

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-001

XXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on October 1, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 15, 2010, 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, a health services technician who was released from active duty into the Reserve on July 24, 2008, asked the Board to correct her record to reinstate her on active duty and to order the Coast Guard to process her under the Coast Guard's Physical Disability Evaluation System (PDES) prior to her release from active duty (RELAD).

The applicant alleged that during her last year on active duty, her illnesses became aggravated and her health deteriorated significantly just before her RELAD. She alleged medical personnel asked to retain her on active duty and to initiate a medical board to evaluate her, but the Personnel Command refused. Instead, she was discharged and told to seek treatment through the Department of Veterans' Affairs (DVA). Once she was assigned to a clinic as a reservist, the clinic administrator initiated PDES processing. However, the applicant alleged, whatever the result of her PDES processing, it should be backdated as of the date of her RELAD.

The applicant alleged that during her last year on active duty, she was frequently absent from work to attend medical appointments, visit an emergency room, or convalesce from surgeries and so she was unable to perform her duties because of her many gynecological and gastrointestinal illnesses. Because her conditions did not respond to treatment, evaluation by a medical board was recommended by her superiors, but none was performed before she was RELAD. The applicant alleged that she was RELAD while she was convalescing from a second surgery. She argued that she should have been retained on active duty and retired with at least a

30% disability rating. In the alternative, she argued, she should have been placed on the temporary disabled retired list (TDRL).

The applicant alleged that prior to being RELAD, she suffered from the following unfitting conditions:

Gynecological conditions:

- Severe endometriosis in Stage 4 (involving diaphragm, lungs and liver area spots, appendix, large and small intestines, cul de sac, and reproductive organs)
- Severe adhesive disease of the abdomen and pelvis – frozen pelvis
- Dysmenorrhea
- Menorrhagia
- Symptomatic Persistent large ovarian cysts
- Open pelvic laparotomy residuals
- Salpingitis
- Chronic salpingoophoritis
- Oophoritis

The applicant alleged that as a result of these gynecological conditions, she suffers severe chronic pelvic, abdominal, and rectal pain; excessive bleeding during or out of menses; severe menstrual cramps, anemia, and infertility. In addition, she stated that the frozen pelvis and severe adhesion disease of the abdomen and pelvis caused an internal anatomical distortion with organs fused together and an extrinsic compressed rectum, and the open pelvic laparotomy caused an intestinal obstruction which aggravated her other symptoms and caused severe pain and impairment of her organs.

Gastrointestinal conditions:

- Severe irritable bowel syndrome (IBS)
- Chronic constipation alternating with diarrhea
- Gastro-esophageal reflux disease (GERD)
- Chronic gastritis
- Impaired digestion and symptomatic hiatal hernia

The applicant alleged that as a result of these gastrointestinal conditions, she suffers from nausea, bloating, difficulty while passing gases and feces, severe pain with bowel movements, impaired digestion, severe stomach ache, epigastric pain with a burning sensation, chronic reflux, dizziness, fatigue, and vomiting of bile when her intestines were obstructed.

The applicant alleged that at the time of her RELAD she also suffered from several other chronic unfitting conditions, which were not properly evaluated or treated while she was on active duty because all of her time was taken up with her other medical problems.

The applicant alleged that she underwent a physical examination that was conducted prior to her RELAD to determine whether PDES processing should be initiated, but it was used,

instead, as a discharge examination. She was found fit for discharge but did not sign a CG-4057 and so never agreed that she was fit for separation.

The applicant submitted copies of her numerous medical records to support her claims as well as statements from her supervisor, the Clinic Administrator at Xxxxxx; Dr. R, a civilian contractor at the clinic; and Dr. M of the U.S. Public Health Service. A cursory review reveals that her medical records reflect the symptoms and diagnoses claimed in the application and the statements show that her condition worsened significantly during her last year on active duty, that the clinic attempted to initiate PDES processing in May 2008, two months before her scheduled RELAD date, and that the Personnel Command refused to retain her on active duty so that the PDES processing could be completed because she had declined to reenlist so that she could be transferred when her tour of duty in Xxxxxx ended.

VIEWS OF THE COAST GUARD

On March 19, 2010, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief. In so doing, he adopted the facts and analysis provided in an enclosed memorandum prepared by the Coast Guard Personnel Service Center (PSC). The PSC stated that although no relief should be granted, the applicant's current command may take mitigating action.

The PSC stated that on March 24, 2008, Dr. R, who conducted the applicant's physical examination found that she was qualified for military service and had no significant or disqualifying defects. Thereafter, HSC B, the approving official, found that she met the physical standards for being RELAD.

The PSC stated that the applicant's request for a four-month extension on active duty was disapproved because she had refused to obligate sufficient service to be transferred to Air Station Xxxxxx and requested separation in lieu of her transfer orders. Therefore, she was discharged when her enlistment ended.

The PSC stated that upon her RELAD, the applicant was affiliated with the Selected Reserve and completed two drills in January 2009, four drills in February 2009, and one drill in October 2009.

The PSC admitted that beginning in July 2007, the applicant was diagnosed with and treated for conditions "that placed her in an apparent uncomfortable status" and that she "should have requested to enter the PDES process at this time, as she was on active duty upon the onset of her ailments." The PSC stated, however, that instead of requesting PDES processing, she

continued in a presumed fit for full duty status and was voluntarily separated from the service in accordance with 10 USC 61. The disability law that provides for disability retirement or separation is designed to compensate a member whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. That law and this disability system are not to be misused to bestow compensation benefits on those who are voluntarily or mandatorily retiring or separating and have theretofore drawn pay and allowances, received promotions, and continued on unlimited active duty status while tolerating physical impairments that have not actually precluded Coast Guard service.

The PSC stated that because there was no medical board evaluation, the applicant was presumed fit for duty. The PSC noted that the applicant requested separation in lieu of executing her transfer orders from Xxxxxx to Xxxxxx. Therefore, her separation was voluntary and not mandatory or due to disability.

Therefore, the PSC recommended that the Board grant no relief. However, the PSC noted that the applicant was separated from the service with a condition that was diagnosed while she was serving on active duty and entitled to basic pay. Therefore, the PSC stated, her current command “should issue orders for a complete physical evaluation examination and if indicated a Medical Evaluation Board should be convened.” The PSC stated that the applicant should not be returned to active duty because she departed the service voluntarily at the end of her enlistment. However, her Reserve component needs to establish her fitness for service, and if she is found unfit for duty, her unit should begin PDES processing.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 13, 2010, the Board received the applicant’s response to the views of the Coast Guard. She stated that she agreed that her unit should process her under the PDES and that her unit had already convened a medical board. However, she did not agree that the Coast Guard had committed no errors because, she alleged, her unit did request a medical board for her prior to her separation.

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 under 10 U.S.C. § 1552(a). The application was timely.
2. The applicant has submitted substantial evidence indicating that her doctors found her to be unfit for duty at the time of her RELAD in July 2008. However, under 33 C.F.R. § 52.13, no application may be considered until the applicant “has exhausted all effective administrative remedies afforded under existing law or regulations.” The record shows that the applicant is currently in the process of exhausting a significant administrative remedy because her Reserve unit has convened a medical board and is processing her under the PDES. The applicant has agreed that this PDES processing should continue.
3. Therefore, the Board finds that the applicant’s case is not yet ripe for decision. The application should be dismissed without prejudice. Her submissions shall be retained, and she may reapply to the Board if she is dissatisfied with the final outcome of her PDES processing.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is dismissed without prejudice.

Francis H. Esposito

Jeff M. Neurauter

Adrian Sevier