

**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. 2010-198**

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XXXXXXXXXXXXXXXXXXXX**

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**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 June 21, 2010, 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 10, 2011, 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 stated that his discharge was unjust and that he "want[s] to reenter the Coast Guard to serve [his] country with honor and respect." He stated that he passed a physical upon enlistment but was unjustly discharged just a few weeks later when he was found unfit for duty because of a brain tumor.

In support of his allegations, the applicant submitted a letter from his primary physician, who stated that the applicant's "grade 2 astrocytoma"<sup>1</sup> has been resected (removed) and that the applicant has been extensively reevaluated by a neurosurgeon and a neurooncologist. The physician stated that he supports the applicant's attempt to reenlist in the Coast Guard and that the applicant "is currently asymptomatic."

The applicant also submitted a letter from his neurosurgeon, who stated that the applicant underwent surgery on December 3, 2009, to remove "what proved to be a very low-grade tumor

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<sup>1</sup> In assessing astrocytomas, grade I is "reserved for special histologic variants of astrocytoma that have an excellent prognosis after surgical excision. ... At the other extreme is grade IV, *glioblastoma multiforme*, a clinically aggressive tumor. *Astrocytoma* (grade II) and *anaplastic astrocytoma* (grade III) are intermediate. ... A limitation of all grading schemes, especially when applied to a single biopsy, is that astrocytic tumors are histologically variable from region to region, and their histopathology may change with time. It is common for low-grade astrocytomas to progress over time to a higher histopathologic grade and a more aggressive clinical course. ... The overall prognosis is poor." See Braunwald, E., *et al.*, eds., HARRISON'S PRINCIPLES OF INTERNAL MEDICINE, 15th ed. (McGraw-Hill, 2001), p. 2444.

of the cerebellum. This tumor had extremely favorable features that are felt to be benign. All in all, he has in my opinion, an excellent neurologic prognosis and he will not require any additional treatment.” The neurosurgeon supported the applicant’s plan to enlist in the Coast Guard and stated that he could “see no neurosurgical contraindication whatsoever to him actively and fully participating in all activities related to his role in the Coast Guard. This, I would like to emphasize, is not a malignant neoplasm; it is extremely benign and he is neurologically well.”

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on July 21, 2009, and was discharged from boot camp on September 17, 2009, for failure to meet the physical procurement standards. Medical notes dated September 14, 2009, show that a brain tumor was revealed by an MRI that was conducted when, during a dental examination, the applicant was unable to lay flat on his back with his head straight without getting dizzy to the point of fainting. He stated that he had first noticed his dizziness upon lying flat more than six years earlier. The tumor measured approximately 1.8 x 1.5 centimeters.

The applicant received an uncharacterized entry level separation, pursuant to Article 12.B.12. of the Personnel Manual, due to “Failed Medical/Physical Procurement Standards,” with an RE-3G reenlistment code, which means that he is eligible to reenlist except for a disqualifying factor, which is a “Condition, Not a Disability,” and a JFW separation code, which means that he was involuntarily discharged for failing to meet the medical and/or physical standards for enlistment.

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

On October 27, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC). The PSC alleged that the applicant has failed to substantiate any error or injustice in his record and stated that if the applicant wants to reenlist, he must “go through a Coast Guard recruiter to initiate the accession process ... and prove the disqualifying factor has been resolved prior to enlistment.”

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

On November 25, 2010, the applicant responded to the views of the Coast Guard. The applicant alleged that at the time of his discharge, “it had not yet been determined whether the mass in my brain was a tumor or not,” so he should have undergone further testing and he should only have been discharged if the tumor was malignant.

The applicant stated that his surgery proved that his tumor was benign. He argued that he should not have been discharged because the tumor did not interfere with his function. He noted that he had graduated from basic training and passed all of the medical and mental examinations to become an aviation survival technician. In addition, he argued, “since no additional testing

had been performed, it was impossible to determine if my condition would require either frequent specialized attention or whether it had a high malignant potential.”

The applicant stated that he has been to a recruiter who said “he would be happy to help fight my case to help me reenlist.” However, he argued, his RE-3G reenlistment code is erroneous because his tumor did not interfere with his performance of duty. (An RE-1 code would make the applicant eligible to reenlist without any review or waiver.)

