

through Friday. Persons wishing acknowledgment of their comments' receipt should include a stamped, self-addressed postcard. The Documentary Services Division will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert H. Joost, Chairman, Board for Correction of Military Records of the Coast Guard, C-60, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street SW, Washington, D.C. 20590-0001. Telephone: (202) 366-9335.

SUPPLEMENTARY INFORMATION:

The Board Process With Respect to Reconsideration

The Secretary of Transportation, acting through the Department of Transportation Board for Correction of Military Records of the Coast Guard, is authorized by section 1552 of title 10, United States Code, to correct the military records of serving, separated and retired Coast Guard military personnel when there is an error or injustice in a military record.

After a final decision has been reached on an application for correction, the decision can be appealed by the applicant in an appropriate Federal court. There is no right, under 10 U.S.C. 1552, to administrative reconsideration of a final decision, but applicants have always been allowed to request such reconsideration by regulation.

Under the present DOT BCMR regulation with respect to reconsideration (33 CFR 52.67(b)), the only basis for reconsideration is the presentation of "newly discovered evidence or information, not previously considered by the Board * * * [which] would, if true, result in a determination other than that originally made."

The present regulation does not explicitly authorize reconsideration if the applicant offers evidence showing that material legal or factual error was made by the Board in its original decision. Also, it does not provide a means for expeditious handling of requests for reconsideration that do not meet the threshold requirements for review. Because of the current statutory direction that Board decisions be issued within 10 months of receiving a complete application, and the resulting pressure on Board resources, the Board must find ways to increase its efficiency of operation. An expedited process for handling facially defective reconsideration requests is proposed as an appropriate step in that direction. In addition, the present rule does not

require that a request for reconsideration be made within a certain time period.

The Proposal

The proposed rule would explicitly authorize the Board to consider applications for reconsideration upon a showing that the Board committed legal or factual error in the original determination that could have resulted in a determination other than that made.

The proposed rule would authorize the Chairman not to docket applications for reconsideration that do not meet the threshold requirements for reconsideration, i.e. applications that only (1) present evidence or information previously considered by the Board, (2) present new evidence or information that is clearly not material to the result in the case, (3) present new evidence or information that could have been submitted earlier with the exercise of reasonable diligence, or (4) make arguments as to legal or factual error that are clearly not material to the result. The phrase "otherwise comes to the attention of the Board" has been deleted, however, as unnecessary.

The proposed rule would provide that no Board member who considered an applicant's original application for correction would participate in the consideration of that person's application for reconsideration. There will, to the extent practicable, be a related prohibition on the staff member; the person who drafted the original decision would not draft the reconsideration decision. In light of these safeguards, it would not be necessary for the Secretary's designate to approve each denial of a reconsideration request, thus expediting the review process.

Section-by-Section Analysis

Section 52.67, Reconsideration, is rewritten to add the new requirements outlined above, and to simplify the procedure on reconsideration.

Paragraph (a) provides that reconsideration of an application may occur if the applicant meets at least one of two sets of criteria. The first of these, paragraph (a)(1), directs reconsideration if an applicant presents evidence or information that was not previously considered by the Board if that evidence or information could result in a different determination and if it "could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence." The second of these, paragraph (a)(2), directs reconsideration if an applicant presents evidence or information that the Board committed legal or factual

error in the original determination that could have resulted in a different result.

Paragraph (b) directs the Chairman to docket a reconsideration request if it meets the requirements of paragraph (a)(1) or (a)(2). If neither of these requirements is met, the Chairman shall not docket the request, and shall return the application to the applicant with a statement that no action is being taken due to a failure to meet the threshold requirements for docketing.

Paragraph (c) provides that the Board shall consider each application for reconsideration that has been docketed under paragraph (b). This paragraph also provides that the final decision on reconsideration shall involve a different Board than the one that initially considered the application.

Paragraph (d) provides that the Board's final action on docketed application for reconsideration shall be the same as if they were original applications for correction.

Paragraph (e) provides that an applicant's request for reconsideration must be filed within two years after the issuance of a final decision, subject to other legal rules such as the Soldier's and Sailor's Civil Relief Act. The two-year statute of limitations parallels the time period allowed by Article 73 of the Uniform Code of Military Justice for petitioning for a new trial after the approval of a court-martial sentence on the grounds of newly discovered evidence or fraud on the court. If the Chairman docketed an applicant's request for reconsideration under paragraph (b), the two-year requirement may be waived if the Board finds that it would be in the interest of justice to consider the request despite its untimeliness.

Regulatory Process Matters

This NPRM does not propose a significant rule under Executive Order 12681 or the Department's Regulatory Policies and Procedures. The costs of a purely procedural change in the Board's rule would be negligible. The NPRM would not, if adopted, have a significant economic effect on a substantial number of small entities, as defined in the Regulatory Flexibility Act. There are no Federalism factors to warrant the preparation of a Federalism assessment.

List of Subjects in 32 CFR Part 52

Administrative practice and procedure, Archives and records, Military personnel, Military records.