

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-205

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 July 22, 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 March 26, 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 alleged that he received a general discharge and asked the Board to correct his record to show that he received a medical separation. The applicant alleged that at the time of his discharge, he was being treated at xxxxxxx Naval Hospital for hives, anxiety, and high blood pressure. A commander told him that he would receive an honorable discharge and could seek treatment for his conditions from the Veterans' Administration (VA). Later his parents were told that he had received a general discharge, which was unfair.

The applicant stated that he was greatly embarrassed when the doctors reported that he was passive-dependent and that his general discharge has prevented him from getting certain jobs. He argued that it would be in the interest of justice for the Board to excuse the untimeliness of his application because he has had open heart surgery, suffers from several medical conditions, and has lived with the embarrassment of his general discharge for a long time.

In support of his allegations, the applicant submitted a copy of his DD 214, which clearly shows that he received an honorable discharge. Upon inquiry by the Chair, the applicant stated that he wants the Board to correct the reason for his discharge from unsuitability due to a passive-dependent personality disorder to physical disability. The applicant stated that prior to his discharge, he was told that "a medical discharge would present a problem to me as to I wasn't cured and it would prolong my military stay and hospitalization in xxxxxxx," but, on the other hand, he "could take the honorable and be treated at our local VA hospital in xxxxxxxxx where

I was from.” Therefore, he took the honorable discharge. The VA treated his medical conditions and soon awarded him a 20% service-connected disability rating.

The applicant alleged that “a letter was sent to my parents stating I was discharged with a general under honorable conditions due to I was unfit for military duty due to being passive-dependent.” He stated that “[t]his has played a major part in my life causing daily extreme amount of pain and mental suffering as to I was treated unfairly.” Because of embarrassment, he has not reported his military service for employment purposes. Moreover, doctors have told him that his stress related to his health has gotten worse, and it is a struggle to get to work everyday.

SUMMARY OF THE RECORD

On September 11, 1972, the applicant enlisted in the Coast Guard for four years. He attended training and was assigned to the CGC xxxxxxxxxxxx, a high endurance cutter homeported in xxxxxxxxxxxxxxxx.

From July 3 to 16, 1973, the applicant was absent without leave (AWOL) from the xxxxxxxxxxxxxxxx. He was punished at mast and fined \$50 for his unauthorized absence. From September 8 to 12, 1973, the applicant was AWOL again and missed his ship’s movement. He was punished at mast and fined \$100 for this misconduct.

On November 12, 1973, the applicant sought treatment for a rash on his neck and chest.

On November 17, 1973, the applicant was in a car accident and sought treatment for pain in his back, wrist, and shoulder. X-rays revealed no abnormalities. On November 19, 1973, the applicant sought treatment for back pain. He told the doctor that he had suffered intermittent back pain since he injured his back playing baseball four years earlier, prior to his enlistment. The doctor stated that his x-rays were normal and that he had a full range of motion in his back.

On January 4, 1974, the applicant sought treatment for dizziness, a pounding heart, and past pain in his left arm. He reported that the pain had occurred in his arm for three minutes while he was home for the holidays on January 1, 1974.

On January 6, 9, 11, 14, 15, and 21, 1974, the applicant sought treatment for severe hives (urticaria).¹ The doctor reported that the applicant’s hives had not responded to prescribed antihistamines and ointments. On January 23, 1974, the applicant was admitted to a hospital to determine the cause of his hives. The results of all physical and laboratory tests were normal. Therefore, he was examined by a psychiatrist, who reported the following:

This patient is a 19-year old SA US Coast Guardsman with about 1 ½ years active duty. He was referred for evaluation because of recurrent rash on his skin. The patient indicated that he had been told that the doctors thought it was due to “my nerves,” and he indicated that he was inclined

¹ Urticaria, or hives, is “a vascular reaction in the upper dermis, usually transient, consisting of localized edema caused by dilatation and increase capillary permeability, with development of wheals [itchy bumps]. Many different stimuli may induce it, and it may be classified as either immune-mediated ... material-induced, physical agent-induced, stress-induced, or idiopathic.” DORLAND’S ILLUSTRATED MEDICAL DICTIONARY, 29th ed. (W.B. Saunders Co., 2000), p. 1921.

to agree. He stated that when he was home, the rash cleared up but would recur when he made plans to return back to the Coast Guard. He further indicated that his mother said that when he was a child, he would develop a rash when he had to go to see a doctor or a dentist. ...

