

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-124

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX (Former)

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 June 15, 2005, upon receipt of the applicant's completed application and military and medical records.¹

This final decision, dated April 5, 2006, 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 his record to show that he was retired from the Coast Guard due to physical disability on June 20, 2000 rather than having been separated with severance pay. The applicant was discharged from the Coast Guard with a 10% disability rating for Post Traumatic Stress Disorder (PTSD) and a 10% disability rating for Intervertebral Disc Syndrome, for a combined 20% disability rating, for which he received severance pay. To be retired by reason of physical disability, the applicant's disability rating must be at least 30% disabling.

The applicant stated that he believed that the Central Physical Evaluation Board (CPEB) ² did not properly evaluate his PTSD because if they had, he would have either

¹ The BCMR received the application on December 7, 2004.

² 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

been placed on the temporary disability retired list or the permanent disability retired list. He asserted that his medical records clearly showed that he had severe PTSD and a 55 score on the Global Assessment of Functioning Evaluation. He stated that both the Coast Guard and the Department of Veterans Affairs (DVA) use the same criteria in evaluating disabilities, but the DVA rated his PTSD as 30% disabling and his lumbar condition as 20% disabling for a combined disability rating of 50% for the two disabilities. Therefore, the applicant argued that based on the DVA ratings his discharge from the Coast Guard with severance pay was inappropriate and he should have been retired by reason of physical disability.

The applicant stated that he did not discover the alleged error until November 30, 2004. He stated that it would be in the interest of justice for the Board to waive the three-year statute of limitations and consider his application because he was not aware of the existence of the Board until recently and no one in the Coast Guard advised him about it.

SUMMARY OF THE RECORD

On April 16, 1996, the applicant enlisted in the Coast Guard for four years. In 1997, while lifting a heavy object, the applicant incurred an injury to his back that caused him to have occasional pain, for which he received periodic treatments with medication and physical therapy. An MRI taken on April 14, 1999, showed that the applicant had a herniated disc at the L5-S1 level of the vertebrae. It also showed early degenerative changes at the L4-5 level of the vertebrae.

The Physical Disability Evaluation System (PDES) file shows that in 1999 the applicant was treated for myriad complaints. During that year, he was diagnosed as suffering from anxiety and mild depression. He was prescribed Prozac and later Wellbutrin.

On February 5, 2000, the applicant was referred to a licensed professional counselor (LPC) for evaluation as to whether the applicant was suffering from PTSD. The LPC diagnosed the applicant as suffering from PTSD with delayed on-set. The LPC reported that the applicant stated that he was severely beaten on four separate occasions during the first year and a half that he was in the Coast Guard. The LPC stated that the applicant did not report the beatings because he was threatened that if he did so, he would be subjected to further beatings. The LPC also reported that the applicant stated that at one point he was locked in a cage and then beaten and thrown into a bin of lime. The LCP reported that after the beatings the applicant lived in terrible fear wondering when the next ambush might occur. "[The applicant] felt

members on the temporary disability retired list. See Chapter 4.A.1. of the Physical Disability Evaluation System Manual (COMDTINST M1850.2C).

continued helplessness and fear in regard to protecting himself because of the threats he received during the beatings and because on one occasion a senior officer seemed to be cognizant of the attack and did nothing." The LPC stated that the applicant had a serious to severe case of PTSD requiring urgent attention.

After the evaluation by the LPC, Dr. R, a Coast Guard physician, requested a psychiatric evaluation of the applicant to confirm the PTSD diagnosis. In requesting the psychiatric evaluation, Dr. R noted the applicant's numerous physical complaints over a two-year period, the LPC's report, and the applicant's treatment with Wellbutrin.

