

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2004-088**

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**FINAL DECISION**

**Author: Ulmer, D.**

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 application was docketed on April 1, 2004, upon receipt of the applicant's completed application and military records.

This final decision, dated June 30, 2005, 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 initially asked the Board to correct his military record by upgrading his RE-4 (not eligible to reenlist) reenlistment code to an RE-3 (eligible to reenlist except for disqualifying factor: physical disability) so that he could reenter the service. The applicant's most recent reenlistment occurred on January 13, 2001, for a four-year term. He was discharged from the Coast Guard on January 14, 2003, by reason of physical disability due to Crohn's disease rated as 10 percent disabling, for which he received severance pay. He was given a JFL (physical disability) separation code and an RE-4 reenlistment code. At the time of his discharge he had served a total of five years, eleven months, and twenty days on active duty.

The applicant alleged that he was erroneously diagnosed and separated from the Coast Guard for having Crohn's disease, which was later determined by the Department of Veterans Affairs (DVA) to be a bacterial infection. In support of his contention, he submitted an August 21, 2003, letter from a DVA gastroenterologist who

wrote that based upon his examination and diagnostic testing, the applicant did not suffer from Crohn's disease. The letter reads as follows:

[The applicant] was seen in our GI Clinic for evaluation of a previous diagnosis of Crohn's disease. A colonoscopy with ileoscopy was performed with random biopsies taken throughout the colon. The examination and biopsies were all normal without evidence of Crohn's. An extensive laboratory evaluation was also normal. A small bowel follow through was also normal. His complete absence of symptoms is also not characteristic of Crohn's. I can find no evidence at this time that he has Crohn's disease. His initial symptoms may well have been due to a self-limited infectious colitis that resolved. Unless symptoms recur, I would not recommend any further diagnostic evaluation and feel the patient can return to full, unrestricted duties.

#### **SUMMARY OF PHYSICAL DISABILITY EVALUATION SYSTEM (PDES) PROCEEDINGS**

On November 21, 2001, while on active duty, the applicant was evaluated by gastroenterology medical personnel and diagnosed as having Crohn's disease, an inflammatory disease of the gastrointestinal tract. The medical report described the applicant's condition as mild with minimal interference of his daily activities. The report stated that it was not possible to predict how the disease would affect the applicant in the future, but it would be beneficial to the applicant if he were assigned to shore-based commands to be near specialized medical care should the need arise. The report stated that the cause of Crohn's disease is unknown and that the clinical course is different for every patient. "Some patients have very mild disease while others have disease that is so severe that surgery is required. Other patients experience alternating periods of remission and active disease."

On July 10, 2002, a medical board<sup>1</sup> (MB) was convened to evaluate the applicant's physical condition. The MB diagnosed the applicant as suffering from "Inflammatory Bowel (Crohn's) Disease, Inflammatory Proctitis, and Intermittent Anemia." The MB report stated that the applicant was well until approximately January 2000 when he began to complain regularly of recurrent bloating, cramping and diarrhea. The MB stated that the applicant's symptoms ranged from incapacitating to minimal over a period of one to two years, with the applicant reporting that he had three to eight stools per day.

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<sup>1</sup> The purpose of a Medical Board is to evaluate and report upon the present state of health of any member who may be referred to the medical board by an authorized convening authority and provide a recommendation as to whether the member is medically fit for the duties of his or her office, grade, rank, or rating. See Chapter 3.A. of the Physical Disability Evaluation System Manual (COMDTINST M1850.2C).

The MB noted that the x-ray studies were normal, but the diagnosis was confirmed by UGI showing mild nodularity of the terminal ileum and ileocecal junction and colonoscopic biopsies by local and military treatment facility gastroenterologists. The applicant was treated with medication over a one-year period with a moderate to good response (with stools less than three per day). The MB offered the following prognosis:

The prognosis for this patient is guarded but his response to therapy is encouraging. It is unlikely that this member will soon be fit for worldwide deployments as a member of a ship's crew, but sea duty/training close to a tertiary care center would be appropriate. The patient may completely respond to therapy over the next one-two years, but will be at risk for symptom recurrence indefinitely and must remain near (within 1-2 hr) [of] a tertiary care MTF [medical treatment facility] during this period.