On mental examination, the patient related in a rather bitter, passive, but covertly hostile manner. He was extremely dejected about his lot in the Coast Guard, and it was apparent that his motivation was almost non-existent. He showed no evidence of psychosis or other true mental disease

CONCLUSIONS: This patient shows evidence of a rather MARKED PASSIVE-DEPENDENT PERSONALITY, and it is strongly recommended that he be administratively discharged from the Coast Guard on the basis of his personality disorder.² He has no service-incurred disability from a psychiatric standpoint.

On February 5, 1974, the applicant was released from the hospital. A doctor noted that the applicant had a passive-dependent personality disorder but was mentally competent and had no mental defects that were ratable as a disability under the Veterans' Administration Schedule for Rating Disabilities (VASRD). The doctor also reported the following:

DIAGNOSES: (1) Urticaria, probably psychogenic
(2) Passive-Dependent Personality

HISTORY: The patient is an 19-year old Caucasian male who had been in his usual state of health until about two weeks prior to admission when he had an onset of intractable hives which had been treated with steroids as well as antihistamines and tranquilizers. He had received no relief with this treatment.

The patient stated that he had intermittent hives several times over the past six months which had subsided spontaneously. He also stated that when he was a child and went to the dentist, he used to break out in hives before he arrived at the dentist's office. He stated that he wanted to leave the Coast Guard. ...

PHYSICAL EXAMINATION: Revealed a well-developed, well-nourished Caucasian male in no apparent distress. [Head, chest, abdomen, and cardiac examination and all laboratory test results were normal.] ... Rest of physical examination was within normal limits.

SKIN EXAM: Scattered urticaria over the entire body.

HOSPITAL COURSE: The patient was placed on antihistamines, his steroids were tapered, but he continued to have mild to moderately severe hives throughout his admission. He was seen in Dermatology Clinic by [Dr. A] on 1-25-74 who felt that the urticaria were quite possibly due to a stress reaction as there was no direct evidence of other allergies. He was seen by our psychiatrist, [Dr. H] on 2-4-74, who felt that the patient had a marked passive-dependent personality, and he strongly recommended that the patient be discharge administratively from the Coast Guard on this basis. The Medical Service feels that the patient's urticaria are also related to his psychiatric

² A "personality disorder" is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment." American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (hereinafter "DSM-IV-TR"), p. 685. Types of personality disorders include paranoid, schizoid, schizotypal, antisocial, borderline, histrionic, narcissistic, avoidant, dependent, obsessive-compulsive, and passive-aggressive. *Id.* "The diagnosis of Personality Disorders requires an evaluation of the individual's long-term patterns of functioning The personality traits that define these disorders must also be distinguished from characteristics that emerge in response to specific situational stressors or more transient mental states." *Id.* at 686. Personality disorders are not considered physical disabilities by the Coast Guard or the DVA. 2006 MEDICAL MANUAL, Chap. 5.B.2.; 38 C.F.R. §§ 4.127 and 4.130.

condition and that they will continue to interfere with the patient's ability to carry out his duties in the Coast Guard. For this reason, we also recommend that the patient be administratively discharged from the Coast Guard.

DISPOSITION: The patient is discharged from the hospital FIT FOR DUTY PENDING ACTION BY THE COAST GUARD ON THE ABOVE RECOMMENDATIONS.

On February 12, 1974, the applicant went AWOL for the night. He returned the next day and told a doctor that he went AWOL because he could not handle being on a ship any more and his rash was driving him crazy. The doctor noted that all medical treatments had failed to eradicate the applicant's hives and that further treatment would not be helpful because the urticaria "stems from an emotional base and if [the] recommendations for his discharge are not followed, hives will continue and will cont[inue] to waste command's time, [patient's] time, doctor's time and will continue to frustrate everyone concerned. NO R_x."