On March 6, 2000, a military psychiatrist confirmed the applicant's PTSD diagnosis. The psychiatrist noted in his report that the applicant stated that as a result of the beatings, he was not able to sleep soundly through the night, talked in his sleep, and had vivid nightmares. The psychiatrist described the applicant's mental examination as follows:

The patient reports [to the examination] well-groomed and dressed in duty uniform. He is a well-developed/well-nourished white male who is very cooperative and engaged easily in the interview. His thought processes were linear and goal directed. His thought content showed no evidence of suicidal or homicidal ideation, auditory or visual hallucinations. There was no paranoid ideation. His mood was described as "not that good" and his affect was anxious and somewhat sad. His concentration, memory and abstraction were all within normal limits. His insight into the cause and difficulties that he was having is considered good and his judgment is also considered good.

The psychiatrist stated that the applicant's PTSD diagnosis while serious and requiring treatment would not meet the criteria for disposition through a medical board (MB)³. He returned the applicant to duty with psychiatric follow-up and medications.

A MB convened in the applicant's case on March 17, 2000. The MB consisting of one physician, Dr. R, who diagnosed the applicant with the following conditions: PTSD, multiple somatic complaints, esophageal reflux disease, and a herniated L5-S1 disc. According to the MB, during the March 17, 2000 medical examination, Dr. R found the applicant to be "stable on current management." The MB stated that the applicant reported improved sleep dynamics and less agitation and that he had some para-lumbar tightness, for which Ultram was prescribed as needed. The MB stated that

³ 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 applicant's physical examination showed that his deep tendon reflexes were normal and symmetrical. The straight leg test was normal at 45-60 degrees. The toe and heel-walk were normal, as was the sensory and motor examination. Range of motion of the lumbo-sacral spine included: "1) forward flexion -90-100 degrees; 2) backward flexion-20-25 degrees; and lateral flexion -45 degrees (right equals left)." The MB concluded that the applicant was unable to fulfill the requirements for worldwide deployment and required close monitoring by mental health. The MB further stated that the "PTSD and/or medications (Wellbutrin and Prozac) rendered [the applicant] not fit for full duty."

On March 27, 2000, the applicant was notified of the MB and did not desire to submit a statement in rebuttal.

On March 20, 2000, the applicant's commanding officer (CO) forwarded the MB to CGPC recommending that it be approved. The CO stated that the applicant was unable to perform his duties of traveling with very little warning, lifting materials and equipment weighting as much as 50 pounds, and performing basic facility maintenance tasks. He also stated that the applicant's work ethic had suffered following his diagnosis. In this regard, he stated that the applicant "has been observed participating in physically demanding activities such as wrestling and playing basketball, but he complained shortly thereafter about soreness and his inability to perform certain work tasks. "

On February 27, 2002, the Central Physical Evaluation Board (CPEB) reviewed the applicant's case and recommended that he receive a 10% disability rating for PTSD under the Veterans Administration Schedule for Rating Disabilities (VASRD)⁴ code 9411 (PTSD). The CPEB described the applicant's PTSD symptoms as follows: "occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress." The CPEB also gave the applicant a 10% disability rating for mild intervertebral disc syndrome under VASRD code 5293, for a combined disability rating of 20%. The CPEB recommended that the applicant be separated with severance pay.⁵

On April 24, 2000, a law specialist counseled the applicant on the CPEB recommended findings and disposition. On April 26, 2000, the applicant accepted the CPEB's findings and recommendation and waived his right to a formal hearing.

⁴ The VASRD at 38 C.F.R., part 4, is the DVA's schedule for rating disabilities. The PDES boards use it to assign codes and percentages of disability for an evaluatee found unfit for duty. See Chapter 2.A.51 of the PDES Manual.

⁵ Under 10 U.S.C. § 1201, only disabilities ratings of 30% or higher entitle a member to a medical retirement. Ratings of 10% or 20% entitle a member to severance pay. 10 U.S.C. § 1203.

On May 10, 2000, the Chief Counsel (now the Judge Advocate General) reported that the proceedings were in acceptable form and technically correct. On May 15, 2000, the Chief Administrative Division ordered that the applicant to be discharged by reason of physical disability with severance pay.

On June 20, 2000, the applicant was honorably discharged with a combined 20% disability rating and severance pay.

