

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-222

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

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 application upon receipt of the applicant's completed application on August 3, 2011, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated June 21, 2012, 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 former member of the Coast Guard Reserve, asked the Board to reinstate her in the Reserve, with no loss of time in service or other negative consequences. She also requested that "the monies taken from [her] paycheck due to assessed travel overpayments be refunded to [her]." Last she requested that her release from active duty (RELAD) in September 2006 be reviewed for errors.

FACTUAL BACKGROUND

The applicant was an enlisted member of the Reserve until September 22, 2002 when she was commissioned as an ensign.

From March 31, 2003, through September 25, 2006, the applicant served on active duty. The applicant stated that she served the first six months on active duty in New Orleans, her hometown, and the remainder of her active duty in Washington, D.C. on temporary duty (TDY). She stated that lodging expenses while on TDY were reimbursed on a dollar-for-dollar basis and claims for reimbursement were submitted on a monthly basis.

According to a December 18, 2006, Coast Guard letter to the applicant's senator, she served under title 10 contingency orders from June 2003 to September 2003. The Coast Guard

stated in that letter that beginning in October 2003 her orders changed to Active Duty for Special Work (ADSW) non-contingency orders.¹

On or about the end of the applicant's first year of active duty she and the Coast Guard disagreed on reimbursements for lodging and per diem. She stated that the Coast Guard notified her at the end of that year that she had been overpaid by \$20,000.00. According to the applicant, the Coast Guard at one point began withholding money from her then-current travel claims. The Coast Guard also began an investigation into allegations that she was submitting fraudulent claims. (Neither the applicant nor the Coast Guard submitted a copy of the investigation into the applicant's travel claims.)

The applicant was released from active duty on September 25, 2006 into the Reserve upon the completed of her last set of ADSW orders. She returned to the Selected Reserve in New Orleans. During the processing of her RELAD, the Coast Guard refused initially to pay her for the approximately 45 days of leave that she had earned and to provide her with healthcare benefits under TAMP (Transitional Assistance Management Program). However, in its letter to the applicant's senator, the Coast Guard indicated that upon a review of the circumstances, she had been reimbursed \$6616.71 for her unused leave. The letter also stated that she had been ruled eligible for TRICARE Reserve Select (TRS)² Tier 1 benefits (not TAMP) on November 21, 2006. (TRS is not TAMP.) Although the coverage would not start for approximately 6 weeks, it would be retroactive to her RELAD date of September 25, 2006.

On October 14, 2006, the applicant submitted a request to resign from the Coast Guard Reserve, effective immediately. She offered the following reasons for her resignation:

I have concluded that the Coast Guard Reserve program is hopelessly broken, and the indications are that it will remain so into the indefinite future. The Coast Guard does a terrible job of looking after its people, its Reservists in particular. I have completely fulfilled any and all obligations I have to the Coast Guard and therefore, respectfully request that I be released from any future commitments or obligations.

¹ The following OERs show that the applicant was a Reserve officer serving on ADSW during most of her active duty:

September 27, 2002 to June 30, 2003	91 days of ADSW; 38 IDT drills
July 1, 2003 to July 30, 2004	Shows status as ADSW
August 1, 2005 to January 31, 2006	198 days ADSW
July 31 2004 to January 31, 2005	184 days ADSW
February 1, 2005 to July 31, 2005	212 days ADSW
February 1, 2006 to September 26, 2006	238 days ADSW

² TRS is a discounted premium-based health insurance for eligible members of the Reserve following demobilization.

According to documents in the record, on December 14, 2006, the Commander for the Eighth Coast Guard District requested that the applicant's resignation be held in abeyance until completion of the final review of the CGIS investigation into her travel claim.

On August 15, 2007, CGPC (rpm-1) accepted the applicant's resignation from the Reserve on behalf of the President, with an effective date of September 1, 2007.