On February 20, 1974, the commanding officer (CO) of Group xxxxxxxx formally notified the applicant in a memorandum that he was recommending that the applicant receive an administrative discharge for unsuitability due to his passive-dependent personality. The CO noted that he had a right to submit a statement on his own behalf. The applicant signed an acknowledgment of this notification and indicated that he did not desire to make a statement regarding the CO's recommendation that he be administratively discharged.

On February 20, 1974, the CO recommended to the Commandant that the applicant be discharged for unsuitability because a psychiatrist had diagnosed him with a passive-dependent personality disorder. He noted that a personality disorder is not a ratable disability, that the applicant was mentally competent, and that the applicant had elected not to submit a statement regarding his discharge.

On February 21, 1974, the Commandant ordered that the applicant be discharged for "unsuitability" pursuant to Article 12-B-10 of the Personnel Manual, with separation code 265.

On February 26, 1974, the applicant signed his Termination of Health Record while indicating that he agreed with the findings of the physical examination given to him on February 4, 1974, and that he did not desire to submit a statement to rebut the findings.

On February 26, 1974, the applicant was honorably discharged from the Coast Guard. His DD 214 cites the authority and reason as Article 12-B-10 and separation code 265. He was not recommended for reenlistment. He was issued an honorable discharge certificate.

On May 27, 2009, the Department of Veterans' Affairs (DVA) informed the applicant that his rating for service-connected generalized anxiety disorder was granted with a 30% rating as of February 25, 2009; that his rating for urticaria at 20% was continued; and that service connection for hypertension, coronary artery disease, and a back condition was denied.

VIEWS OF THE COAST GUARD

On November 20, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted recommended that the Board deny the applicant's request. The JAG stated that the application should be denied for untimeliness and lack of merit because the applicant was aware of his discharge status in 1974 and "provides no rationale for his approximately 35+ year delay.

The JAG also adopted the findings and analysis provided in a memorandum on the case submitted by Commander, Coast Guard Personnel Service Center (PSC). PSC stated that the psychiatrist's report shows that the applicant's urticaria resulted from stress (psychogenic) and that this condition pre-existed his enlistment because it occurred when he was a child and visited the dentist. PSC stated that no evaluation by a medical board was initiated because the applicant was fit for duty and had no service-incurred disability. However, his diagnosed personality disorder qualified him for an administrative discharge for unsuitability under Article 12-B-16 of the Personnel Manual. PSC stated,

In summation, the applicant was discharged due to a pre-existing condition deemed *unsuitable* for continued military service and not due to a physical disability incurred while a member of the Coast Guard. If the latter were the case, the member would rate appropriately under the Physical Disability Evaluation System for possible medical discharge. The applicant's process for separation was administrative in nature based upon the concurrent diagnosis of both the resident psychiatrist and medical doctor that examined [him] in 1974.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 24, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

APPLICABLE LAW

Chapter 5-C-1 of the old Medical Manual, CG-294,³ states that Coast Guard members diagnosed with a personality, character, or behavior disorder should be considered for an administrative discharge under Article 12-B-10 of the Personnel Manual. The list of disorders includes passive-dependent personality disorder.

Chapter 3-B-3(c)(4)(d) states, "If the review of physical examination report indicates that an examinee on active duty does not meet the minimum physical standards for retention on active duty, and a waiver of the defects has not been made and approved, the reviewing authority will arrange for the examinee to be evaluated by a Medical Board." Chapter 3-G-2(a) states that the physical standards listed in Chapter 3-I apply to the retention and potential disqualification of regular enlisted personnel.

Chapter 3-I-15(c)(2) of the Medical Manual states that "[t]ransient personality disruptions of a nonpsychotic nature or situational maladjustments due to acute or special stress do not render an individual unfit because of physical disability."

³ The Board does not have a 1974 Coast Guard Medical Manual but does have one that was issued in 1976. Therefore, all citations will be to the 1976 regulations in U.S. COAST GUARD, CG-294, MEDICAL MANUAL (1976).

