

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-055

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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 after receiving the completed application December 14, 2008, 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 August 27, 2009, 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 asked the Board to correct his record to show that he was retired based upon his time in the service rather than his physical disability. He alleged that he should have been given the choice and that he has been "robbed of [his] dignity" and stigmatized because his discharge form, DD 214, shows "Disability, Permanent" as his narrative reason for retirement.

SUMMARY OF THE RECORD

On June 15, 1987, the applicant enlisted in the Coast Guard. He served on continuous active duty and on June 1, 2003, accepted an appointment as a chief warrant officer (CWO). On May 1, 2007, the applicant accepted an appointment as a temporary lieutenant.

On October 6, 2007, the applicant was admitted to a hospital after an MRI showed that he had suffered a pulmonary embolism. His symptoms were shortness of breath and a swollen leg. It was his second pulmonary embolism as he had had one eleven years earlier following orthopedic surgery. The cause of the second was reported to be "unclear, hence unprovoked," although the applicant reported having been struck on the leg while playing basketball five days earlier. The doctor stated that the applicant had thus experienced "2 potentially life-threatening thrombotic events"; was at increased risk of having more; and should take an anticoagulant (Coumadin) for at least a year if not indefinitely.

On November 7, 2007, the applicant was examined by a hematologist, who noted that she had counseled the applicant for an hour about his diagnosis, prognosis, and options. Following this appointment, the applicant was referred for evaluation by a medical board.

On February 5, 2008, the applicant underwent evaluation by a Medical Evaluation Board (MEB). The MEB noted that he had been enrolled in the Coumadin clinic and was taking 10 milligrams per day except for 7.5 milligrams on Thursdays. The MEB stated that the applicant's prognosis was good and his condition stable but that he would have to continue taking Coumadin for the rest of his life. The MEB diagnosed his condition as "recurrent pulmonary embolism (415.1) with anticoagulant medication (208.90)." Also on February 5, 2008, the applicant signed an acknowledgement of the report of the MEB. He acknowledged that the MEB had found that as a result of his diagnosis, he was no longer medically qualified for retention on active duty. He also signed a statement indicating that he did not desire to rebut the MEB's findings.

On March 14, 2008, the applicant's commanding officer (CO) forwarded the report of the MEB to the Personnel Command and strongly recommended that the applicant be retained on active duty. The CO stated that the applicant was an Information Technology Systems Engineer and Business Manager, who supervised a staff of eighteen contractors. He stated that the applicant was an administrator and that his work was "not strenuous and [could] best be described as desk work." The CO stated that the applicant remained highly productive at this work and that his attendance had been exemplary. In addition, he noted that the applicant's retention would be critical to several large and important projects and strategic initiatives.

On May 6, 2008, a doctor at Coast Guard Headquarters sent an email to the applicant asking how long the hematologist had advised him to take Coumadin, and whether the applicant was given an option in how long to take it. The applicant replied that the hematologist "stated that her first option was Coumadin for a year, but later stated that any time you have a recurring episode the normal course is to place the patient on Coumadin for life. She discussed the dangers of not taking anticoagulation medication and I agreed that I would rather take the medication than have another episode."

On May 20, 2008, the applicant's case was reviewed by an Informal Physical Evaluation Board (IPEB). The IPEB found the applicant "unfit for continued duty by reason of physical disability" and cited the unfitting condition as asymptomatic "Pulmonary Vascular Disease requiring life long anticoagulant therapy." Because his condition was asymptomatic, his disability was rated as zero percent under the Veterans' Affairs Schedule for Rating Disabilities (VASRD). The IPEB recommended that the applicant receive a permanent medical retirement.

On May 30, 2008, the Personnel Command forwarded the IPEB's report to the applicant. The Personnel Command advised the applicant that he was entitled to free legal counsel to help him decide whether to accept or reject the IPEB's findings and that he had 30 days to submit his response. Also on May 30, 2008, the applicant signed an election form on which he declined the opportunity to consult counsel and to be represented by counsel. He also signed an acknowledgement of the IPEB's findings and recommendation, accepted the recommended disposition, and waived his right to a formal hearing.

On July 21, 2008, the Commander of the Personnel Command approved the findings of the IPEB. On July 23, 2008, the Personnel Command issued disability retirement orders for the applicant. The orders state that his DD 214 should show separation code SFJ and “Disability, Permanent” as the narrative reason for separation.

On August 31, 2008, the applicant was honorably retired as a CWO by reason of “Disability, Permanent,” under Article 17.B.6. of the Personnel Manual, with separation code SFJ. He had completed 21 years, 2 months, and 18 days of active duty.

VIEWS OF THE COAST GUARD

On April 30, 2009, the Judge Advocate General of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant’s request. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC; successor to the Personnel Command).

