

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

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2008-094

**XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX**

FINAL DECISION

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 March 21, 2008, upon receipt of the applicant's completed application, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated December 17, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant asked the Board to correct his record to show that he was awarded the Coast Guard Meritorious Unit Commendation for the period June 1, 1994 through July 3, 1996, the Coast Guard "E" Ribbon for the period May 16, 1994 through June 2, 1994, while on the CGC STORIS, and the Coast Guard Unit Commendation for the period May 1, 1993 through September 30, 1995 while assigned to the Petaluma Training Center.

The applicant entered active duty on August 3, 1993. He was placed on the temporary disability retired list (TDRL) and temporarily retired on May 18, 1998, with an SFK (temporary disability) separation code and an RE-3P (eligible for reenlistment with waiver) reenlistment code.

On March 1, 2001, the applicant was removed from the TDRL and discharged from the Coast Guard by reason of physical disability with a 20% disability rating for which he received severance pay. He is currently requesting that his DD Form 214 be corrected to change the type of separation from retired to discharged, the separation code from SFK to KBK (completion of required service), and the reenlistment code from RE-3P to RE-1 (eligible to reenlist). He is also requesting that block 4.a. of his DD Form 214 be corrected to show FNMK as his rate instead of FN.

The applicant claimed that he discovered the alleged error on May 19, 1998 and that he has tried since then to have his DD Form 214 corrected. Documents in his military record show that on March 17, 2001, he sent a letter to National Personnel Records Center requesting a copy

of his DD Form 214. On December 6, 2001, he sent another letter to NPRC stating that he was in contact with the Coast Guard about certain inaccuracies on the DD Form 214 but needed a copy of all of his records to corroborate his contentions. NPRC sent the applicant a letter dated February 5, 2003, informing the applicant that it did not have authority to review and approve amendments or corrections to records. NPRC enclosed a DD Form 149 for the applicant to request corrections through the BCMR. The applicant stated that on December 20, 2007, Coast Guard Personnel Command corrected block 14 (Military Education) of his DD Form 214 through the issuance of a DD Form 215.

VIEWS OF THE COAST GUARD

On August 12, 2008, the Board received an advisory opinion from the office of the Judge Advocate General (JAG) of the Coast Guard. The JAG adopted the facts and analysis provided by the Commander, Coast Guard Personnel (CGPC) as the advisory opinion.

CGPC recommended that the Board grant the following partial relief to the applicant through the issuance of a DD Form 215:

- That Item 13 of the DD Form 214 be corrected to show that the applicant earned the “Coast Guard Meritorious Unit Commendation” and the “Coast Guard “E” Ribbon.”
- That Item 23 of the DD Form 214 be corrected to show that the applicant was discharged instead of retired.
- That Item 26 of the DD Form 214 be corrected to show JFL (disability severance pay) as the separation code rather than SFK.
- That Item 28 of the DD Form 214 be corrected to show disability severance pay instead of temporary disability as the narrative reason for separation.
- That the following remarks be added to Item 18: “Effective March 1, 2001, status change from temporary retired to disability with severance pay –type of separation, separation code and narrative reason updated for separation to reflect status change.”

CGPC reached the following conclusions after reviewing the applicant’s application and service record:

1. A complete review of the applicant’s record supports that he is entitled to the award of the Coast Guard Meritorious Unit Commendation and the Coast Guard “E” Ribbon for his service on board the Coast Guard cutter STORIS (WMEC 38).
2. The applicant contends that he is entitled to the Coast Guard Unit Commendation. There is no indication in the Applicant’s record that he was awarded this award. The applicant was assigned to Training Center Petaluma from approximately July 1995 through May 18, 1998. The applicant’s record does not contain more specific dates for this assignment. Training Center

Petaluma was awarded the Coast Guard Unit Commendation for the period May 1, 1993 through September 30, 1995 . . . the applicant was assigned to this unit for approximately 90 days out of the 870-day period covered by this award (10% of the period) . . . [Article 2.A.1. of the Medals and Awards Manual] prescribes a 50% participation standard unless the individual is specifically recommended for such award. There is no indication that the applicant was specifically recommended for the Coast Guard Unit Commendation Ribbon.

3. The applicant states that item 4.a. of his DD Form 214 should reflect FNMK (fireman machinery technician) vice FN (fireman). The applicant's record shows that he received training in engineering specific courses. However, there is no indication that he attended Machinery Technician Class "A" School or successfully completed the Machinery Technician striker program and was designated as a Machinery Technician. The applicant has not substantiated that he was in fact assigned the MK rating designator.

4. The applicant further requests that his DD-214 be corrected to reflect that he was discharged vice retired and that his separation code, reentry code and narrative reason for separation be updated accordingly. The applicant's status at the time he departed active duty on May 18, 1998, was temporary disability retired list (TDRL). He was subsequently found not fit for duty, assigned a disability rating of 20% and separated with severance pay effective March 1, 2001 . . . At the time of issuance and for the period of service indicated, the DD-214 correctly identifies the applicant's status. The applicant was properly assigned SPD Code SFK . . . upon being placed on the TDRL, although he should have been assigned a RE-2 [retired] vice RE-3P Reentry Code.

5. The applicant requests his SPD Code be changed to "KBK", which reflects "completion of required service" . . . The applicant's discharge with severance pay does not support the assignment of this SPD Code. Rather, effective on March 1, 2001, the appropriate code would be JFL, "Disability Severance Pay". SPD Code JFL carries a Reentry Code of RE-3P. Therefore, the applicant should be issued a DD-215 correction changing item 23 to "Discharged", item 26 to "JFL", item 28 to "Disability Severance Pay". The following notation should be included in the remarks: "Effective March 1, 2001, status changed from Temporary Retired to Disability with Severance Pay--Type of Separation, Separation Code and Narrative Reason for Separation updated to reflect status change." The issuance of a DD-215 is desired vice a new DD-214 as the DD-215 more clearly shows a change in status from the TDRL to separation with disability retirement.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 14, 2008, a copy of the views of the Coast Guard was mailed to the applicant for his response. The Board did not receive a response from the applicant.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law.