On August 16, 2007, the applicant sent an email to in CDR S, asking to withdraw her request to resign her commission. She stated that the resignation request was submitted during a very difficult RELAD, but that she had reconsidered the decision six months earlier and that she has been drilling with her unit regularly since June. CDR S told the applicant that he accepted her email as initial notification of her request to withdraw her resignation but that a formal letter from her to CGPC was required.

On August 17, 2007, the applicant submitted a formal request to withdraw her resignation. She stated that she continued to believe there were problems with the Reserve program, but that she wanted to work toward positive changes in the program rather than giving up on the entire system.

On August 24, 2007, CGPC (rpm-1) denied the applicant's request to rescind her resignation and directed that she be discharged effective October 1, 2007.

On or about September 20, 2007, the applicant submitted a request for reconsideration of CGPC's decision not to accept her resignation from the Coast Guard. She complained that the Coast Guard did not offer a reason for refusing her request to withdraw her resignation.

On October 1, 2007, the applicant was discharged from the Coast Guard Reserve. At the time of her discharge, the applicant had approximately sixteen years of military service.

ALLEGATIONS

The applicant alleged that due to the Coast Guard's failure to adhere to its own policies and procedures, she was subjected to prolonged stress, which ultimately led to severe depression that was exacerbated by her improper RELAD. She stated that in the midst of her depression, which was untreated and in frustration, she requested to resign. She stated that before the Coast Guard granted her resignation, she withdrew it and began drilling again. She argued that she was discharged over her objection and against her will.

She argued that because of the Coast Guard's unilateral decision to discharge her against her will, she has suffered a tremendous injustice and has been deprived of the following:

- 1)Retirement. With 16 years of creditable service, I was four years away from vesting;
- 2)Medical benefits, in the form of ongoing treatment for conditions I was still being treating for at the time of discharge; and ongoing health care benefits for my family. We are currently without coverage.
- 3)Economic benefits, in the form of IDT and ADSW;

4) Professional benefits, in the form of ongoing training, support and experience.

The applicant stated that when she asked to resign, she was emotionally and physically spent, and suffering from untreated depression. She stated that when she began to recover from her depression she returned to drilling. After she had been drilling for approximately 3 months, the Coast Guard informed her that it was approving her request to resign. The applicant stated that she thought her request had been officially withdrawn. She stated that she followed the proper procedure to avoid being discharged. She stated that she felt embarrassed and humiliated before her command. She stated that because the District 8 legal office was always short-handed and her skills seemed to be needed, it made no sense for the Coast Guard to exacerbate that personnel shortage by discharging her when she was clearly willing to remain. She stated that the decision devastated her again in her still somewhat fragile state. Her statement concluded with the following:

I want to be allowed to return as a reservist, serve honorably, and retain my retirement. I want to have the last four years credited toward my retirement; I would like to be advanced in accordance with the time-in-service requirements and without regard for my lack of performance over the past four years.

I would also like to be refunded all the monies the Coast Guard wrongfully took away from me in the form of Travel Claim Money, and for my appeal of the Coast Guard's PSC's decision to recoup those monies reviewed and solved. I would like my record cleared of any wrong doing associated with travel claims, or to be formally charged and be provided a full evidentiary hearing on the matter.

I request an opportunity to appear and present my case in person before the Board

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VIEWS OF THE COAST GUARD

On October 28, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion, in which he recommended that the Board deny relief. The JAG argued that the application was not timely. In this regard, the JAG stated that the applicant was discharged on October 1, 2007 and that the Board's receipt of her DD 149 on October 1, 2010, exceeded the Board's three year statute of limitations. The JAG asserted that the applicant had not provided any justification for her untimely application.

With regard to the merits of her application, the JAG stated that the applicant had failed to substantiate an error or injustice regarding the Coast Guard's decision not to allow her to rescind her resignation request. The JAG stated that on August 23, 2007, a panel of officers at PSC reviewed the applicant's request to withdraw her letter of resignation in accordance with the Coast Guard Reserve Policy Manual. Her request to withdraw her resignation was denied.

