

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-007

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX, SA (former)

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 October 21, 2005, upon receipt of the applicant's completed application and military and medical records.¹

This final decision, dated July 21, 2006, 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 his record to show that he was discharged from the Coast Guard in 1980 by reason of physical disability instead of by reason of unsuitability due to a personality disorder.

The applicant stated that the term "unsuitability" erroneously characterizes his status at the time of his separation. He stated that he was not an unsuitable member of the Coast Guard and alleged that he was discharged because of a mental condition that prevented him from performing his duties.

¹ The Board ordered the applicant's military record from the National Personnel Records Center and received a temporary record. Information in the temporary record indicates that the applicant's official military record has been misplaced since the early 1990's. The temporary record contained a copy of the applicant's DD Form 214. The Board was able to obtain a copy of the applicant's Coast Guard medical record from the Department of Veterans Affairs.

The applicant stated that although he discovered the alleged error in 1984, the Board should waive the three-year statute of limitations because justice and equity warrant favorable consideration of his case. He further stated that the reason for his discharge is vague and imprecise and has negatively impacted his ability to engage in a normal life.

SUMMARY OF RECORD

On October 1, 1979, the applicant enlisted in the Coast Guard. His enlistment physical examination showed that he was in good health and qualified for enlistment.

On January 21, 1980, the applicant was referred for a psychiatric evaluation with a provisional diagnosis of anxiety neurosis. The referral stated that he had been a super performer until the week of January 13, 1980, when he absented himself without authority. The referral described the applicant as tense, highly anxious, perplexed, unable to think clearly, and exhibiting paranoid thoughts.

On January 21, 1980, the applicant was admitted to a United States Public Health Service Hospital (USPHS). He was discharged from the hospital on February 15, 1980, with a diagnosis of Obsessive-Compulsive Personality Disorder and with a recommendation for an administrative discharge from the Coast Guard under Article 12-B-16 of the Personnel Manual. The hospital discharge narrative summary also stated the following, in pertinent part:

HISTORY . . . [T]his patient suffered from a somewhat severe feeling of loss since the fairly recent death of his grandfather whom he was close to. His grandfather died approximately a year prior to the admission. Fairly recently the patient became involved with a woman about five years his senior with two children . . . In short he states that he cannot perform his duties adequately in the U.S. Coast Guard and at the same time, perform his duties as a surrogate father and husband. He states that he would find it difficult and perhaps impossible to give up his relationship with his new family. He states that from his experience in the Coast Guard, he realizes that he cannot perform adequately [in the Coast Guard] and at the same time, discharge the duties that he perceives are his as a father in this family at the same time. This intense conflict led to the patient's admission to the hospital. At that time he was extremely anxious, depressed and in need of psychiatric help.

MENTAL STATUS: Revealed the patient to be fully oriented. Although he attempted to be cooperative, he was impulse-ridden. That is, he appeared to be unable to remain in the hospital for any length of time. He felt an obligation to spend his evenings and weekends with his surrogate

family. However, he was not noted to be actively suicidal, homicidal, hallucinatory or delusional. He did not show an organic syndrome.

RECOMMENDATIONS: 1. Because the patient suffers from a primary inherent personality defect which is not secondary to any disease or injury and existed prior to entrance into the Coast Guard, he is at present unsuitable for further military service.

2. There are no disqualifying physical or mental defects which are ratable as a disability under the standard schedule for rating disabilities in current use by the Veterans Administration.

3. The patient was and is mentally responsible both to distinguish right from wrong and to adhere to the right and has the mental capacity to understand the action being contemplated in this case.

4. It is recommended that the patient is not fit for duty pending administrative separation.

DISPOSITION: The patient is discharged psychiatrically not fit for duty in the U. S. Coast Guard with recommendations for administrative Separation.

The applicant was honorably discharged from the Coast Guard on February 29, 1980, by reason of unsuitability due to a personality disorder with a JMB (personality disorder) separation code and an RE4 (not eligible to reenlist) reenlistment code. The reason for discharge on the DD Form 214 reads: Unsuitability - Personality Disorders (with a line through the personality disorders initialed by JS).

Other submissions from the applicant indicate that he has sought medical treatment for what he called depression from the DVA and the county in which he lives. However, the documents he submitted contain no definitive diagnosis.

Department of Veterans' Affairs (DVA) Records

The Board was able to obtain some of the applicant's records from the DVA in Waco, Texas. According to these records, the DVA has never granted the applicant a service connected-disability rating for a psychiatric disorder. The applicant stated to a DVA social worker that he is receiving social security disability compensation.²

² The applicant inquired as to whether the Board could obtain his medical records from SSA. He was advised that he would have to obtain the records and send them to the Board.