It is the opinion of the board that the aforementioned diagnoses and present objective findings are correct and that the patient has recovered his ability to function as a BM1 petty officer. The member does not have a physical impairment that precludes performing the duties of his grade and rate.

The prognosis for this patient remains guarded while he resumes full activity afloat and remains on maintenance medication. The patient should respond to therapy over the next months-years.

The applicant was notified that the MB had recommended a finding of fit for limited duty for a continuous period with the limitation that he "must remain near (within 1-2hr) [of] a tertiary care MTF."

On August 1, 2002, in separate letters the applicant requested to be retained on active duty and he rebutted the medical board. In his rebuttal, the applicant stated that he had five years and six months of service. He further stated the following with respect to the MB:

The [MB] narrative states that I remain within 1-2 hours of a tertiary care medical treatment facility, but then goes on to say that I have recovered my ability to function as a BM1 Petty Officer. It then goes on to say that I will resume full activity afloat. This is contradicting because in order for me to stay within 1-2 hours of a medical treatment facility I cannot resume full activity afloat. I plan to retire from the Coast guard and want to advance to the highest rank possible. In order to do that and broaden my

career I need sea time. I was diagnosed with Crohn's disease over 1 year ago. I have responded well to the medication. I ask that the recommendation to stay within 1-2 hours of a medical treatment facility be changed to 8-10 hours so that I will be able to get under way on a cutter.

In commenting on the applicant's rebuttal, the applicant's officer-in-charge noted that the applicant's performance had been superb since the Crohn's disease diagnosis. He agreed that the applicant was not fit for worldwide assignment or assignment to larger cutters, but recommended that the applicant be assigned to moderate sized cutters because they operated closer to shore. He also recommended that the MFT arrival time be increased to 8-10 hours rather than the 1-2 hours recommended by the MB.

The commanding officer (CO) for the group to which the applicant's unit belonged stated in a letter dated October 1, 2002, that the applicant was performing his duties at a high level with no loss of productivity. He concurred with the findings of the IMB and requested the Central Physical Evaluation Board<sup>2</sup> (CPEB) review the applicant's case.

The CPEB met on October 22, 2002, and determined that the applicant was unfit to perform "regular or customary assigned duties." The CPEB recommended that the applicant be separated from the Coast Guard with severance pay, due to a 10% disability rating for "Crohn's Disease Analogous<sup>3</sup> ] to Colitis, Ulcerative: Moderate."

On November 18, 2002, the applicant accepted the CPEB's tentative findings and recommended disposition and waived his right to a formal hearing.

On November 20, 2002, the proceedings were reviewed by the Chief Counsel (now known as the JAG) and found to be correct and supported by the evidence of record.

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<sup>2</sup> The Central Physical Evaluation Board is a permanently established administrative body convened to evaluate on a records basis the fitness for duty of active and reserve members and the fitness for duty of members on the temporary disability retired list. See Chapter 4.A.1. of the Physical Disability Evaluation System Manual (COMDTINST M1850.2C).

<sup>3</sup> Rating by analogy is the process in which a disability that is not listed on the Veterans Affairs Schedule for Rating Disabilities (VASRD) is rated using a disability from the VASRD with similar functional impairments. See Chapter 9.A.7. of the Physical Disability Evaluation System Manual (COMDTINST M1850.2C).

On November 22, 2002, the Deputy Commander (for the Commandant) ordered the applicant to be separated from the Coast Guard with severance pay due to a physical disability.

### **VIEWS OF THE COAST GUARD**

The Judge Advocate General (JAG) in an advisory opinion dated April 29, 2004, stated that it had administratively corrected the applicant's DD Form 214, through the issuance of a DD Form 215, to show his reenlistment code as RE-3P (physical disability). The Judge Advocate General (known then as the Chief Counsel) recommended that the Board administratively close the applicant's case because the Coast Guard had administratively granted the relief requested by the applicant.