The author of the advisory for the JAG stated that the applicant bears the burden of proving the existence of an error or injustice by a preponderance of the evidence, which she failed to do in this case. He stated that the evidence suggests that the applicant probably

requested immediate resignation based on a pending CGIS investigation of possible UCMJ violations. However, the JAG noted in a footnote that although this is speculation, it is a common practice for officers to request resignation in lieu of UCMJ action.

The JAG attached a memorandum from the Commander, Personnel Service Center (PSC) to the advisory opinion. He adopted the facts and analysis provided by PSC and asked the Board to accept PSC's comments as a part of the advisory opinion.

PSC Memorandum

PSC recommended that the application be denied for untimeliness. PSC stated that the only explanation offered by the applicant for the untimeliness was that “[d]ue to the Coast Guard’s actions, I was deprived of medical care that would have allowed me to address these issues sooner; as a result, I have suffered from largely untreated depression since my RELAD in 2006, exacerbated by my discharge in 2007.”

PSC stated that with regard to the substantive merits of her claim, the applicant did not submit any documentation with her application that would substantiate any error or injustice with how the Coast Guard administratively separated her. PSC stated that her separation was in accordance with the Reserve Policy Manual.

PSC submitted a copy of Article 8.A.3.b. of the Reserve Policy Manual. This provision states that unqualified resignations may be submitted up to one year in advance, but shall be submitted in sufficient time to reach CGPC-rpm at least three months prior to the requested date of resignation. Subsection c. states that resignations may be withdrawn with the approval of CGPC-rpm. Subsection d. states that the Commandant may, at his or her discretion, retain an officer beyond the requested resignation date on the needs of the Service.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 31, 2012, the Board received the applicant’s response to the views of the Coast Guard. She disagreed with them. The applicant argued that her application was timely because it was submitted by October 1, 2010, within three years of October 1, 2007, the effective date of her discharge.

The applicant stated that although she believes that she should be allowed to return to Reserve status in the grade that she would have achieved had she remained in the Active Reserve, she is willing to accept reinstatement of her reserve status at the level of LT. She also asked to be allowed to exercise TAMP and the TRS benefits that were denied to her in 2006.

The applicant stated that because the Coast Guard continues to malign her character and integrity by repeatedly suggesting, in spite of its inability to prove that she had engaged in any improper conduct with regard to travel claims, that she must be guilty, she is expanding her request to ask that the Coast Guard either “1) formally charge me with a violation, bring me onto active duty and formally prosecute me, or; 2) completely expunge my record of any and all accusations, innuendo, suggestion, or reference at all that I engaged in any wrongdoing.”

The applicant denied that she requested an “immediate” resignation. She stated that she cooperated fully with the CGIS Investigation and remained on active duty for a full year after the investigation started at the request of her superiors. She stated that she refused another year of active duty because she missed her family and that it was time to go home. She stated that upon her REALD she received a Coast Guard Achievement Medal for her work while on active duty and that she was assigned to the Selective Reserve upon her RELAD. She stated that the last thing on her mind was avoiding a UCMJ investigation, as suggested in the advisory opinion. She stated that she would have welcomed it at the time and insists upon it now to clear references to the investigation from her files.

The applicant complained that her RELAD was a disaster and her Servicing Personnel Office (SPO) and Coast Guard Headquarters failed to complete a single task on the 17-step demobilization checklist provided for guidance in the Personnel and Pay Procedures Manual (PPPM). She stated that she did not know this guidance existed until after her RELAD.

In this regard, the applicant addressed several steps on the checklist that were omitted in her case. She cited Step 1 of the guidance, which states that responsible personnel should ensure that a member is physically qualified for release for active duty. It also states that a discharge physical is required if one has not been done within the previous 12 months, and that if one has been done, a health screening assessment is required. The provision further states that all medical problems should be documented in the member’s health record and that a line of duty determination is made if there is a medical problem. Contrary to this guidance, the applicant contended that the Coast Guard released her from active duty even though she was being treated for a severe case of carpal tunnel syndrome and her treating physician recommended that she be retained on active duty until she had completed treatment. She stated that the Coast Guard ignored the recommendation and released her “with an ongoing medical problem *and absolutely no means to continue treatment.*” (Emphasis in original.)

