

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-197

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receiving the completed application on July 6, 2009, 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 March 26, 2010, 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, who was honorably discharged for unacceptable conduct on October 10, 2000, asked the Board to correct her record to reflect a medical separation for bipolar disorder.¹ The applicant stated that she was diagnosed as bipolar after she was discharged from the Coast Guard, but she believes that she had the condition prior to her discharge and was misdiagnosed by military physicians. She alleged that her bipolar disorder caused the behavior for which she was discharged and has manifested itself since her discharge from the Coast Guard. The applicant alleged that she discovered this error and injustice on November 13, 2008, and alleged that it is in the interest of justice for the Board to excuse the delay of her application because she was recently hospitalized because of her bipolar disorder. In support of her allegations, the applicant submitted copies of medical records, which are in the record summarized below.

¹ Bipolar disorder is a mood disorder characterized by recurrent depressive episodes and manic episodes and sometimes by psychotic or catatonic features. American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-TR), p. 382 *et seq.* The Coast Guard relies on the DSM when diagnosing psychiatric conditions. See U.S. COAST GUARD, COMDTINST M6000.1B, MEDICAL MANUAL Chap. 5.B.1. (Change 15, Aug. 24, 2000). The average age at onset is 20. DSM-IV-TR, at 386. Truancy and occupational failure are common features of the disorder. *Id.* at 394. Paranoia, grandiosity, distractibility, sleep disturbance, non-stop talking, poor judgment, and irritability are some of the common symptoms of bipolar disorder. Eugene Braunwald *et al.*, eds., HARRISON'S PRINCIPLES OF INTERNAL MEDICINE, 15TH EDITION (McGraw-Hill, 2001), p. 2551. Bipolar disorders constitute physical disabilities disqualifying for military service and members with bipolar disorders are processed under the physical disability evaluation system. U.S. COAST GUARD, COMDTINST M6000.1B, MEDICAL MANUAL Chap. 5.B.10. (Change 15, Aug. 24, 2000).

SUMMARY OF THE EVIDENCE

On October 28, 1997, at the age of 18, the applicant enlisted in the Coast Guard. While on active duty, the applicant was treated for a variety of physical ailments. Only the medical records that concern her mental condition are included in this summary.

On December 9, 1998, the applicant was counseled about reporting for work an hour late.

On March 23, 1999, the applicant was counseled about poor watchstanding, misuse of Government materials, sleeping during training, and disrespect for petty officers. The Executive Officer noted that despite counseling, she continued to question the authority of senior petty officers to give her orders and that any further disobedience would result in disciplinary action.

On April 16, 1999, the applicant was placed on report for insubordinate conduct toward a petty officer, failing to obey an order, and making a false official statement in violation of the Uniform Code of Military Justice (UCMJ). Although the charges were dismissed, she was counseled about her lackadaisical attitude and failure to present her safety equipment for inspection as ordered by her supervisor.

On July 2, 1999, the applicant was counseled for failing to obey an order; failing to have an inspection-ready uniform; and failing to report to work on time.

On July 23, 1999, the applicant was placed on report for showing disrespect toward a senior petty officer and for dereliction of duty.

On August 18, 1999, the applicant's supervisor sent her to the health clinic but failed to tell her she would be undergoing a psychiatric evaluation. The doctor noted that it was too difficult to perform the evaluation because the applicant was shocked and upset.

On August 24, 1999, the applicant was punished at mast. Comments on a performance evaluation in her record state that she had never successfully passed personnel inspection during the evaluation period because she did not even have all the necessary parts of the uniform; had repeatedly failed room inspections, missed morning muster, or reported for muster out of uniform; had reported for work late and failed to obey orders; had thrown away new equipment needed for an engraving machine; had slept during her training on the engraving process; had shown disrespect for petty officers; and had been ordered to live in the barracks because of financial irresponsibility. She was reduced in pay grade from E-3 to E-2.

On October 27, 1999, the applicant was counseled about her absence and failure to report for morning muster on October 20, 1999. She was warned that any future late arrivals would be punished at mast. The Executive Officer further noted that the applicant took this counseling as a "personal attack" and began challenging the his authority to counsel her. She was advised to seek "workplace coping skills training from the CG Employee Assistance Program" to learn not to lash out when her supervisors were trying to redirect her focus.

On December 17, 1999, the applicant was counseled about the fact that her room smelled so bad that on December 7, 1999, a contract repairman had refused to enter the room to make repairs. Her supervisor had previously made sure that she had seen and understood the regulations for room cleanliness. She was ordered to prepare a written analysis of each paragraph of the regulations, and she was advised that any further infraction would be punished at mast.

On December 22, 1999, the applicant was punished at mast for failing to accompany her guests and ensure that they departed on time. She was also counseled about repeatedly failing room inspections, shading the truth, and poor performance.

