

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-095

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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 April 14, 2006, upon receipt of the applicant's completed application and military and medical records.

This final decision, dated January 11, 2007, is 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 her record so that the Coast Guard is responsible for her pain and suffering, medical bills, lost wages, any permanent disability, and any other losses resulting from or related to a left knee injury that she allegedly incurred while in recruit training.

The applicant alleged that on August 6, 2004, while in recruit training another recruit ran into the applicant knocking her into a locker. She stated that as a result of hitting the locker, her kneecap "popped out" and she was taken by ambulance for treatment. On September 3, 2004, after several weeks of treatment, the Coast Guard discharged the applicant with an uncharacterized discharge, by reason of failed medical/procurement standards, with an RE-3G¹ reenlistment code and a JFW²

¹ An RE-3G reenlistment code means that the applicant is eligible for enlistment except for disqualifying factor: failed medical/physical standards.

separation code. In letters to both her congressman and senator she denied that her injury was preexisting and she asserted that the Coast Guard medical report failed to state that another recruit ran into her and knocked her into a locker. The applicant stated that she was discharged without benefits or compensation and that she desperately needed help. She alleged that the Coast Guard did not properly report how her injury happened and that it did not properly discharge her. She stated that she wants to be made whole in every way.

SUMMARY OF RECORD

On May 6, 2004, the applicant enlisted in the delayed entry program.³ On August 3, 2004 she was discharged from the delayed entry program and enlisted in the regular Coast Guard for four years. She did not indicate any health problems on her enlistment medical history report form or on her pre-training medical report form.

On August 6, 2004, the applicant reported to the emergency room for treatment of left knee pain. The treatment record states that the applicant reported that she was at a locker when her knee popped out and she fell causing it to hit the locker. The treatment record further reports that the applicant stated, " [a] similar episode occurred at age 17 when [she] slipped at work." The applicant was diagnosed with subluxation (partial dislocation) of the left knee, for which she was treated with Motrin, placed on crutches, and told to return for a follow-up in three days.

The applicant had a physical therapy consult on August 10, 2004. The physical therapist noted that the applicant had suffered a previous dislocation four months earlier but did not note it on her MEPS physical.

Subsequent to the emergency room treatment and physical therapy, the recruit training medical officer found that the applicant did not meet the minimum standards for enlistment and retention in the Coast Guard due to a recurrent patella dislocation. He found her prognosis for further military service to be good. He further stated the following on the recruit discharge summary report:

Recruit is a 18-year old female who initially presented to medical in her first week of training complaining of left knee pain after a self reducing patella dislocation. [The applicant] reports that she has had this problem once before where it kept her out of commission for a couple of months. She was first treated for the second of her patellar dislocations on 6

² A JFW separation code means that the applicant was involuntarily discharged due to failure to meet established medical and/or physicals procurement standards.

³ The delayed entry program is a recruiting tool that allows the Coast Guard to enlist members in the Reserve for up to 180 days, at which time or before they are required to join the regular Coast Guard and are discharged from the Coast Reserve.

August 2004 with knee immobilization and crutches. The hope was that she would progress quickly with daily PT and conditioning. She remained on the ward and initially made good progress to the extent that she could bear some weight and walk without the use of crutches. She has however reached a clinical endpoint. The x-rays, MRI and exam support the diagnosis of a second dislocation (recurrent). [The applicant] should be sent home for rest and conditioning. Due to the nature of this injury, its pre-existence, possible re-occurrence is common. [The applicant] should follow-up with an orthopedic surgeon at home. Likelihood for future service is good. If after a sixth month of demonstrated stability in the knee and clearance from an orthopedic surgeon, consideration for USCG military can be made at that time.

On August 31, 2004, the health services technician prepared a memorandum notifying the applicant's command that the medical officer had found the applicant disqualified for continued service due to recurrent dislocation of the left patella. The memorandum also stated that the applicant had been informed of the medical officer's findings and recommendation that she be processed for discharge. The applicant did not request a waiver of the disqualifying condition, and indicated her desire not to request a waiver by circling the word "did not" and writing her initials underneath when asked if she wanted to request a waiver. The applicant also acknowledged with her signature that she had read and understood the information in the memorandum and that she had had the opportunity to ask questions pertaining to her condition.

An August 31, 2004 entry was placed in the applicant's health record entitled "SUBSTITUTION PHYSICAL EXAMINATION" for the purpose of discharge. The applicant acknowledged with her signature a recommendation that she was fit for discharge with no limitation and that she denied any other injury or illness. On September 3, 2004, the applicant was discharged from the Coast Guard. She had served for one month and one day.