The applicant stated that the medical benefits issue was a huge matter because on the day before she began terminal leave her husband was laid off. Therefore TRS/TAMP was their sole means for continuing medical benefits. She stated that “with both [she and her husband] being out of work at the same time, they could not afford COBRA, and without TRS/TAMP, she would have a break in coverage and be denied coverage under any new policy for her preexisting carpal tunnel, which she states is what happened.

The applicant stated that Step 2 of the demobilization checklist stated that responsible personnel should ensure that the member has notified the SPO of desires concerning disposition of accrued leave at least 45 days prior to separation or departure on terminal leave. The applicant again mentioned the fact that she was initially denied her request to sell back her unused leave. As stated earlier in this decision, the applicant was subsequently allowed to sell back her accrued leave.

The applicant stated that Step 4 of the demobilization checklist stated that responsible personnel should “[c]ounsel members concerning transition health-care benefits. . . Ensure that health-care benefits are recorded in the DEERS database.” The applicant stated that this never

happened. She stated that it was early September 2006 before she had any inkling that there was a problem with her TRS/TAMP benefits. She stated that up until that point, she and other reservists had been assured that they were entitled to TRS and TAMP upon their RELAD.

According to the applicant, Step 12 of the demobilization guidance stated that responsible personnel should ensure that the member has no pending UCMJ action. Although there was an investigation into the applicant's travel claim, there is no evidence in the record of any pending UCMJ action against her.

The applicant stated that step 16 of the demobilization guidance provides that responsible personnel should deliver the DD 214 to the member. The applicant received her DD 214, albeit a month after her RELAD.

The applicant asked to be afforded the following minimum relief:

- 1) The Coast Guard should either formally charge me with a violation under the UCMJ, bring me onto active duty and formally prosecute me, or completely expunge my record of any and all accusations, innuendo, suggestions, or reference at all that I engaged in any wrongdoing. An apology would be nice as well.
- 2) I be allowed to return to an active reserve status at the rank of LT and allowed to drill accordingly and earn toward my retirement.
- 3) I be deemed eligible for TAMP and /or TRS and allowed to use the benefits which were denied me upon my discharge.

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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code.
2. The application was timely with regard to allegations related to her discharge because it was received at DHS Headquarters on September 31, 2010, even though it was not received in the BCMR office until October 1, 2010. The applicant was discharged from the Coast Guard Reserve on September 31, 2007, with an effective date of October 1, 2010.
3. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.
4. In June 2003, the applicant was recalled to active duty under title 10 orders in support of a national contingency. She served under these orders until September 2003. Although she remained on active duty, in October 2003 her orders were changed from title 10 to ADSW non-contingency orders. She served continuously under several sets of ADSW orders. On September

25, 2006, she was RELAD after her orders for that period of service expired. After her RELAD she returned to the Selected Reserve. On October 14, 2006, she submitted her request to resign from the Reserve. It was approved by CGPC-rpm on August 15, 2007. On August 16, the applicant emailed LCDR S requesting to withdraw her resignation and on August 24, 2007, the applicant's request to rescind her resignation was denied and she was given an effective discharge date of October 1, 2007. On or about September 20, 2007, the applicant requested reconsideration of the Coast Guard's decision not to allow her to withdraw her resignation. The record does not contain a response to the applicant's request for reconsideration. She was discharged from the Reserve effective October 1, 2007. (Two important dates in this case: September 25, 2006, the date the applicant went from active duty back to her non-active duty Reserve status and October 1, 2007, the date she was discharged from the Reserve, completely terminating her status as a Coast Guard officer.)