Decision of the Department of Veterans Affairs (DVA)

The applicant submitted a January 10, 2003, rating decision from the DVA showing that he had been granted a 30% disability rating for PTSD under VASRD code 9411, and a twenty percent disability rating for lumbar degenerative disc disease under VASRD code 5293-5290.⁶

The rating decision stated that the DVA examination of December 16, 2002, showed the following:

VA exam shows you reported problems with fatigue, interrupted sleep, dreams, and frustration of stress. You stated you have nightmares twice a week, flashbacks two to three times a week, and intrusive thoughts. Other symptoms were listed as easily startled, and hypervigilance. You stated that you are uncomfortable in crowds and avoid them. You also stated that you have a volatile temper and do not like to talk about your experience. Exam showed your mood as tense, affect was appropriate with no homicidal or suicidal ideation. There were no delusions, hallucinations, ideals of reference or suspiciousness. Memory both remote and recent was good. There was some social impairment, and difficulty in establishing and maintaining close relationships.

The DVA rating decision stated the following with respect to the applicant's lumbar degenerative disc disease:

Treatment reports from [a] VAMC show you were being followed for chronic low back pain with pain medication being prescribed for control. Lumobsacral spine x-rays taken on July 22, 2002 . . . showed lumbar vertebra to be intact with disc spaces preserved. There was a transitional vertebra of S1.

⁶ The DVA also granted the applicant a 10% rating for gastroesophageal reflux disease under VASRD code 7399-7346, a 10% rating for radiculopathy of the right leg under VASRD code 5293-8520; and 0% rating for history of pleurisy under VASRD code 6899-6845. The applicant's combined DVA rating was 60% effective from March 26, 2002, the date he first filed his claim.

VA exam showed you reported chronic back pain with bending, twisting, and pain going down the right leg with numbness and tingling down the right leg. You stated you had to be careful getting up and down, and lifting. Exam of the back revealed stiffness and lack of normal motion of the lumbar spine on walking. There were very firm paraspinal muscle masses. Range of motion of the lumbar was limited with flexion to 30 degrees (95 is normal), extension to 20 degrees (35 is normal), right and left lateral flexions to 30 degrees (40 is normal) and right and left rotation to 15 degrees (35 is normal). Reflexes were 3+ knee jerks and 1+ ankle jerks with some decreased sensation in the lateral aspect of the right leg. Diagnosis was given as lumbar degenerative disc disease.

* * *

Since there is an overall 47% loss of motion of the lumbar spine, which is considered moderate symptoms, an evaluation of 20 percent is assigned from March 26, 2002. An evaluation of 20% is assigned for moderate limitation of motion of the lumbar spine or for moderate recurring attacks of intervertebral disc syndrome, or if there are incapacitating episodes having a total duration of at least two weeks but less than four weeks during the past 12 months.

VIEWS OF THE COAST GUARD

On November 8, 2005, the Board received an advisory opinion from the Office of the Judge Advocate General (JAG). He recommended that the applicant's request for relief be denied because it was untimely and for lack of proof of error or injustice.

The JAG argued that the applicant has failed to show why it is in the interest of justice to excuse his delay in filing an application with the Board within three years of his June 2000 discharge from the Coast Guard. The JAG stated that the applicant offered no explanation or justification for his delay in discovering the alleged error or in filing his application with the Board stating that he was not aware that he could petition the Board. In this regard, the JAG stated that the applicant reasonably should have discovered the alleged error on his DD Form 214 when it was issued to him in 2000.

The JAG argued that the applicant has the burden of proving that the Coast Guard committed an error or injustice in his case, which he failed to meet. He stated that absent strong evidence to the contrary it is presumed that Coast Guard officials carried out their duties lawfully, correctly, and in good faith. Arens v. United States, 969 F.2d 1034, 1037 (D.C. Cir. 1990). The JAG stated that the military record actually shows that the applicant was afforded full due process rights and, with full advice of counsel, agreed with the Coast Guard's rating of his disability.