Under Chapter 3-I-16(x) of the Medical Manual, urticaria that is chronic, severe, and not amenable to treatment is disqualifying for retention on active duty. Under Chapter 3-I-11(c)(1), hypertensive cardiovascular disease and hypertensive vascular disease are disqualifying for retention if the member has the following:

- a. Diastolic pressure consistently more than 110 millimeters of mercury flowing adequate period of therapy on an ambulatory status, or
- b. Any documented history of hypertension regardless of the pressure values if associated with one or more of the following:
 1. More than minimal demonstrable changes in the brain.
 2. Heart disease related to the hypertension.
 3. Kidney involvement, manifested by unequivocal impairment of renal function.
 4. Grade III (Keith-Wagener-Barker) changes in the fundi.

Under Article 12-B-10(a) of the Personnel Manual in effect in 1974,⁴ the Commandant could discharge a member for unsuitability if the member was diagnosed with a personality disorder. Article 12-B-10(d) states that a member being discharged for unsuitability should be examined by a medical officer and by a psychiatrist if a psychiatric condition is involved. The psychiatrist should determine whether the member is mentally competent and/or has a mental disability ratable under the Veterans' Administration Schedule for Rating Disabilities (VASRD), in which case the member would be referred to a Board of Medical Survey. Under Article 12-B-10(e), a member being recommended for an unsuitability discharge who had less than eight years of military service was entitled to notice of the proposed discharge and the reasons therefore and an opportunity to submit a statement in his own behalf. (Members with more than eight years of service were entitled to a hearing before an Administrative Discharge Board.)

Under COMDTINST 1900.4, the instruction for preparing DD 214s in 1974,⁵ members discharged for unsuitability because of a diagnosed personality, character, or behavior disorder under Article 12-B-10 of the Personnel Manual in 1974 received separation code 265 and reenlistment code RE-4.

Article 17-A-1-(h) of the Personnel Manual in effect in 1974 states that “[e]ntitlement to disability retirement or separation arises only on a determination of physical unfitness to perform duties. It does not arise at the convenience of the member on the mere existence of a disability or a condition ratable under the Veterans Administration Schedule for Rating Disabilities.” Article 17-A-12(c) states, “The mere presence of physical disability or of a disability ratable under the Veterans Administration Schedule for Rating Disabilities, or the fact that the evaluatee is currently on the sick list or hospitalized, does not require a finding of unfitness for duty.” Article 17-A-1(b) states, “The fact that a member is determined to be unfit for duty while on active duty is not sufficient by itself to entitle him to disability retirement or severance pay. There must be a medical conclusion that this unfitness is due to a disability incurred while entitled to basic pay.” Article 17-A-10(a) states that “[t]he term ‘physical disability’ does not include such inherent defects as behavior disorders, personality disorders,”

⁴ U.S. COAST GUARD, CG-207, PERSONNEL MANUAL (Amend. No. 41, 1974).

⁵ U.S. COAST GUARD, COMDTINST M1900.4, INSTRUCTIONS FOR THE PREPARATION AND DISTRIBUTION OF THE CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY, DD FORM 214, Encl. (2) (1973).

Under Chapter 5.B.2. of the Medical Manual and Article 12.B.16. of the Personnel Manual in effect today, members are administratively discharged (rather than medically separated) for diagnosed personality disorders that interfere with their performance of duty.

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 10 U.S.C. § 1552.
2. Under 10 U.S.C. § 1552(b), an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his military record. The applicant received his unsuitability discharge in 1974. Therefore, his application is untimely.
3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if 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 to determine 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 instructed 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."⁶
4. Regarding the delay of his application, the applicant argued that it would be in the interest of justice for the Board to excuse the untimeliness because his discharge was unfair and he has had open heart surgery. The applicant's argument is not compelling because he has not shown that anything prevented him from seeking correction of his record more timely. However, because the Board's cursory review of the record shows that the applicant may have been discharged at least in part due to hives, the Board will waive the statute of limitations and consider the case on the merits.
5. The applicant alleged that he should have received a medical separation in 1974 because he was being treated for hives, anxiety, and high blood pressure. However, Coast Guard members were not in the 1970s and are not today medically separated with a disability rating just because they have a medical condition when they are discharged.⁷ Medical separations were and