On December 23, 1999, the applicant went to the clinic complaining of mood swings and mixed emotions. A physician's assistant referred her for a psychiatric evaluation to rule out a possible bipolar disorder. The assistant noted that the applicant had had "multiple job performance problems" and that she claimed that she would work well one day but do nothing the next.

On December 27, 1999, the applicant was counseled about her "continued failure to obey basic rules as a watchstander and for [her] recurring failure to obey supervisors within the facility engineering division." The applicant was placed on performance probation and warned that unless she improved and abided by the rules, the command would initiate her discharge.

On January 4, 2000, the applicant went to the clinic to ask questions about her upcoming psychiatric evaluation. A doctor met with her and reported that the evaluation was needed to rule out a possible adjustment disorder or bipolar disorder but that she was fit for full duty.

On January 11, 2000, the applicant was counseled about cleanliness because her room and bathroom had been so unclean that the command had had to house her new roommate elsewhere while the rooms were cleaned.

On January 27, 2000, a psychiatrist filed the following report:

Diagnosis: No psychiatric diagnosis at this time.

Plan/Rec.: (1) Patient is psychiatrically fit for full duty. (2) She is fully responsible for her actions. (3) She agrees to seek medical help if suicidal or homicidal ideations occur. (4) Although [she] appears to be reacting normally to psychosocial stressors, she may benefit from counseling from a psychologist or LCSW, and command can consider arranging this for patient. I also advised [her] that National Alliance for the Mentally Ill can provide resources and names of groups for family members of schizophrenics. (5) No further follow-up by Psychiatry indicated at this time. If [she] finds symptoms worsening, she should report to medical and we would be happy to see [her] concerning use of medication at that time. [She] stated she does not want psychotropic medications and none appear indicated at this time. (6) Above [discussed with patient] who understood and agreed. (7) Attempt to contact [the unit health specialist] unsuccessful. (8) [psychiatrist's name and telephone number].

[History]: Voluntary evaluation for this 20 y.o. single female SR/USCG/AD with 2½ yr. AD. [She] stated she has had some difficulties with Coast Guard, has been unhappy with work, but feels she has changed her attitude and is looking forward to finishing her enlistment and perhaps in remaining in Coast Guard. She has had two NJPs, both Art. 92. [She] stated another stressor has been visiting her mother, who is institutionalized with schizophrenia. [She] has separated from mother at an early age. She described a happy childhood but missed her mother. [She] denied any [history of] depressed mood longer than a few hours, or any [history of] sustained ele-

vated mood or unusual behaviors. She denied sleep disturbance greater than one day. She denied prolonged irritability, poor energy, concentration, or sense of enjoyment. She denied any [history of] alcohol or drug abuse. She denied any [history of] perceptual disturbance. She denied any [history of] suicidal or homicidal ideation. [Family history]: + schizophrenia–mother, alcohol–brother, drugs–sister.

[Affect]: [Patient] is alert, calm, fully oriented, well-kempt in [unreadable word]. Mood euthymic except for tearful episode when talking about mother. Eye contact and psycho motor activity normal. Speech normal in flow and goal-directed. There is no evidence of psychosis, mood instability, organicity, medically boardable mood or anxiety disorders, suicidality, or homicidality. [She] denies suicidal or homicidal ideation. Cognition, memory, insight, judgment intact.

On June 22, 2000, the applicant's supervisor sent her for a mental evaluation after she made a comment about jumping from a bridge. The doctor reported that the applicant denied being suicidal and "just wants to get out of the USCG." She complained to the doctor that she was not learning anything, that she was always blamed for small errors, and that she did not like to receive orders like a child. She was tired of being punished at mast, tired of reporting for work and doing "nothing," and just wanted out of the Coast Guard. The applicant attributed her comment about jumping from the bridge to wanting an adrenalin rush. The doctor noted that the prior psychiatric evaluation had resulted in no psychiatric diagnosis and found her fit for full duty. However, he diagnosed her with an "adjustment disorder mixed"² because she could not cope with being in the military and recommended that she be discharged.

On June 30, 2000, the applicant was punished at mast because as the District mail clerk, she had "grossly neglected to follow established mail handling procedures for registered mail and negligently failed to show up to morning muster and subsequent personnel inspection." She had left a registered mail package containing classified material unsecured in the mail room and in her car, had failed to mail the package, and had missed morning muster.

On August 5, 2000, the applicant was charged with insubordinate conduct toward a petty officer, reckless operation of a vehicle, damaging military property, and failing to obey an order. The records indicate that although her driver's license had been suspended and arrangements had been made for someone else to drive her to her eye examination, she operated a Government vehicle in violation of a direct order from a petty officer, ran a stop sign, and caused an accident with extensive vehicular damage.