The JAG argued that the only evidence submitted by the applicant to support his allegation that the Coast Guard committed an error in evaluating his condition is the 2003 DVA rating granting him a higher disability rating for PTSD and his back condition. The JAG noted that the DVA findings regarding the applicant's disabilities have no bearing on the Coast Guard's decision to separate the applicant upon rating his conditions as 20% disabling. In this regard, the JAG stated that the DVA determines to what extent a veteran's civilian earning capacity has been reduced as a result of physical disabilities. In contrast, the Coast Guard determines if a member is unfit to perform her military duties and then rates the extent the unfitting medical condition prevents the member from performing her duties. He further stated as follows:

The procedures and presumptions applicable to the [DVA] evaluation process are fundamentally different from, and more favorable to the veteran than, those applied under the PDES (Coast Guard's Physical Disability Evaluation System). The DVA is not limited to the time of Applicant's discharge. If a service-connected condition later becomes disabling, the DVA may award compensation on that basis. The DVA's finding that the applicant was 60% disabled⁷ is not relevant to the Coast Guard's finding that he was 20% disabled at the time of his discharge. The sole standard for a disability determination in the Coast Guard is unfitness to perform duty . . . In any event any long-term diminution in the Applicant's earning capacity attributable to his military service is properly a matter of the DVA, not the Coast Guard or the BCMR.

The JAG attached comments from the Commander, Coast Guard Personnel Command (CGPC) as Enclosure (1) to the advisory opinion. CGPC stated that the applicant was afforded all of his due process rights with respect to the processing of his case through the PDES. He stated he found no error in the process or the decision of the Coast Guard to discharge the applicant with a 20% disability rating. CGPC noted that the applicant based his request for relief on the 60% disability rating he received from the DVA. CGPC noted the possibility that the applicant's condition may have changed

⁷ The DVA combined 60% disability rating included 30% for PTSD, 20% for Intervetebral Disc Syndrome, and two 10% ratings for conditions not rated by the CPEB.

or worsened after his separation from the Coast Guard and further noted the differences between the military and DVA disability evaluation systems.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On November 9, 2005, the BCMR sent the applicant a copy of the views of the Coast Guard and granted him thirty days to reply. The BCMR did not receive a response from the applicant.

SUMMARY OF 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."

Provisions of the PDES Manual (COMDTINST M1850.2C)

The PDES Manual governs the separation of members due to physical disability. Chapter 3 provides that a MB normally consisting of two medical officers⁸ shall conduct a thorough medical examination, review all available records, and issue a report with a narrative description of the member's impairments, an opinion as to the member's fitness for duty and potential for further military service, and if the member is found unfit, a referral to a CPEB. The member is advised about the PDES and permitted to submit a response to the IMB report.

Chapter 3.I.7. provides that before forwarding an IMB (initial medical board) report to the CPEB, the member's CO shall endorse it "with a full recommendation based on knowledge and observation of the member's motivation and ability to perform." The endorsement must include a summary of the duties normally associated with the member's grade or rating and a statement regarding the member's ability to perform those duties.

⁸ In exceptional cases a MB can consist of one medical officer. See Chapter 3.C.1. of the PDES Manual.

Chapter 4 provides that a CPEB, composed of at least one senior commissioned officer and one medical officer (not members of the IMB), shall review the IMB report, the CO's endorsement, and the member's medical records. Chapter 4.A.5.7. provides that if the CPEB finds that the evidence is insufficient for a proper determination, it will return the case to the member's command for a Disposition Medical Board (DMB) to amplify the record.

Chapter 2.C.2.a. provides that the "sole standard" that a CPEB or FPEB may use 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."