### **APPLICABLE LAW**

Chapter 3.D of the Medical Manual lists the physical standards for enlistment. Chapter 3.D.32.a. of the Medical Manual provides that “[c]urrent benign tumors (M8000) or conditions that interfere with function, prevent the proper wearing of the uniform or protective equipment, shall require frequent specialized attention, or have a high malignant potential, such as Dysplastic Nevus Syndrome, are disqualifying.”

Article 12.B.12.a.5.c. of the Personnel Manual states that recruits can be discharged for “fail[ing] to successfully complete established physical fitness accession standards prior to completion of training.”

Article 12.B.20.a.1.c. of the Personnel Manual authorizes “uncharacterized” discharges for members with fewer than 180 days of active service who “[e]xhibit minor pre-existing medical issues not of a disabling nature which do not meet the medical/physical procurement standards in place for entry into the Service.”

Article 2.D.1.a.5. of the Recruiting Manual states that an RE-3 reenlistment code “is not a bar to enlistment or reenlistment and shall not be, by itself, the reason to reject a prospect or applicant. ... A prior service prospect with a RE-3 (alpha character) code must prove the disqualifying factor has been resolved before enlistment can take place. Recruiters shall forward documentation and/or statements regarding disqualifying factors to [the Recruiting Command] for enlistment authorization.”

Under the Separation Program Designator (SPD) Handbook, members who are being involuntarily discharged for failing to meet the enlistment standards in the Medical Manual may receive a JFW separation code and either an RE-3G, RE-3X (motion sickness or nonswimmer), or RE-4 (ineligible to reenlist) reenlistment code.

### **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 10 U.S.C. § 1552. The Board finds that the applicant has exhausted his administrative remedies, as required by

33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice.<sup>2</sup>

2. The applicant alleged that he should not have been discharged and that his reenlistment code, RE-3G, should not reflect a disqualifying condition that interfered with his performance of duty. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>3</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>4</sup>

3. The record shows that although the applicant passed the usual physical examinations for enlistment, he was unable to lie flat on his back with his head straight for dental treatment during basic training. An MRI revealed that he had a brain tumor, as stated in the medical notes dated September 14, 2009. In accordance with Articles 12.B.12. and 12.B.20. of the Personnel Manual, the Coast Guard discharged him for failing to meet the physical standards for procurement in Chapter 3.D.32. of the Medical Manual.

4. The applicant alleged that the Coast Guard's decision was erroneous because at the point of his discharge, it had not yet been determined whether he had a tumor. However, the medical notes dated September 14, 2009, state that the MRI showed that the applicant had a brain tumor, which clearly predated his enlistment on active duty.

5. The applicant alleged that the Coast Guard's decision to discharge him was erroneous because his tumor was benign and did not interfere with his function, prevent him from wearing the uniform or protective gear, require frequent specialized attention, or have a high malignant potential, as required by Chapter 3.D.32.a. of the Medical Manual. However, the tumor did prevent the applicant from lying on his back for a dental examination without getting dizzy, and he has not shown that he would never be required to perform duties requiring him to lie on his back. Moreover, the surgical removal of the tumor no doubt required frequent specialized medical attention. Therefore, the Board finds that the applicant has not proved by a preponderance of the evidence that the Coast Guard erred by discharging him for having a pre-existing brain tumor. With regard to the applicant's allegations about the nature of the tumor, the Board notes that although the neurosurgeon wrote that the applicant's tumor had "features that are felt to be benign," his tumor was grade 2.

6. Under the SPD Handbook, the JFW separation code and the RE-3G reenlistment code were the appropriate codes to assign the applicant since he was being discharged for failing to meet the procurement standards due to a pre-existing condition. The Board finds that the

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<sup>2</sup> The Board notes in this regard that the Discharge Review Board does not normally handle medical cases.

<sup>3</sup> 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

<sup>4</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

applicant has not proved by a preponderance of the evidence that these codes are erroneous or unjust.

7. Accordingly, the applicant's request should be denied. The Board notes, however, that an RE-3G reenlistment code is not an absolute bar to reenlistment and that under Article 2.D.1.a.5. of the Recruiting Manual, the Recruiting Command evaluates the fitness for duty of veterans with RE-3G codes individually and may approve their reenlistment based on the needs of the Service.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of former SR xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

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Lillian Cheng

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Megan Gemunder

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Donna A. Lewis