5. The applicant now asks this Board to reinstate her into the Reserve and grant her constructive service credit from the effective date of her discharge until reinstated. For the Board to order reinstatement and constructive service credit, the applicant must show that the Coast Guard's action in approving her resignation and discharging her was wrongful. For the reasons discussed below, the Board finds that the Coast Guard did not commit an error by approving the applicant's request to resign and discharging her from the Coast Guard.

6. Article 8.A.3. of the Reserve Policy Manual permits a Reserve officer to request resignation from the Reserve, and on October 14, 2006, the applicant submitted such a request. The applicant argues essentially that her request to resign was involuntary and wrongful because she was suffering from undiagnosed and untreated depression at the time she submitted her request and that her depression was caused in part by the manner in which the Coast Guard handled her RELAD. The applicant submitted no medical evidence that she was diagnosed with or suffered from depression at the time she submitted her resignation. In addition, while the applicant encountered some problems while on active duty such as with her travel claim and a related investigation, with selling unused leave, and with being denied certain medical benefits upon her RELAD, there is no medical evidence in the record that these problems were so unusual that they caused the applicant to be unable to make rational and intelligent decisions about resigning from the Reserve. Therefore, the applicant has submitted insufficient evidence to prove that she suffered from depression at the time she submitted her resignation or that the problems she encountered with her RELAD were so severe as to make her voluntary resignation involuntary.

7. The applicant also argued that the Coast Guard's refusal to allow her to withdraw her resignation request was an error. However, Article 8.A.3.c. of the Reserve Policy Manual makes clear that resignations, once submitted, may be withdrawn with the approval of the CGPC-rpm. The Coast Guard refused to permit the applicant to withdraw her resignation stating only that the request had been carefully reviewed and denied. The applicant argued that it was an error or injustice for the Coast Guard to deny her request for withdrawal of her resignation without an explanation when the unit to which she was assigned was always short of staff. However, the Reserve policy Manual does not require that the Coast Guard provide a reason for disallowing the withdrawal of a resignation request. It states only that "Resignations may be withdrawn with

approval of CGPC-rpm.” Therefore, while an explanation might have satisfied the applicant, no such explanation is required under the Reserve Policy Manual.

8. The applicant next argued that she withdrew her resignation prior to approval by CGPC-rpm. However, the record shows that CGPC approved the resignation on August 15, 2007 and that on August 16, 2007, the applicant requested to withdraw her resignation. The Board notes that under the regulation as stated above, when she submitted her request to withdraw her resignation, the decision to permit the withdrawal of a resignation is up to the discretion of CGPC-rpm. CGPC-rpm exercised that discretion and denied her request to withdraw her resignation. Accordingly, the Board finds that the Coast Guard did not commit an error by refusing to allow the applicant to withdraw her resignation and by discharging her in accordance with her approved voluntary resignation request.

9. The applicant argued that the decision to discharge her against her will was an injustice because she was just 4 years away from earning a 20 year retirement, because it left her without medical benefits even though at the time discharge she was being treated for a medical problem, because it deprived her of economic benefits in the form of IDT and ADSW, and because it deprived her of ongoing training, support and experience. However, these are all issues that the applicant should have considered before she submitted her resignation request. The Coast Guard did not force her to resign and is not responsible for the loss of any of her service-related benefits.