The applicant submitted a medical report of an examination performed after her discharge by a civilian physician, Dr. B. She argued that his examination proves the Coast Guard's diagnosis of a second dislocation was incorrect. She stated Dr. B's medical report verifies that her "past history is absolutely normal." In the history portion of Dr. B's initial examination of the applicant on September 14, 2004, he wrote the following:

This eighteen-year old white female is seen for orthopedic evaluation with the chief complaint of pain in the left knee. She smashed her knee into a locker. She knocked her kneecap out of place. This happened on 08-06-04 at boot camp for the Coast Guard. The knee throbs. It gives way. It is made worse whenever she puts pressure on it. It does not lock. It grinds

and it pops. Icing it and elevating it will make it better. Standing for long-periods of time will hurt. She describes an aching, stabbing pain. On a pain scale of 10 she rate it as a 5. Ninety-five percent of the time she has pain.

Her past history is absolutely normal.

Dr. B reported that the X-rays of the applicant's knee show that the applicant's patella "rides pretty nice" on the merchant view and that on the bent knee PA view every thing looks normal. The lateral view of the x-ray showed that the applicant had a very long infrapatellar tendon with patella alta.⁴ Dr. B's impression was that the applicant suffered from "patellofemoral syndrome,⁵ left knee, with patella alta and ligamentous laxity.⁶ He recommended isometric exercises rather than surgery at that time.

In a January 5, 2005 note of an office visit regarding the applicant's ability to perform a job with the post office, Dr B wrote that the applicant reported that her knees give her occasional difficulty. He stated that his examination revealed patellofermoral crepitus, both knees and diagnosed her with "patellofemoral syndrome, left knee patella alta, ligamentous laxity. He stated that "[the applicant] does not need any surgical procedures. As far as I'm concerned, she can do whatever she so desires. I don't find anything seriously wrong with her. It is my opinion she is capable of working for the post office."

The record indicates that the applicant did not visit Dr. B again until September 2005, during which month she had an MRI performed on the knee. The radiologist interpreted the MRI as showing the following: " 1. Patella is somewhat laterally positioned at knee but frank dislocation is not identified at present time. 2. Patella tear involving upper surface of posterior horn of medial meniscus. Tear is linear and horizontal."

⁴ Patella alta is an abnormally high kneecap. See *Dorland's Illustrated Medical Dictionary*, 29th edition, p. 1335.

⁵ "Patellofemoral syndrome is characterized by a group of symptoms that are easily diagnosed and often respond to simple management. The common presentation is knee pain in association with positions of the knee that result in increased or misdirected mechanical forces between the kneecap and the femur. See <http://www.emedicine.com/pmr/topic101.htm>

⁶ Ligament laxity is defined as loose ligaments. See https://www.caringmedical.com/conditions/ligament_laxity.htm

Dr. B wrote in a medical note dated November 30, 2005, that he advised the applicant to undergo a Maquet procedure.⁷ A medical note dated December 30, 2005, states that surgery was done three weeks ago.

The applicant submitted evidence of fourteen statements of insurance payments for doctor visits and surgery. She is requesting reimbursements for these costs. The applicant also complained that upon discharge the Coast Guard would not send her to her grandparents home in New York, but rather to her home of record, Orlando, FL. In this regard, the applicant stated the following:

I was transported to Philadelphia airport and left with a voucher to fly to Orlando even though it was known that the Orlando airport was closed due to the hurricane. I asked to be shipped to N.Y. to my grandparents instead and was told the voucher was good for my home state of record and the Coast Guard would not change it. I was left stranded at the airport so I called my mother in Lake Mary, Florida. She bought a plane ticket to Tampa and picked me up that night.

VIEWS OF THE COAST GUARD

On August 22, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. The JAG adopted the facts and analysis provided by Commander, Coast Guard Personnel Command (CGPC) as the Coast Guard's advisory opinion. CGPC made the following conclusions:

1. The applicant contends that her record is incorrect in that there lacks notation that she was pushed by another recruit which resulted in her knee injury. The applicant's record makes no mention of another recruit causing her injury and contrary to her statement to the BCMR, the record indicates that the applicant's "knee popped out and she fell causing her knee to hit the locker" . . . The applicant has not substantiated any error/injustice in this regard other than her own statement made after the fact.
2. The applicant states in her BCMR application that the record is incorrect in that she never had a previous patella dislocation. The

⁷ Maquet procedure is the "anterior elevation of the tibia tuberosity (the site of the patellar tendon insertion . . . It is based on the concept that articular pressure (and therefore pain) can be diminished if the patella is elevated off the trochlea." See http://www.kneehippain.com/patient_pain_surgery.php p. 5.

accession medical history prepared by the applicant states no history of previous knee injury . . . However, at the time of the applicant's injury on [August 6, 2004⁸] she disclosed that she previously had a similar patella dislocation at age 17. The August 10, 2004 physical therapy narrative notes that the applicant disclosed a previous patella injury approximately 4 months prior and that the injury was not noted on the MEPS physical . . . [The recruit discharge summary sheet] indicates that her physical examination, X-ray, and MRI results support a recurrent patella dislocation. There is nothing to substantiate that the medical findings or the applicant's statements [in the various medical entries] are incorrect. The applicant did not initially divulge any pre-existing injury at the time of her accession, however in the interest of her medical treatment for the current dislocation, she disclosed the previous dislocation on multiple occasions. Additionally, there is no indication at the time of exam[ination] or discharge that the applicant contested such findings, and she did not request a waiver . . .