On August 9, 2000, the applicant was charged with being absent without leave (AWOL) after she failed to report for morning muster and duty. She was charged with the same offenses when she missed muster on August 11, 2000. At mast on August 14, 2000, the applicant was reduced in pay grade from E-2 to E-1; fined \$100; and restricted to the base with extra duties for thirty days.

² Adjustment disorders are defined as psychological responses to identifiable stressors that result in the development of clinically significant emotional or behavioral symptoms, including either "marked distress that is in excess of what would be expected given the nature of the stressor or ... significant impairment in social or occupational (academic) functioning." DSM-IV-TR, p. 679. Adjustment disorders disappear when the stressors disappear. *Id.* Adjustment disorders are not considered physical disabilities, but members with chronic adjustment disorders that interfere with their performance of duty are administratively (not medically) discharged. U.S. COAST GUARD, COMDTINST M6000.1B, MEDICAL MANUAL Chap. 5.B.3. (Change 15, Aug. 24, 2000).

On August 16, 2000, the applicant's commanding officer (CO) notified her that he was initiating her honorable discharge for unsatisfactory performance because her performance had not improved while she was on probation. He advised her that she was entitled to object to the discharge and to submit a statement rebutting his recommendation.

On August 17, 2000, the applicant signed a statement objecting to the circumstances of her discharge, but noting that she did not object to being discharged. She submitted a statement noting that she had received two unit commendations and a team award while on active duty. She asked to be retained through her third active duty anniversary, October 27, 2000, so that she would be eligible for educational benefits under the Montgomery G.I. Bill (MGIB).

On August 22, 2000, the CO sought authority to discharge the applicant for unsatisfactory performance under Article 12.B.9. of the Personnel Manual. He noted that she had been counseled about her poor performance numerous times and had been punished at most four times. However, he recommended that she receive an honorable discharge and that she be discharged on or after October 27, 2000, so that she would have three continuous years of service and be eligible for MGIB benefits.

On August 30, 2000, the Commandant responded to the CO and stated that the applicant should be discharged for unsuitability under Article 12.B.16.b.3. of the Personnel Manual, which authorized discharges for "Apathy, Defective Attitudes, and Inability to Expend Effort Constructively." The CO was advised to give the applicant notice of this change and another opportunity to object to her discharge. On August 31, 2000, the applicant acknowledged notice of the proposed discharge for unsuitability and again noted that she did not object to being discharged.

On September 12, 2000, the Commandant ordered that the applicant be honorably discharged for unsuitability no later than October 10, 2000, with a JNC separation code, which denotes "unacceptable conduct."

On September 13, 2000, the applicant's command responded to the discharge order by asking that her discharge date be changed to November 1, 2000, so that the applicant would be entitled to MGIB benefits. However, on September 15, 2000, this request to delay her discharge was disapproved based upon her numerous violations of the UCMJ.

On September 22, 2000, the applicant underwent a physical examination pursuant to her pending discharge. On her Report of Medical History, she denied ever suffering from insomnia, depression, or nervous trouble of any sort and wrote that she was in good health. No physical disabilities were discovered during the examination, and she was found fit for discharge.

On October 10, 2000, the applicant was honorably discharged from the Coast Guard for unacceptable conduct under Article 12.B.16. of the Personnel Manual. She had completed 2 years, 11 months, and 13 days of active duty.

On October 5, 2008, the applicant was admitted to a hospital. A mental health technician who conducted the intake evaluation reported that the applicant was "delusional + paranoid.

Unable to function. Calling police + fire dept. often.” Upon her discharge, the applicant’s condition was noted as an exacerbation and manic phase of her bipolar disorder with psychotic symptoms. The doctor noted that she had previously been hospitalized at two other institutions due to a “bipolar disorder with manic flares,” which had been treated with the drug Abilify.

VIEWS OF THE COAST GUARD

On October 30, 2009, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the facts and analysis provided by the Personnel Service Center (PSC) in an attached memorandum.

PSC stated that the application is not timely and should be denied due to untimeliness. PSC stated that the applicant underwent a psychiatric evaluation while in the Coast Guard and was found to be psychiatrically fit for duty and fully responsible for her conduct. PSC further noted that the earliest documentation of a diagnosis of bipolar disorder in the record is dated October 5, 2008, eight years after the applicant’s discharge from active duty. PSC concluded that the applicant was “appropriately processed for separation due to misconduct” and so no relief should be granted.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 3, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to submit a response within thirty day. No response was received.

APPLICABLE REGULATIONS

Article 12.B.16.b.3. of the Personnel Manual in effect in 2000 authorized discharges for “Apathy, Defective Attitudes, and Inability to Expend Effort Constructively.” The member was entitled to a probationary period to overcome performance deficiencies, but if the member did not improve, the command could initiate the discharge after notifying the member and affording her an opportunity to submit a rebuttal statement and, if a general discharge was proposed, to consult an attorney.

