

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-013

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 Chair docketed the case on October 23, 2006, upon receipt of the completed application and military records.

This final decision, dated June 13, 2007, is approved and 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 military record to show that he was placed on the temporary disability retired list (TDRL)¹ in pay grade E-4, the highest grade he held in the military, rather than in pay grade E-3, the highest grade he held in the Coast Guard.

The applicant alleged that the highest grade he has held in the military service was pay grade E-4 and he should have been retired in that grade. He served in the United States Marine Corps from April 20, 2000, to June 19, 2004. During this service, he was advanced to corporeal (pay grade E-4), which is the rate he held upon his discharge from the Marine Corps.

After being discharged from the Marine Corps, the applicant enlisted in the Coast Guard on June 9, 2005, in pay grade E-3.

¹ The TDRL is a pending list of individuals whose disabilities are not permanent. In order to be placed on the TDRL, the individual must have a disability that renders him or her unfit to perform the duties of his or her office, grade and rank, and the disability must be rated at a minimum of 30% disabling. Temporary Disability retired pay terminates at the end of 5 years. See Chapter 8 of COMDTINST M1850.2C (Physical Disability Evaluations Manual).

On April 21, 2006, a Medical Board (MB) convened and diagnosed the applicant as suffering from chronic post traumatic stress disorder (PTSD) with delayed onset and with a personality disorder (NOS (not otherwise specified)).

On May 17, 2006, the Central Physical Evaluation Board (CPEB)² met and agreed with the MB that the applicant suffered from PTSD. The CPEB rated the applicant's disability as thirty percent disabling and recommended that he be placed on the TDRL.

On May 25, 2006, the applicant accepted the findings of the CPEB and its recommended disposition and waived his right to a formal hearing. The CPEB findings were reviewed by the Judge Advocate General (JAG) on June 21, 2006, and approved by the Deputy Commander, Coast Guard Personnel Command (CGPC) on July 6, 2007.

The applicant was placed on the TDRL with an effective date of August 15, 2006 in pay grade E-3 with a thirty percent disability rating.

VIEWS OF THE COAST GUARD

On March 14, 2007, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board deny relief. The JAG stated that Article 12.C.15.f. of the Personnel Manual controls the determination of pay grade upon a member's placement on the TDRL. This provision states in relevant part:

Unless entitled to a higher grade under some other provision of law, any Coast Guard member who retires for physical disability or is placed on the [TDRL] under 10 U.S.C. 61 is entitled to the grade or rate equal to the highest of:

1. The grade or rate in which the member served on the date his or her name was placed on the TDRL, or , if his or her name was not carried on that list, on the date when the member retires.
2. The highest grade or rate in which the member served satisfactorily, as the Commandant determines.

The JAG stated that Commander, CGPC, acting under the authority of the Commandant, determined that the highest grade satisfactorily held by the applicant was E-3. The JAG stated that the Coast Guard Personnel Manual does not include provisions for retiring members at a higher pay grade attained in prior non-Coast Guard service. The JAG stated that while in the Coast Guard the applicant never advanced beyond pay grade E-3.

² The Central Physical Evaluation Board is a permanently established administrative body that evaluates 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).

The JAG argued that the Coast Guard acted appropriately and in accordance with applicable law and regulations in placing the applicant on the TDRL at pay grade E-3. The JAG further stated that absent evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. *Arens v. United States*, 969 F.2d 1034, 1037 (1992). In this regard, the JAG argued that the applicant has failed to meet his burden of proving error or injustice on the part of the Coast Guard.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 28, 2007, a copy of the Coast Guard views was mailed to the applicant with 30 days allotted for him to respond. The BCMR did not receive a response from the applicant.

APPLICABLE REGULATION

Article 12.C.15.f. of the Personnel Manual states, in relevant part:

Unless entitled to a higher grade under some other provision of law, any Coast Guard member who retires for physical disability or is placed on the [TDRL] under 10 U.S.C. 61 is entitled to the grade or rate equal to the highest of:

1. The grade or rate in which the member served on the date his or her name was placed on the TDRL, or , if his or her name was not carried on that list, on the date when the member retires.
2. The highest grade or rate in which the member served satisfactorily, as the Commandant determines.

Article 12.C.15.g. (Procedure to Certify Highest Grade or Rate on Retirement) of the Personnel Manual provides the following, in pertinent part:

"1. Commander, (CGPC-epm) or (CGPC-opm) will administratively review the record of each individual scheduled to retire to determine the highest grade or rate in which his or her Coast Guard service is satisfactory."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions and military records, submission of the Coast Guard, 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. Prior to enlisting in the Coast Guard, the applicant served in the Marine Corps for four years reaching pay grade E-4. His DD Form 214 from the Marine Corps shows that he was honorably discharged with an RE-1A reenlistment code. Approximately, one year after being

discharged from the Marine Corps, the applicant enlisted in the Coast Guard in pay grade E-3, the rate he held at the time of his placement on the TDRL.

3. The applicant's request for retirement in the higher E-4 pay grade is based upon his Marine Corps service. Article 12.C.15.f. of the Personnel Manual provides, in pertinent part, that a member being placed on the TDRL is entitled to the rate equal to the highest of:

1. The grade or rate in which the member served on the date his or her name was placed on the TDRL, or, if his or her name was not carried on that list, on the date when the member retires.

2. The highest grade or rate in which the member served satisfactorily, as the Commandant determines.

4. Further, Article 12.C.15.g.1 of the Personnel Manual strongly suggests that non-Coast Guard service will not be considered in making a highest grade determination. This provision states, "Commander, (CGPC-epm) or (CGPC-opm) will administratively review the record of each individual scheduled to retire to determine *the highest grade or rate in which his or her Coast Guard service is satisfactory.*" (Emphasis added). Since the applicant never served in pay grade E-4 while in the Coast Guard, he was properly placed on the TDRL in pay grade E-3, which is the highest grade he held in the Coast Guard in which his service was satisfactory.

5. Accordingly, the Board finds that the applicant has not demonstrated an error or injustice in this case and it should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG (Ret.), for correction of his military record is denied.

Kathryn Sinniger

Dorothy J. Ulmer

Thomas H. Van Horn