3. The Coast Guard followed well established procedures when discharging the Applicant with an uncharacterized entry level discharge . . . Recurrent dislocation of the patella is a disqualifying condition for accession . . . The Coast Guard elected to discharge her with an uncharacterized discharge in lieu of a less favorable discharge due to her failure to divulge a disqualifying medical condition, fraudulent enlistment. The applicant received all indicated studies and medical care prior to discharge. The applicant's record does not support any of her allegations and the applicant has not demonstrated any injustice or error with her record.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On September 25, 2006, the BCMR received the applicant's response to the views of the Coast Guard. The applicant stated that she did not list any history of knee trouble on her enlistment and pre-training medical forms because she never had any history of knee trouble. She stated that she never saw a physician for any kind of knee pain or injury prior to joining the Coast Guard. She stated that she played soccer, softball and lacrosse with no prior knee pain or injury. According to the applicant, her mother denied that the applicant had a prior history of knee problems during a telephone conversation with Coast Guard personnel.

⁸ The advisory opinion contained an incorrect date of June 8, 2004. In fact the emergency care and treatment record shows the date of the applicant's injury as 06/08/04 corresponding to day, month, and year.

The applicant questioned how she was able to pass her physicals if she had incurred a knee injury four months earlier that had kept her out of commission for a couple of months as indicated on the physical therapy consult and recruit discharge summary report. She stated that she was given "3 physicals before she entered basic training and a 'pre-existing knee condition' was never mentioned to [her]."

The applicant restated her contention that another recruit pushed her into a locker causing the applicant's knee to slam into the locker and her kneecap to pop out. She stated that it was only after her discharge and arrival home that she began to review her medical records and discovered that the Coast Guard had "falsified her medical report" leaving out crucial information of how she sustained the knee injury. The applicant queried how she could substantiate the alleged error or injustice in her record, other than by her own statement, when there was no investigation into or injury report of the knee injury. She further stated that "[she] was an 18 year old female who enlisted in the service and placed her life, well-being and trust in the hands of the United States Coast Guard believing that the Coast Guard was going to protect her, not betray her and betray her is exactly what the Guard did. The Guard relied on the naivety of an 18-year old female knowing she would trust the Guard and never question the records until after she was discharged."

With respect to the memorandum she signed acknowledging her disqualifying condition and medical officer's recommendation, the applicant stated, "she was told that she could not go home unless she signed the documents." She denied that the information contained in the memorandum was not explained to her and that when she asked questions she was told "to sign [the memorandum]. If you don't, we cannot discharge you."

SUMMARY OF APPLICABLE LAW

Disability Statutes

Title 10 U.S.C. § 1201 provides that a member who is found to be "unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay" may be retired if the disability is (1) permanent and stable, (2) not a result of misconduct, and (3) for members with less than 20 years of service, "at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination." Title 10 U.S.C. § 1203 provides that such a member whose disability is rated at only 10 or 20 percent under the VASRD shall be discharged with severance pay. Title 10 U.S.C. § 1214 states that "[n]o member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it."

Coast Guard Personnel Manual

Article 12.B.20 of the Personnel Manual authorizes uncharacterized discharges for entry-level separations for personnel who: "a. Have fewer than 180 days of active service on discharge, **and** b. Demonstrate poor proficiency, conduct, aptitude or unsuitability for further service during the period from enlistment through recruit training, **or** c. Exhibit 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."

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 section 1552 of title 10 of the United States Code. The application was timely.

2. The applicant has failed to prove that the Coast Guard committed an error or injustice by discharging her with an uncharacterized discharge due to "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." Three days after reporting to recruit training the applicant suffered an injury to her left knee. The emergency treatment record, the physical therapy record, and the recruit discharge summary all state that the applicant admitted that she had suffered a similar injury to her knee prior to joining the service. In this regard all three reports are consistent. For instance the emergency treatment record indicated that the applicant reported a, "similar episode occurred at age 17 when [patient] slipped at work." The physical therapy consult reported that the applicant had a previous patella dislocation four months ago. The recruit discharge summary stated, "[the applicant] reports that she has had this problem once before where it kept her out of commission for a couple of months."