⁶ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁷ U.S. COAST GUARD, CG-207, PERSONNEL MANUAL, Art. 17-A-1(h) (Amend. No. 41, 1974) ("Entitlement to disability retirement or separation arises only on a determination of physical unfitness to perform duties. It does not arise at the convenience of the member on the mere existence of a disability or a condition ratable under the Veterans Administration Schedule for Rating Disabilities."); *Id.*, Art. 17-A-12(c) ("The mere presence of physical disability or of a disability ratable under the Veterans Administration Schedule for Rating Disabilities, or the fact that the evaluatee is currently on the sick list or hospitalized, does not require a finding of unfitness for duty."); U.S. COAST GUARD, COMDTINST M1850.2D, PHYSICAL DISABILITY EVALUATION SYSTEM, Chap. 2.C.2.i. (May 2006) (hereinafter "PDES MANUAL") ("Although a member may have physical impairments ratable in accordance with the

are received by members who are involuntarily separated because a physical disability incurred while serving on active duty has rendered them unfit for continued military service.⁸

6. Under Chapters 3-B-3(c)(4)(d) and 3-G-2(a) of the Medical Manual, only disabilities listed as potentially disqualifying for retention in Chapter 3-I could result in a member being referred to a Medical Board for evaluation and possible medical separation. Although the applicant complained of dizziness and a pounding heart on January 4, 1974, there is no evidence that he had hypertension that was disqualifying for retention on active duty under the criteria listed in Chapter 3-I-11(c)(1) of the Medical Manual. The hospital report dated February 5, 1974, shows that his cardiac examinations and all test results were normal.

7. The applicant's medical records show that at the time of his discharge, he was complaining of stress and urticaria (hives). Because doctors could not find a physical cause for the urticaria, he was evaluated by a psychiatrist, who diagnosed his conditions as a passive-dependent personality disorder and "urticaria, probably psychogenic" and noted that the applicant wanted out of the Coast Guard. The psychiatrist's diagnoses are presumptively correct.⁹

8. Personality disorders were not and are not considered physical disabilities by the Coast Guard or the DVA and so do not entitle a member to a medical separation.¹⁰ Under Chapter 3-I-16(x) of the Medical Manual, urticaria that is chronic, severe, and not amenable to treatment is disqualifying for retention on active duty and may result in a medical separation. However, the applicant's urticaria was apparently psychogenic—i.e., it resulted from the stress he felt about being in the Coast Guard due to his passive-dependent personality disorder. The applicant told the doctor that his hives cleared up when he was home on leave. Therefore, the doctors recommended that he be administratively discharged due to his personality disorder, which was in accordance with Article 12-B-10 of the Personnel Manual then in effect. In addition, the Board notes that the applicant's condition pre-existed his enlistment. He told the doctors that even as a young child he got hives when he was under stress, such as when he went to a dental appointment. Pre-existing conditions do not qualify a member for a medical separation. Article 17-A-1(b) of the 1974 Personnel Manual states that to be entitled to a disability discharge, "[t]here must be a medical conclusion that this unfitness is due to a disability *incurred while entitled to basic pay.*" [Emphasis added.]

VASRD, such impairments do not necessarily render him or her unfit for military duty ... Such a member should apply to the [DVA] for disability compensation after release from active duty.").

⁸ U.S. COAST GUARD, CG-207, PERSONNEL MANUAL, Art. 17-A-1(b) (Amend. No. 41, 1974) ("The fact that a member is determined to be unfit for duty while on active duty is not sufficient by itself to entitle him to disability retirement or severance pay. There must be a medical conclusion that this unfitness is due to a disability incurred while entitled to basic pay."); PDES MANUAL, Chap. 2.C.2.b. ("The law that provides for disability retirement or separation (10 U.S.C., chapter 61) is designed to compensate members whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty.").