Chapter 2.C.3.a.(3)(a) provides that, if a CPEB (or subsequently an FPEB) finds that the member is unfit for duty because of a permanent disability, it will

propose ratings for those disabilities which are themselves physically unfitting or which relate to or contribute to the condition(s) that cause the evaluatee to be unfit for continued duty. The board shall not rate an impairment that does not contribute to the condition of unfitness or cause the evaluatee to be unfit for duty along with another condition that is determined to be disqualifying in arriving at the rated degree of incapacity incident to retirement from military service for disability. In making this professional judgment, board members will only rate those disabilities which make an evaluatee unfit for military service or which contribute to his or her inability to perform military duty. In accordance with the current VASRD, the percentage of disability existing at the time of evaluation, the code number and diagnostic nomenclature for each disability and the combined percentage of disability will be provided.

Chapter 9.A.8. provides that if "a medical condition which causes or contributes to unfitness for military service is of such mild degree that it does not meet the criteria even for the lowest rating provided in the VASRD ... [a] zero percent rating may be applied in such cases."

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. The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered or should have discovered the alleged error or injustice. See 33 CFR 52.22. This

application was submitted approximately eighteen months beyond the statute of limitations.

3. However, the Board may still consider the application on the merits, if it finds it is in the interest of justice to do so. In Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further stated that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." Id. at 164, 165. See also Dickson v. Secretary of Defense, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant claimed that he did not discover the alleged error until November 30, 2004. However, the Board finds that the alleged error should have been discovered at the time of the applicant's discharge because he was well aware at that time that he was receiving a combined 20% disability rating from the Coast Guard. In addition, the Board notes that the applicant waited almost two years after the January 2003 DVA rating decision to file a BCMR claim. Although the applicant alleged that he was not aware of the BCMR until about November 30, 2004 and therefore the Board should excuse his untimely filing, the Board finds that information about the BCMR is available to the public and accessible through libraries, the Internet, and the Coast Guard Personnel Manual. Even if the applicant was not aware of the BCMR, he has offered no evidence that he sought any help from any source on how to challenge his disability rating from the date of his discharge until approximately November 30, 2004. The applicant has failed to provide a sufficient explanation for not filing his application within three years after his discharge from the Coast Guard.

5. With respect to the merits of the case, the Board finds that the applicant is not likely to prevail on them. The applicant has submitted insufficient evidence to prove that the Coast Guard committed an error by discharging him with a 10% disability rating for PTSD and a 10% disability rating for his back disability.

6. The PDES Manual requires the Coast Guard to use the VASRD in rating disabilities. The CPEB rated the applicant's PTSD under VASRD code 9411 and found that his symptoms closely matched those at the 10% level. Symptoms for a 10% disability rating under VASRD code 9411 are as follows: "Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or symptoms controlled by continuous medications." The psychiatric findings of the MB support the CPEB's assignment of a 10% disability rating. According to the psychiatrist who evaluated the applicant for the MB, the applicant reported not being able to sleep soundly through the night, talking in his sleep and having vivid nightmares. However, the mental examination showed the applicant's concentration, memory and abstraction

were all within normal limits. It further showed that the applicant's insight and judgment were good. In fact, the psychiatrist stated that the applicant could be returned to duty with psychiatric follow-ups and medication. In addition, according to the CO, the applicant's PTSD interfered with the performance of his duties only to the extent of limiting his ability to travel on short notice. (The other factors mentioned by the CO had to do with the applicant's back injury.) In finding the applicant unfit for full duty, the MB noted the applicant's need psychiatric follow up and medication. In light of the psychiatric evaluation and the MB, the applicant's PTSD symptoms at the time of his discharge were not severe enough to mandate a rating higher than 10%. For a higher PTSD disability rating under VASRD code 9411 at the time of discharge, the applicant needed to show that he had increased occupational and social impairment due to symptoms such as depressed mood, anxiety, suspiciousness, panic attacks, chronic sleep impairment, or mild memory loss. Such symptoms either were not present or were minimal at the time of the applicant's discharge.