### **APPLICANT RESPONSE TO THE VIEWS OF THE COAST GUARD**

On May 3, 2004, the Chair sent the Coast Guard's advisory opinion to the applicant for his review and response. On June 18, 2004, the Board received the applicant's response to the advisory opinion. He stated the following:

I feel that the Coast Guard has misunderstood my request to change my reenlistment code. After 6 years of service I was forced to leave due to Crohn's Disease. After my discharge, the VA determined that I did not have this disease. The Coast Guard misdiagnosed my case and my DD-214 should reflect this. I request that my RE code be changed to an RE-1 and that the reason for my separation be that my time in service was completed.

On July 12, 2004, the applicant informed the Board that he was attempting to obtain a waiver for enlistment from the Navy with his RE-3P reenlistment code. He requested that his application be placed on hold until the outcome of his waiver request.

On October 29, 2004, the applicant advised the Board that the Navy had denied his request for a waiver and that he wanted to continue with the processing of his request to have his RE-3P reenlistment code changed to an RE-1 (eligible for reenlistment).

On November 4, 2004, the Board requested that the Coast Guard issue a supplemental advisory opinion on the applicant's request to change his reenlistment code from RE-3P to RE-1.

### **SUPPLEMENATAL VIEWS OF THE COAST GUARD**

On January 3, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted a supplemental advisory opinion recommending that the Board deny the applicant's request to have the RE-3P reenlistment code changed to RE-1 and the reason for his discharge changed to expiration of enlistment.

The JAG stated that the Coast Guard had changed the applicant's reenlistment code to RE-3P as he requested in his initial application. With respect to the applicant's subsequent request to have the RE-3P changed to RE-1, the JAG stated that the applicant was properly processed through the PDES and that he was afforded his full due process rights before his separation with severance pay. He further stated the following:

The evidence submitted by Applicant consists of a single one-paragraph letter signed by a gastroenterologist employed by the VA. In essence, that letter states that applicant currently shows no evidence of having Crohn's disease and that Applicant's complete absence of symptoms is not characteristic of Crohn's disease. The letter goes on to theorize about what might have been happening at the time of Applicant's separation and offers an opinion that Applicant could return to unrestricted duty. Although this evidence should assist Applicant in convincing a recruiter that the medical condition flagged by his current RE-3 code has been resolved, it is simply not persuasive evidence that the Coast Guard erred in separating Applicant, with Applicant's concurrence, at the time it did so. There are alternate explanations regarding Applicant's current lack of symptoms, including an uncharacteristic case of Crohn's disease. It is also beyond debate that Applicant's medical condition at the time of his separation rendered him unfit for continued service.

The JAG argued that the applicant has failed to carry his burden of production and persuasion and should have his claim denied for lack of proof and merit. The JAG further stated that the relief already granted by the Coast Guard affords the applicant the opportunity to demonstrate that his medical issues are sufficiently resolved to allow him to resume his service in the armed forces and is the only relief warranted in this case.

#### **APPLICANT'S RESPONSE TO THE SUPPLEMENTAL VIEWS OF THE COAST GUARD**

On January 4, 2004, the BCMR sent the applicant a copy of the supplemental views of the Coast Guard and invited him to respond. The Board did not receive a response from the applicant to the supplemental views of the Coast Guard.

#### **APPLICABLE LAW**

## *Disability Statutes*

Title 10 U.S.C. § 1201 provides that a member who is found to be “unfit to perform the duties of the member’s office, grade, rank, or rating because of physical disability incurred while entitled to basic pay” may be retired if the disability is (1) permanent and stable, (2) not a result of misconduct, and (3) for members with less than 20 years of service, “at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination.” Title 10 U.S.C. § 1203 provides that such a member whose disability is rated at only 10 or 20 percent under the VASRD shall be discharged with severance pay. Title 10 U.S.C. § 1214 states that “[n]o member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.”

## *Physical Disability Evaluation System (PDES) Manual (COMDTINST M1850.2C)*

Article 2.B.c.2. states that the sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated through military service. Each case is to be considered by relating the nature and degree of physical disability of the evaluatee concerned to the requirements and duties that a member may reasonably be expected to perform in his or her office, grade, rank or rating.

## *Medical Manual (COMDTINST M6000.1B)*

Article 3.F.9.(13) of the Medical Manual lists ulcerative colitis as a disqualifying condition for retention.

## *Separation Program Designator Handbook*

The Separation Program Designator Handbook authorizes the assignment of an RE-3P reenlistment code with the JFL separation code for an involuntary discharge resulting from physical disability with entitlement to severance pay.

