

## § 50.6

(b) If the Board reverses the findings of the retiring board being reviewed, it will make complete findings, including:

(1) Whether the applicant was incapacitated for active service;

(2) If so, the disability causing the incapacity;

(3) Whether the incapacity is permanent;

(4) Whether the incapacity was the result of an incident of service or incurred in the line of duty;

(5) Whether the incapacity was the result of the applicant's own vicious habits;

(6) In the case of Reserve officers and officers who have served under temporary appointments, when the physical disability was incurred.

(c) The findings and decision of a majority of the Board will constitute the findings and decision of the Board Members who do not concur with the majority may file a minority report.

(d) When the Board has concluded its proceedings in any case the Recorder will prepare a complete record thereof including (1) the application for review (2) a transcript of the hearing, if any (3) affidavits, briefs, and written agreements filed in the case, (4) the findings and decision of the Board, and (5) all other papers and documents necessary to reflect a true and complete record of the proceedings. This complete record will be transmitted to the Commandant for appropriate action.

[10 FR 5650, May 17, 1945. Redesignated at 13 FR 7303, Nov. 30, 1948, and amended at CGFR 53-12, 18 FR 2953, May 22, 1953]

### § 50.6 Notification of final action.

The officer requesting the interview will be notified by letter of the final action taken in the case.

[CGFR 48-73, 13 FR 9333, Dec. 31, 1948]

## PART 51—COAST GUARD DISCHARGE REVIEW BOARD

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AUTHORITY: 10 U.S.C. 1553.

SOURCE: CGD 81-104, 50 FR 41495, Oct. 11, 1985, unless otherwise noted.

### § 51.1 Basis and purpose.

This part establishes the procedures for review of administrative discharges from the Coast Guard by a Discharge Review Board (DRB) or by the Secretary of the Department, and for the compilation of the record of the DRB determination, made available for public inspection, copying and distribution through the Armed Forces Discharge Review/Correction Board Reading Room.

### § 51.2 Authority.

(a) The Secretary of Transportation has the authority to establish a Discharge Review Board (DRB) to review the discharge of a former member of the United States Coast Guard under the provisions of 10 U.S.C. 1553. This part prescribes the establishment and outlines the procedures of the Coast Guard Discharge Review Board. The Secretary retains the authority to review and take final action on the DRB's findings in the following cases:

(1) Those cases in which a minority of the board requests that their written opinion be forwarded to the Secretary for consideration;

(2) Those cases selected by the Commandant to inform the Secretary of aspects of the board's functions which may be of interest to the Secretary;

(3) Any case in which the Secretary demonstrates an interest;

(4) Any case which the President of the board believes is of significant interest to the Secretary.

(b) The Commandant of the Coast Guard is delegated the authority to:

(1) Appoint members to serve on the Discharge Review Board;

(2) Appoint alternates to serve on the DRB in the event that a regularly appointed member is unavailable;

(3) Designate a member as the President of the DRB; and

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(4) Review and take final action on all DRB decisions which are not reviewed by the Secretary.

[CGD 81-104, 50 FR 41495, Oct. 11, 1985, as amended by CGD 97-023, 62 FR 33362, June 19, 1997]

### §51.3 Applicability and scope.

The provisions of this part apply to the United States Coast Guard including reserve-components and all former members who have been discharged within 15 years of the date upon which application for review is received by the DRB. A former member may apply to the DRB for a change in the character of, and/or the reason for, the discharge. The Coast Guard DRB review is generally applicable only to administrative discharges, however, the DRB may review the discharge of a former member by sentence of a court-martial for the purpose of clemency. A petition for clemency will not be considered by the DRB unless the applicant has exhausted all appellate remedies. Upon a petition for clemency, the DRB shall consider only the equity of the discharge awarded.

### §51.4 Definitions.

*Applicant.* A former member of the Coast Guard who has been discharged from the service but excluding those discharged by sentence of a court-martial, except as provided in §51.3. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member.

*Counsel.* An individual or agency designated by the applicant who agrees to represent the applicant in a case before the DRB. It includes, but is not limited to: A lawyer who is a member of the bar of a federal court or of the highest court of a state; an accredited representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a state agency concerned with veterans affairs; or a representative from private organizations or local government agencies.

*Discharge.* Any formal separation of a member from the Coast Guard which is not termed "honorable", including dismissals and "dropping from the rolls".

This term also includes the assignment of a separation program designator, separation authority, the stated reason for the discharge, and the characterization of service.

*Discharge Review.* The process by which the reason for separation, the procedures followed in accomplishing separation, and the characterization of service are evaluated. This includes determinations made under the provisions of 38 U.S.C. 3103(e)(2).

*Discharge Review Board.* A board consisting of five members of the U.S. Coast Guard, appointed by the Commandant of the Coast Guard and vested with the authority to review the discharge of a former member. The board is empowered to change a discharge or issue a new discharge to reflect its findings, subject to review by the Commandant or the Secretary.

*Hearing.* A proceeding which, upon request of the applicant, is utilized in the discharge review process enabling the applicant and/or the applicant's representative to appear before the DRB and present evidence.

*President.* An officer of the United States Coast Guard appointed by the Commandant as President to preside over the DRB. The President will convene the board and may also serve as a member. If the President does not serve as a member of the DRB, the President shall designate a presiding officer for the board to serve as President.

[CGD 81-104, 50 FR 41495, Oct. 11, 1985, as amended by CGD 96-026, 61 FR 33663, June 28, 1996]

### §51.5 Objective of review.

The objective of the discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes if necessary. The DRB will utilize its discretion to reach a fair and just resolution of the applicant's claim. The standards of review and the underlying factors which aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established which require automatic change, or denial of change, in a discharge.