7. As the advisory opinion stated, the applicant's condition apparently worsened after his discharge. The applicant reported during the 2003 DVA examination, approximately two years after his discharge that he suffered from "fatigue, interrupted sleep, dreams, and frustration of stress." He further reported nightmares twice a week, flashbacks, two to three times a week, and intrusive thoughts. The DVA rating decision stated that the applicant reported that he was anxious, hypervigilant, uncomfortable in crowds, and that he had a volatile temper. In contrast, the Coast Guard psychiatrist reported in 2000 that the applicant stated that he did not sleep soundly through the night and that he talked in his sleep and had nightmares. Subsequently, the MB of March 17, 2000 reported that the applicant's sleep dynamics had improved and that he had less agitation. The Coast Guard could only rate those symptoms that were present at the time of the applicant's medical board examination.

8. Nor has the applicant submitted sufficient evidence to show that the Coast Guard erred in rating his intervertebral disc syndrome under VASRD code 5293 as 10% disabling. Under VASRD code 5293, a mild case of intervertebral disc syndrome carries a disability rating of 10%. The applicant relied on his DVA examination that occurred two years after his discharge from the Coast Guard to prove he should have had a higher rating. The Coast Guard medical record established that the applicant suffered from a herniated disc while on active duty, but at the time of the MB, the doctor found his back condition to be stable and his range of motion to be only slightly impaired, although the applicant reported occasional right para-lumbar discomfort. However, during the DVA examination two years later, the applicant stated that he had chronic pain with bending, twisting, pain radiating down the right leg with numbness and tingling, and that he had to be careful getting up and down and lifting. In addition, the DVA medical examination showed that the applicant's range of motion was limited significantly. The fact that the applicant's back condition worsened two years after his discharge does not mean that his Coast Guard medical examinations, MB, or CPEB

determinations were incorrect at the time of his discharge. The applicant's CO stated that the applicant's condition interfered with his ability to lift equipment sometimes weighing as much as 50 pounds. However the CO also noted that the applicant was observed wrestling and playing basketball. If, as it appears, the applicant's conditions worsened after his discharge from the Coast Guard, the DVA is the appropriate agency from which the applicant may seek an increase in his disability rating and compensation.

9. Chapter 2.C.2.a. of the PDES Manual 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 one's rank or rating. In this regard, the CO's statement is critical in determining how the applicant's conditions affected his ability to do his job. The CO's statement of the impact of the applicant's disabilities on the performance of his duties is not inconsistent with the ratings assigned by the CPEB.

10. Although the applicant submitted evidence showing that the DVA has granted him higher disability ratings for his PTSD and back injury, such evidence does not establish error by the Coast Guard. This Board has consistently held that a higher disability rating from the DVA does not of itself establish that the Coast Guard committed an error or injustice by assigning a lower disability rating. In Lord v. United States, 2 Cl. Ct. 749, 754 (1983), the Court of Federal Claims stated "[d]isability ratings by the Veterans Administration [now the Department of Veterans Affairs] and by the Armed Forces are made for different purposes. The Veterans Administration determines to what extent a veteran's earning capacity has been reduced as a result of specific injuries or combination of injuries. [Citation omitted.] The Armed Forces, on the other hand, determine to what extent a member has been rendered unfit to perform the duties of his office, grade, rank, or rating because of a physical disability. [Citation omitted.] Accordingly, Veterans' Administration ratings are not determinative of issues involved in military disability retirement cases."

11. Importantly, the Board finds that the applicant signed a statement accepting the CPEB's finding that he was unfit for continued active duty and should be discharged with severance pay due to a combined 20% physical disability rating. The applicant also waived his right to a formal hearing, where his objection to the CPEB findings could have been addressed prior to his discharge. Absent persuasive proof of error or injustice, the Board will not disturb findings rendered by the Coast Guard.

12. The applicant received all due process to which he was entitled under the Physical Disability Evaluation System and has failed to prove that the Coast Guard committed an error or injustice in his case.

13. Accordingly, due to the unpersuasive reason for not filing his application sooner and the lack of merit in his claim, the Board finds that it is not in the interest of

justice to waive the statute of limitations in this case, and it should be denied because it is untimely.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SN xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Frank H. Esposito

Jordan S. Fried

William R. Kraus