VIEWS OF THE COAST GUARD

On March 9, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request, in accordance with the memorandum from the Commander, Coast Guard Personnel Command (CGPC), attached as Enclosure (1) to the advisory opinion.

CGPC noted that the medical doctors recommended that the applicant be administratively discharged due to his Obsessive-Compulsive Personality Disorder, which preexisted his military service. CGPC noted that the application was untimely, but offered the following opinions and conclusions if the Board chose to consider the application on the merits.

2. While the Applicant' record received from the National Records Center is incomplete, the portion of the record received is adequate to address the Applicant's BCMR petition.

3. The applicant was discharged from the Coast Guard under the provisions of Article 12-B-16 of the Personnel Manual for a diagnosed personality disorder . . . Personality disorders are processed for discharge under Article 12-B-16 under the broader heading of unsuitability . . .

The JAG noted that the words "Personality Disorder" should not have been placed along side the word unsuitability in block 28 on the applicant's DD-214. Chapter 1.E. COMDTINST M1900.4D (Instructions for completing DD Form 214) states that in completing Block 28. (Narrative Reason for Separation) of the DD Form 214, "Only the narrative reason, i.e. UNSUITABILITY . . . etc. is to be entered -- do not enter additional information, i.e. Due to frequent involvement with civil authorities . . . etc." Regardless, the JAG did not recommend removal of the words "personality disorder" because they help to explain the applicant's situation. However, the JAG noted that the Coast Guard would issue a DD-215 correcting block 28. of the DD-214 by deleting the words "personality disorder" if the applicant requests it.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On March 13, 2006, the Board sent the applicant a copy of the views of the Coast Guard. The applicant's reply consisted of bits and pieces of information, some of which showed that his appeal of the DVA's denial of his disability compensation claim was unsuccessful. He also submitted documents that showed his application for county governmental assistance.

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. Although the applicant's official military record has been misplaced by the National Records Personnel Center, his temporary military record and a copy of his Coast Guard medical record were sufficient for the Board to docket and decide this case.

2. The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the alleged error or injustice was or should have been discovered. See 33 CFR 52.22. The applicant filed his application with the Board approximately twenty-six years after his discharge from the Coast Guard and approximately twenty-two years after he allegedly discovered the error.

3. However, the failure to file timely may be waived, if the Board finds that it is in the interest of justice to do so. In assessing whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." See Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992). **The Board finds that it might be in the interest of justice to waive the statute of limitations in this case because the applicant may have suffered from a physical disability subsequent to his discharge from the Coast Guard that interfered with his ability to understand the requirement to submit a more timely application.**

5. **However, even if the applicant's reason for not filing a timely application were persuasive, it would still not be in the interest of justice to excuse the untimeliness based upon a review of the merits of his case.** In this regard, the Board finds that the applicant is not likely to prevail on his request for a change in the reason for his discharge from unsuitability to physical disability. The applicant's Coast Guard medical record contains no evidence that the applicant suffered from a mental disability prior to his discharge. He was evaluated medically prior to discharge and diagnosed with a personality disorder, which is not a physical (mental) disability. See Chapter 2.A.7. of the Physical Disability Evaluations Manual. The applicant has submitted no evidence to prove that the Coast Guard's diagnosis that he suffered from a Compulsive-Obsessive Personality Disorder at the time of his discharge was erroneous or unjust.

6. **The Board notes that While the Coast Guard found that there was no evidence of a preexisting condition prior to the applicant joining the Coast Guard,**

that even if, for the sake of argument, there were facts in the record indicating a possible preexisting condition prior to joining the Coast Guard, there was no evidence presented, and twenty-three years after the incident, it would be virtually impossible to present, evidence that the Coast Guard somehow caused or aggravated such a preexisting condition. In fact the applicant admits that it was the loss of a family member and conflict with his new family that seemed to trigger his symptoms while the Coast Guard.

7. Therefore, the applicant was properly administratively discharged under Article 12.B.16. of the Personnel Manual by reason of unsuitability due to a personality disorder.

8. **Although the record suggests that the applicant may have a legitimate reason for not filing his application sooner, it is not in the interest of justice to excuse the untimeliness in this case due to the applicant's probable lack of success on the merits of his claim. Therefore,** the application should be denied because it is untimely.

9. The Coast Guard noted that the words "personality disorder" (lined through but clearly visible on the DD Form 214) should not have been placed there. However, the JAG recommended that the DD Form 214 remain as is because it helps to explain the applicant's situation. The Board agrees with this recommendation and further notes that the applicant has not requested to have the words "personality disorder" removed from his DD Form 214.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of former SA xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Toby Bishop

Jordan S. Fried

Nancy L. Friedman