10. One issue before the Board that requires further discussion is whether the applicant was entitled to 180 days of healthcare under TAMP upon her RELAD from the Reserve. Healthcare is available for 180 days for members who were involuntarily separated from active duty or who served under Title 10 or other orders in support of a contingency operation. See Chapter 10, sec. 5.1 of the TRICARE Policy Manual 6010.54-M (August 8, 2002) and Enclosures 12 & 13 to COMDTINST 1900.2A (2003). The Coast Guard admitted that the applicant was first recalled to active duty under title 10 orders in support of a contingency and served under them until September 2003. However, in October 2003 her orders were changed from title 10 contingency orders to ADSW non-contingency orders. ADSW is active duty for reservists authorized from applicable military or reserve appropriations (AC (Active Component) funded or RC (Reserve Component) funded) to support AC or RC programs, respectively. The purpose of ADSW is to provide the necessary skilled manpower assets to temporarily support existing or emerging requirements. Article 3.A.4.a. of the Reserve Policy Manual. The applicant’s OERs covering the period from July 1, 2003 to September 26, 2006 support the Coast Guard’s statement that the applicant’s orders for most of the three-year period were ADSW non-contingency orders. Therefore, when the applicant was RELAD on September 25, 2006, she was not serving under title 10 or any other contingency orders and had been off active duty for approximately one year when she was discharged from the Reserve. Therefore she was not entitled to TAMP Healthcare. See Chapter 11 of the Coast Guard Pay and Procedures Manual (2002). Although the applicant was probably eligible for TAMP healthcare at the end of her title 10 orders in September 2003, the 180-day coverage began to run at the end of her title 10 orders. The Board has found no authority which indicates that the commencement date for TAMP healthcare can be suspended for use at a later date. The Board notes that according to the letter to the Applicant’s Senator, she was approved for TRS benefits, but upon discharge she was no longer eligible for TRS. The Board will note that neither the applicant nor the Coast Guard submitted the actual orders for the applicant’s

approximately 3 years of active duty. However, under the Board's regulation the applicant has the burden of proof in this case.

11. The applicant alleged that the Coast Guard violated the demobilization checklist by not ensuring that she was medically qualified for RELAD. She stated that at the time of her RELAD she was suffering from carpal tunnel and that her doctor had recommended that she remain on active duty for treatment. There is a note in the applicant's health record that on September 14, 2006, Dr. V recommended that she be placed on medical hold on active duty for 6 to 12 months to allow for further medical and possible surgical management of lateral epicondylitis. Article 12.A.10.b. of the Personnel Manual states that a scheduled separation or release date may be delayed *only* if a question exists about a member's unfitness for continued service so as to require convening a medical board under the Physical Disability Evaluation System (PDES) or if a serious disease or injury intervenes. Article 12.A.10.a. defines "unfit for continued service" as a physical disability that renders the member unfit to perform the duties of his or her office, grade, rank, or rating. In this case although the applicant was being treated for lateral epicondylitis the physician did not state that her condition was a physical disability that rendered her unfit for continued service. Moreover, the applicant's medical record indicates that she had a separation physical on December 14, 2005, where she was found fit for separation. The Personnel Manual does not require a physical examination upon separation if the member has had one within the past 12 months. The applicant has failed to prove that she had an unfitting condition at the time of her RELAD. Although the applicant complained that she was not able to immediately receive treatment through the Department of Veterans Affairs because she did not have her DD 214, to the best of the Board's knowledge, she received her DD 214 about 30 days after her RELAD and treatment through the DVA was accessible to her at that time.

12. The applicant also asked that "the monies taken from [her] paycheck due to assessed travel overpayments be refunded to [her]." However, the applicant did not present any documentation or evidence establishing that she is owed money by the Coast Guard. Therefore, she has failed to prove any error or injustice in this regard.

13. She also requested that her record be completely expunged of any and all accusation, innuendo, suggestion, or reference that she engaged in any wrongdoing with regard to her travel claim. However, the applicant did not present the investigation and it is not in her military record. Therefore, she had not proven that her military record contains references to the investigation or that the investigation itself contained erroneous findings that should be corrected. The Board's decision is based upon the evidence of record, of which the investigation was not a part.

14. The applicant has failed to prove that the Coast Guard committed an error or injustice in discharging her from the Reserve. Therefore, she is not entitled to reinstatement. Nor has she proved that she was suffering from an unfitting condition or that she was improperly denied TAMP healthcare benefits at the time of her RELAD or discharge from the Reserve.

15. Accordingly, her application should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXXXXXX, USCGR, for correction of her military record is denied.

Philip B. Busch

Lynda K. Pilgrim

Vicki J. Ray