The PSC stated that in 2008 the applicant was not qualified for a voluntary retirement even though he had more than 20 years of service. The PSC explained that under the Personnel Manual, CWOs who accept a commission as a temporary lieutenant are obligated to serve as a temporary officer for at least three years from the date of appointment. The applicant was commissioned on May 1, 2007, and incurred a three-year service obligation as of that date. Therefore, he was ineligible for a voluntary, time-based retirement in 2008. The PSC stated that if the applicant had requested a voluntary retirement in 2008, his request would have been denied.

The PSC also noted that the applicant had accepted the findings and recommendation of the IPEB that he be retired because of a permanent physical disability. The PSC stated that there was no error or injustice in the procedures that led to the applicant’s medical retirement. The PSC also noted that although the applicant complained of a stigma attaching to his medical retirement, he did not submit any evidence of one.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 11, 2009, the Board sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

APPLICABLE LAW

Article 1.A.3. of the Personnel Manual states that the President may appoint enlisted members, CWOs, and licensed officers of the Merchant Marine as temporary Regular commissioned officers up to the grade of lieutenant, depending upon their time in service, experience, and qualifications. Article 1.A.4.a. states that upon “original appointment as temporary Regular commissioned officers, such officers incur a three-year active duty commissioned service obligation.” Article 1.A.8.a.1. states that once a temporary commissioned officer has been selected for promotion by an active duty selection board, the officer may apply for a permanent commission.

Article 12.C.6. of the Personnel Manual states that “[t]he Commandant may retire a commissioned warrant officer who has at least 20 years of active service at his or her request” and that a CWO may be involuntarily retired upon completion of 30 years and 60 days of active service or within 60 days of his 62nd birthday. Article 12.C.9. states that requests for voluntary retirement must be approved by the Personnel Command and that an officer must normally have completed at least two years in grade/rank before a request for voluntary retirement at that rank will be approved.

Chapter 3.F.19.c.(6) of the Medical Manual states that use of a “[r]equired chronic anti-coagulant, other than aspirin, such as Coumadin” is normally disqualifying for retention on active duty. Chapter 3.F.2. states that members with the medical conditions listed in Chapter 3.F. should be referred for evaluation by a Medical Evaluation Board to determine their fitness for continued service.

The Separation Program Designator (SPD) Handbook states that members being mandatorily retired because of a permanent physical disability receive the separation code SFJ and “Disability, Permanent” as the narrative reason for separation on their DD 214s.

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 application was timely.

2. The applicant asked the Board to correct his record to show that he was retired because he had sufficient time in service to retire rather because of a permanent disability. He alleged that he should have been given the option and that his disability retirement has robbed him of his dignity and stigmatized him.

3. 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.¹ 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.”²

4. The record shows that the applicant received all due process with regard to his medical retirement. Because of his dangerous medical condition, he apparently elected to take

¹ 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)).

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

an anticoagulant medication, Coumadin, indefinitely. Chapter 3.F.19.c.(6) of the Medical Manual states that use of a required anticoagulant such as Coumadin is normally disqualifying for retention on active duty. Given the doctor's note about counseling, it appears that the applicant made the decision to take Coumadin indefinitely knowing that it would likely result in his separation. On February 5, 2008, the MEB notified him that because he had been diagnosed with recurrent pulmonary embolism and anticoagulant medication, he was not medically qualified for retention on active duty. That same day, he signed a form indicating that he did not wish to rebut the findings of the MEB. Moreover, after the IPEB recommended his medical retirement for a permanent disability with a zero percent disability rating, the applicant waived his right to consult counsel and accepted the findings and recommendation of the IPEB. There is no evidence of error or injustice in the record with regard to the applicant's medical retirement.

5. Before the applicant's medical retirement on August 31, 2008, he had accepted an appointment as a temporary lieutenant on May 1, 2007. Under Article 1.A.4.a. of the Personnel Manual, CWOs who accept a temporary appointment as a regular commissioned officer incur a three-year active duty service obligation. The PSC has stated that this obligated service requirement precluded the applicant from requesting a voluntary retirement in 2008 or from having such a request approved because he had not completed three years as a temporary lieutenant. The Board also notes in this regard that Article 12.C.9. of the Personnel Manual states that a request for a voluntary retirement by any officer will not normally be approved until the officer has served at his current rank for at least two years.

6. Under the provisions of the SPD Handbook, members who are being mandatorily separated because of a permanent disability are assigned the SFJ separation code and "Disability, Permanent" as the narrative reason for separation on their DD 214s. Therefore, the applicant's DD 214 was prepared correctly in this regard. The Board also notes that the applicant has submitted no evidence to support his claim that he has been stigmatized and robbed of dignity because of his medical retirement from the Coast Guard.

7. Accordingly, the applicant's request should be denied because he has not proved by a preponderance of the evidence that his medical retirement because of a permanent disability was erroneous or unjust.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG (Retired), for correction of his military record is denied.

Jeff M. Neurauter

David A. Trissell

Thomas H. Van Horn