⁹ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

¹⁰ U.S. COAST GUARD, CG-207, PERSONNEL MANUAL, Art. 17-A-10(a) (Amend. No. 41, 1974) ("The term 'physical disability' does not include such inherent defects as behavior disorders, personality disorders, primary mental deficiency, congenital or developmental defects, or developmental refractive errors of the eye."); 2006 MEDICAL MANUAL, Chap. 5.B.2.; 38 C.F.R. §§ 4.127 and 4.130.

9. Therefore, the preponderance of the evidence shows that the applicant's discharge resulted *not* from a physical disability incurred while on active duty but from a pre-existing personality disorder that caused him to feel stress while on active duty and to develop psychogenic hives that disappeared when he was at home. The applicant received all due process with respect to his discharge proceedings in 1974. As required under Article 12-B-10 of the Personnel Manual then in effect, he was notified on February 20, 1974, of the reason for his pending discharge and afforded an opportunity to submit a statement, which he declined. These are the same rights that a member diagnosed with a personality disorder has today.

10. The applicant pointed out that the DVA has diagnosed him with a service-connected anxiety disorder rated at 30% disabling and urticaria rated at 20% disabling and argued that these ratings show that the Coast Guard erred in discharging him due to a personality disorder. However, DVA ratings are "not determinative of the same issues involved in military disability cases."¹¹ Therefore, the fact that the DVA diagnosed the applicant with an anxiety disorder, rather than a personality disorder, and found his anxiety disorder and urticaria to be service connected even though he suffered urticaria when feeling stress as a child does not prove that the Coast Guard erred in diagnosing him in 1974 or in discharging him for a passive-dependent personality disorder.

11. The applicant stated that he continues to suffer embarrassment because of his discharge and does not use his military service to gain employment because of his diagnosis and unsuitability discharge. His DD 214, however, does not state that he was diagnosed with a personality disorder or that he was discharged for unsuitability. The only notation on his DD 214 that indicates his personality disorder is the separation code 265, and this was the correct code in 1974 for members who, like the applicant, were being discharged because of a diagnosed personality disorder.¹² The Coast Guard revised all of its separation codes in May 1975, when it began using letter codes instead of numerical codes, so separation code 265 has not been in use for almost 35 years.¹³ The Board is not persuaded that the code is erroneous or unjust.¹⁴

12. Accordingly, the applicant's request should be denied because he has not proved by a preponderance of the evidence that the Coast Guard committed an error or injustice by administratively discharging him due to a diagnosed personality disorder with separation code 265 instead of processing him for a medical disability separation.

¹¹ *Lord v. United States*, 2 Cl. Ct. 749, 754 (1983); see *Kirwin v. United States*, 23 Cl. Ct. 497, 507 (1991) ("The VA rating [in 1986] is irrelevant to the question of plaintiff's fitness for duty at the time of his discharge in 1978. Indeed, the fact that the VA retroactively applied plaintiff's 100% temporary disability rating only to 1982, and not 1978, gives some indication that plaintiff was not suffering from PTSD at the time of his discharge."); *Dzialo v. United States*, 5 Cl. Ct. 554, 565 (1984) (holding that a VA disability rating "is in no way determinative on the issue of plaintiff's eligibility for disability retirement pay.").

¹² U.S. COAST GUARD, COMDTINST M1900.4, INSTRUCTIONS FOR THE PREPARATION AND DISTRIBUTION OF THE CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY, DD FORM 214, Encl. (2) (1973).

¹³ U.S. COAST GUARD, COMDTINST M1900.4A, INSTRUCTIONS FOR THE PREPARATION AND DISTRIBUTION OF THE CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY, DD FORM 214 (May 14, 1975).

¹⁴ For the purposes of the BCMRs, "[i]njustice", when not also "error", is treatment by the military authorities, that shocks the sense of justice, but is not technically illegal." *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976). The Board has authority to determine whether an injustice exists on a "case-by-case basis." Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

ORDER

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

Jeff M. Neurauter

Lynda K. Pilgrim

Kenneth Walton