3. In addition, the medical officer noted in the discharge summary that the "x-rays, MRI, and exam[ination] support the diagnosis of a second dislocation (recurrent)." The applicant does not dispute that she was given these diagnostic tests and in fact signed the memorandum acknowledging that she had been informed of her condition and the medical officer's recommendation and that she had been provided with the opportunity to ask questions. She offered no objections to the medical officer's findings and recommendation at that time. Her argument that she could not go home unless she signed the memorandum is not proof that she failed to understand its contents or that she was coerced into signing it.

4. The applicant denied that she had suffered the same type of injury to her left knee prior to entering the service and further denied that she had ever suffered an injury to her knees. In support of her contention, she offered Dr. B's statement that the applicant's "past history is absolutely normal." The Board is not persuaded by the doctor's statement because it does not prove that the applicant did not have a pre-existing problem with her knee. In this regard, Dr. B does not state that the applicant's past history with respect to her left knee is absolutely normal; instead he makes a general statement "her past history is absolutely normal" which could mean anything. Even if Dr. B's statement was in reference to the applicant's left knee, he provided no explanation for how he reached the conclusion that the applicant did not have a similar problem with her knee prior joining the Coast Guard. The Board would be more persuaded by Dr. B's medical report if he had stated how long he has known the applicant and whether he has treated her in the past. Further yet, the Board would find Dr. B's statement more credible if Dr. B had X-rays of the applicant's knee prior to joining the Coast Guard that he compared with the current x-rays and that in his professional judgment he found her knee to be normal based on that comparison. Without more, the Board finds that Dr. B. based his report of the applicant's report of her history after her discharge from the Coast Guard. Accordingly, neither the applicant's denial nor Dr. B's statement, whether considered together or singularly, are sufficient to prove that the applicant did not make the statements attributed to her by the three Coast Guard medical personnel mentioned above or that she did not in fact have a pre-service left knee condition.

5. In challenging the comment in the recruit discharge summary that the prior knee injury kept her out of commission for couple of months and the comment in the physical therapy consult that she had a similar problem four months ago, the applicant argued that she passed all of her physical examinations for entry into the Coast Guard. However, the Board notes that the applicant enlisted in the delayed entry program in May 2004 and did not report for active duty until August 3, 2004, a period of approximately, three months. Therefore, it is possible that the applicant could have incurred the injury and it could have healed during this three-month period. If the applicant did not mention the problem during her enlistment physicals there would have been no need for the Coast Guard to perform more extensive diagnostic examinations. The Board notes that the applicant affirmed on August 4, 2004 that there had been no changes in her health since her MEPS physical, but made admissions of having sustained a prior injury to Coast Guard medical personnel two days later.

6. The applicant makes much of the fact that the emergency medical report allegedly failed to accurately report how her injury occurred. She stated that she was pushed into a locker by another recruit and hit her knee causing the kneecap to pop out. The emergency treatment report stated that the applicant stated, "she was at locker when knee popped out and she fell causing her knee to hit locker." The Board finds that that description of how the injury occurred in the emergency treatment record is

consistent with what she reported to Dr. B, who wrote that "[The applicant] smashed her knee into a locker. She knocked her knee-cap out of place." There is no mention in Dr. B's report or Coast Guard medical reports of another recruit pushing the applicant into a locker causing her knee to dislocate. The applicant has failed to prove that the description of her injury as stated in the emergency treatment record is inaccurate.

7. In light of the applicant's admission that she suffered a pre-existing injury to her left knee, the Coast Guard acted with leniency by discharging her with an uncharacterized discharge, rather than by fraudulent enlistment⁹, which most probably would have resulted in an RE-4 (not eligible to reenlist) reenlistment code and may even have resulted in a general discharge under honorable conditions rather than the uncharacterized discharge she received.

8. The applicant made several other complaints and allegations. Those not discussed within the Findings and Conclusions are either considered to be without merit or not dispositive of the issues in this case.

9. The applicant has failed to prove that the Coast Guard committed an error or injustice or that her discharge was improper. Accordingly her request for relief should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

⁹ Article 12.B.18.b.2 of the Personnel Manual states that CGPC may discharge a member for misconduct who procured a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment that, if known at the time, might have resulted in rejection. The provision further states that the Commanding Officer, Training Center Cape May, is delegated final discharge authority under this Article in these specific cases for members assigned to recruit training or prior service training program: a. Deliberately concealed criminal records or other information necessary to effect enlistment. b. Any current or past medical conditions or problems discovered during recruit training, or prior service training program, which would have prevented enlistment in the Coast Guard, had they been known.

ORDER

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

Jordan S. Fried

George J. Jordan

Charles P. Kielkopf