## **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. The application was timely.

2. The applicant first asked the Board to upgrade his RE-4 reenlistment code to an RE-3. The Coast Guard, in the advisory opinion, acknowledged that the RE-4 reenlistment code was erroneous and stated that it had administratively corrected the applicant's record to show RE-3P as the applicant's reenlistment code. After receiving the advisory opinion and the DD Form 215 correcting the reenlistment code, the applicant amended his application to request an upgrade in the RE-3P reenlistment code and a change in the reason for his discharge. Therefore, the issue before the Board is whether the applicant's RE-3P reenlistment code should be upgraded to RE-1 and whether the reason for his discharge should be changed from physical disability to expiration of enlistment.

3. This relief can be granted only if the applicant proves by a preponderance of the evidence that he did not suffer from a physical disability at the time of his separation from the Coast Guard. The evidence submitted by the applicant is insufficient to persuade the Board that the RE-3P reenlistment code and the discharge by reason of physical disability are in error or unjust. The letter from the DVA gastroenterologist is the only evidence offered by the applicant to prove his contention that he did not suffer with Crohn's disease at the time of his discharge. The DVA doctor offered his opinion that based upon his examination of the applicant and the negative colonoscopy and ileoscopy test results he could find no evidence that the applicant suffered from Crohn's disease. Although he suggested another reason for the applicant's symptoms while on active duty, he never expressly stated that the Coast Guard's diagnosis of Crohn's disease was wrong.

4. The DVA doctor's letter at first glance appears to favor the applicant's contention, but upon closer review the Board finds it to be consistent with the 2001 medical report from the Coast Guard gastroenterologist and 2002 MB. Approximately two years earlier (2001), the Coast Guard gastroenterologist noted that the symptoms of Crohn's disease range from mild to severe and for some individuals there could be alternating periods of *remission and active disease*. He further noted that he could not predict how the disease would affect the applicant in the future. Accordingly, the Coast Guard physician was aware of the possibility that the applicant could have periods when he would be free of Crohn's disease symptoms, but still recommended that the applicant receive only shore assignments so that he would always be near a medical treatment facility should he have a recurrence of symptoms.

5. In addition, the 2002 MB acknowledged in its findings that the applicant had gotten good results with medication therapy and stated that "[t]he [applicant] may completely respond to therapy over the next one-two years, but will be at risk for symptom recurrence indefinitely and must remain near . . . a . . . MTF during this

period." Coast Guard medical personnel considered the possibility that the applicant could experience the absence of symptoms going forward but noted that he would always be subject to a recurrence of symptoms and therefore could only be assigned to commands within one to two hours of a medical treatment facility. The DVA doctor's letter is consistent with the findings and prognosis of Coast Guard personnel and it establishes only that in 2003, the applicant was free of Crohn's disease symptoms. Therefore, the Board finds insufficient evidence in the record to prove that the Coast Guard committed an error by diagnosing the applicant with Crohn's disease.

6. Neither does the Board find an error or injustice with respect to the PDES proceedings. The MB determined that the applicant was not fit for worldwide deployments and placed him on continuous limited duty with the requirement that he be within one to two hours of a medical treatment facility. The applicant's officer-in-charge agreed that the applicant was not fit for assignments to large cutters and the applicant acknowledged in his rebuttal that in order to advance in rank he needed to be able to perform sea duty. Therefore, the CPEB determination that the applicant was not fit to perform the duties of his office, grade, or rate was appropriate. The applicant accepted the CPEB findings and waived his right to a Formal Disability Evaluation Board, where he could have had a hearing, if he believed his diagnosis was erroneous.

7. Accordingly, the applicant has failed to establish an error or injustice with respect to his RE-3P reenlistment code or the reason for his discharge. The Coast Guard administratively corrected the applicant's record to grant the RE-3P reenlistment code after the applicant filed his request for a correction to his record. He has not proven that he is entitled to anything more.

**[ORDER AND SIGNATURES ON FOLLOWING PAGE]**

**ORDER**

The application of \_\_\_\_\_ USCG, for correction of his military record is hereby denied.

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Bruce D. Burkley

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Raghav Kotval

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Kevin M. Walker