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was not timely.

2. To be timely, an application for correction must be filed within three years of the date the alleged error or injustice was, or should have been, discovered. See 10 U.S.C. § 1552, 33 CFR § 52.22.

3. The applicant stated that he discovered the alleged error in 1998. However, it appears from the record that the earliest the applicant could have discovered the alleged errors with respect to the type of discharge, reason for his discharge, and separation was March 1, 2001 the date on which his status changed from temporarily retired by reason of physical disability to discharged by reason of physical disability with severance pay. Using the 2001 "change in status" date, the applicant still filed his BCMR application more than three years past the statute of limitations.

4. 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 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." *Id.* at 164, 165. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

5. The Board finds that it is in the interest of justice to waive the statute of limitations in this case, because the applicant's military record contains some proof that he attempted to have alleged errors corrected, having some success in December 2007. Also, there appears to have been some confusion as to when the error actually began. In this regard, the applicant believed it occurred in 1998 and the Coast Guard believed that no error occurred at all, but rather a change in the applicant's status occurred in 2001. Last, based upon the Coast Guard's recommendation for partial relief, it appears that the applicant's claim has some merit. Therefore the Board finds that it is in the interest of justice to excuse the applicant's untimely filing in this case.

6. The Coast Guard recommends, and the Board agrees, that the applicant's record should be corrected to show that he earned the Coast Guard Meritorious Unit Commendation and the Coast Guard "E" Ribbon for his service on board the Coast Guard Cutter STORIS (WMEC 38). The Board accepts that the Coast Guard has performed a thorough review of the applicant's record and has found evidence that supports his contention that he earned these awards while in the Coast Guard.

7. However, the applicant has not presented sufficient evidence to prove that he earned the Coast Guard Unit Commendation. As the JAG stated, there is no evidence in the applicant's

military record that he is entitled to this award. Under Article 2.A.1. of the Medals and Awards Manual, a member must have participated with the unit for at least half of the period for which the award was given. In this case the applicant was assigned to the unit that received the award for approximately 90 days of the 870-day period covered by this award, far less than the 50% required. Therefore, he was not entitled to the Coast Guard Unit Commendation and the Coast Guard did not commit an error in this regard.

8. The applicant also requested that his DD-214 be corrected to reflect that he was discharged vice retired and that his separation code be changed to KBK and his reenry code be changed to RE-1. Although the applicant's DD Form 214 accurately reflected his situation when it was issued in 1998, the Coast Guard recommended the issuance of a DD Form 215 to reflect the change in the applicant's status upon his removal from the TDRL in 2001. In this regard, the Coast Guard recommended changing the applicant's separation from retired to discharged, his separation code from SFK to JFL (Disability Severance Pay), his narrative reason from temporary disability to disability severance pay, and noting the following in block 18: "Effective March 1, 2001, status changed from Temporary Retired to Disability with Severance Pay--Type of Separation, Separation Code and Narrative Reason for Separation updated to reflect status change." The applicant requested but is not entitled to a KBK separation code because he was not discharged due to completion of required service as that code would indicate. Instead, the applicant was discharged due to a physical disability for which he received severance pay. Nor is he entitled to an RE-1 reenlistment code because he is not eligible to reenlist due to a disqualifying physical disability unless he obtains a waiver.

9. The Board notes that Chapter 1.B.3. of COMDTINST M1900.D (Certificate of Discharge or Release from Active Duty, DD Form 214) states that a DD form 214 will not be issued to members who are being removed from the TDRL, which was the applicant's situation. According to Chapter 1.K. of COMDTINST M1900.D if information may not be entered on a DD Form 214, then such information cannot be entered on a DD Form 215. However since the advisory opinion has been sent to the applicant and he has registered no objection to the relief recommended by the Coast Guard, it would be unjust to the applicant for the Board to deny the recommended relief. However, the Coast Guard is directed to review this provision for consideration in future cases of similar type.

10. The Board agrees with the JAG that the issuance of a DD-215 is more appropriate than the issuance of a new DD-214 because the DD-215 will clearly show the change in his status from placement on TDRL to time of actual separation with disability severance pay. The Board will direct the changes as recommended by the JAG because doing so will eliminate any injustice suffered by the applicant under the circumstances.

11. The applicant alleged that his rate should have been FNMK. He presented no evidence that he graduated from MK "A" School or that he completed the MK striker course. Therefore, he has failed to prove error by the Coast Guard in not designating him as a FNMK on his DD Form 214.

12. Accordingly, the applicant is entitled to the relief recommended above.

ORDER

The application of former XXXXXXXXXXXXXXXX, USCG, for correction of his military record is granted in part. His DD Form 214 shall be corrected through the issuance of a DD Form 215 with the following modifications:

Block 13 shall show the addition of the Coast Guard Meritorious Unit Commendation Medal and the Coast Guard "E" Ribbon for his service on board the Coast Guard cutter STORIS (WMEC 38) .

Block 23 shall show "discharged" as the type of separation.

Block 26 shall show JFL as the separation code.

Block 28 shall show "disability severance pay" as the narrative reason for separation.

Block 18 shall include the remarks "Effective March 1, 2001, status changed from Temporary Retired to Disability with Severance Pay Type of Separation, Separation Code and Narrative Reason for Separation updated to reflect status change."

All other relief is denied.

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