concordia stated the following:

United Concordia has reviewed your request to update the eligibility status on your contract. Unfortunately, United Concordia does not have the ability to update eligibility information and cannot initiate changes in the Defense Enrollment Eligibility Reporting System (DEERS).

In order for United Concordia to update your contract, the eligibility must first be corrected in the Defense Enrollment Eligibility Reporting System (DEERS), which may require you to provide supporting documentation to the DEERS Support Office (DSO).

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 over this matter pursuant to the provisions of 10 U.S.C. § 1552. The application was timely.

2. The Judge Advocate General of the Coast Guard has certified that the applicant was a member of the Selected Reserve (SELRES) from February 1 through June 30, 2002, and that the Coast Guard's own records accurately reflect his status. The applicant's DD 214 also shows that he was released into the SELRES following his separation from active duty on January 31, 2002. Therefore, the Board finds that the applicant has proved that he was a member of the SELRES from February 1 through June 30, 2002.

3. The record indicates that either the Coast Guard erred in incorrectly reporting the applicant's status to DEERS or DEERS erred in incorrectly recording the applicant's status as being in the AGR, instead of the SELRES. Because of this error, the applicant has been denied coverage under the TriCare Dental Program for dental work performed on June 24, 2002, by a private contractor, United Concordia. Although the applicant submitted a copy of his DD 214 showing his SELRES status to United Concordia, the contractor has been unwilling to grant coverage because of the erroneous information in DEERS. Unfortunately, the Coast Guard apparently has no way of correcting information in the DEERS system retroactively.

4. In BCMR Docket No. 2002-148, the applicant's wife had not been enrolled in the TriCare Dental Program because of an administrative error. That applicant was also advised by United Concordia that his only recourse was to apply to and receive a favorable decision from the BCMR. Although the Board's jurisdiction under 10 U.S.C. § 1552 does not extend to the records of private companies such as United Concordia, it is in the interest of justice for this Board to grant such relief as it can to assist veterans in receiving their due benefits.

5. Accordingly, relief should be granted by having the Coast Guard Personnel Command ask DEERS and United Concordia to correct their records to show that the applicant was a member of the SELRES from February 1 through June 30, 2002, and to take such action with respect to his coverage under the TriCare Dental Program as may be appropriate in light of the correction.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is granted as follows:

The Coast Guard Personnel Command shall certify to DEERS and the United Concordia Dental Insurance Company in writing that the applicant was a member of the SELRES from February 1 through June 30, 2002, and the Personnel Command shall ask DEERS and United Concordia to correct their records to show that the applicant was a member of the SELRES and take such action with respect to his to coverage under the TriCare Dental Program during that period as may be appropriate in light of this order.

Philip B. Busch

Marc J. Weinberger

George A. Weller