Article 12.B.1.e.1. of the Personnel Manual, entitled “Cases Involving Concurrent Disability Evaluation and Disciplinary Action,” stated the following:

Disability statutes do not preclude disciplinary separation. The separations described here supersede disability separation or retirement. If Commander, (CGPC-adm) is processing a member for disability while simultaneously Commander, (CGPC-epm-1) is evaluating him or her for an involuntary administrative separation for misconduct or disciplinary proceedings which could result in a punitive discharge or an unsuspended punitive discharge is pending, Commander, (CGPC-adm) suspends the disability evaluation and Commander, (CGPC-epm-1) considers the disciplinary action. If the action taken does not include punitive or administrative discharge for misconduct, Commander, (CGPC-adm) sends or returns the case to Commander, (CGPC-adm) for processing. If the action includes either a punitive or administrative discharge for misconduct, the medical board report shall be filed in the terminated member’s medical personnel data record (MED PDR).

Article 2.C.11. of the Physical Disability Evaluation System (PDES) Manual in effect in 2000 stated the following:

a. Disability statutes do not preclude disciplinary or administrative separation under applicable portions of the Personnel Manual, COMDTINST M100.6 (series). If a member is being processed for a disability retirement or separation, and proceedings to administratively separate the member for misconduct, disciplinary proceedings which could result in a punitive discharge of the member, or an unsuspended punitive discharge of the member is pending, final action on the disability evaluation proceedings will be suspended, and the non-disability action monitored by [CGPC]. ...

b. If the court martial or administrative process does not result in the execution of a punitive or an administrative discharge, the disability evaluation process will resume. If a punitive or administrative discharge is executed, the disability evaluation case will be closed and the proceedings filed in the member's official medical record.

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.
2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. The applicant was discharged for misconduct on October 10, 2000, and knew that she had not received a medical separation on that date. Although she alleged that she did not discover the error in her record until November 13, 2008, her medical records show that she had been hospitalized for bipolar disorder several times before her admission to the hospital on October 5, 2008. The applicant has not submitted documentation disclosing the date she was first diagnosed as bipolar. Therefore, it is not clear whether her application was timely filed. However, because the applicant was discharged nine years ago and has apparently suffered from bipolar disorder for several years and been hospitalized for it several times during that period, the Board finds that it is in the interest of justice to excuse the possible untimeliness of her application and to consider the case on the merits.
3. The preponderance of the evidence in the record shows that the applicant did not suffer from bipolar disorder while she was a member of the Coast Guard and that her non-medical discharge for unacceptable conduct was neither erroneous nor unjust. The earliest evidence in the record of a diagnosis of bipolar disorder is dated October 5, 2008, eight years after her discharge. Although in December 1999 one physician's assistant referred her to a psychiatrist to determine whether she had bipolar disorder because she complained of mood swings, the psychiatrist reported on January 27, 2000, that she had no psychiatric diagnosis; that she was psychiatrically fit for duty and responsible for her conduct; and that no psychiatric medications or follow-up were needed. After another mental examination in June 2000, conducted because the applicant made a comment to her supervisor about jumping off a bridge, she was diagnosed with an adjustment disorder because she told the doctor that she did not like being in the military, did not like to receive orders like a child, and wanted out. An adjustment disorder is not considered

a physical disability and does not entitle a member to medical board evaluation and processing.³ The applicant's Coast Guard medical records are presumptively correct, and she has not submitted sufficient evidence to rebut that presumption.⁴

4. The applicant alleged that her misconduct in 2000 was caused by her bipolar disorder. The existence of a mental illness does not *per se* excuse a member from liability for her misconduct. Instead, the deciding factors are whether the member lacked substantial capacity to appreciate the criminality of her conduct and to conform her conduct to the requirements of law.⁵ Following the psychiatric evaluation on January 27, 2000, the psychiatrist reported that the applicant's cognition, insight, and judgment were intact and that she was "fully responsible for her actions." Thus, even if the applicant had been diagnosed as bipolar before she was discharged from active duty, she would not have been entitled to a medical separation by reason of physical disability because administrative proceedings that result in a discharge for misconduct supersede the statutes and regulations regarding medical separations.⁶

5. The applicant has failed to prove by a preponderance of the evidence that she was misdiagnosed while on active duty or that she suffered from bipolar disorder prior to her discharge from the Coast Guard. The record before the Board lacks evidence of when she was first diagnosed as bipolar. Therefore, her request should be denied. However, she may seek further consideration of her application within a year upon submission of additional medical evidence of the history and duration of her illness.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

³ Chronic adjustment disorders that interfere with a Coast Guard member's performance of duty result in administrative separations (rather than medical board processing). U.S. COAST GUARD, COMDTINST M6000.1B, MEDICAL MANUAL Chap. 5.B.3. (Change 15, Aug. 24, 2000).

⁴ 33 C.F.R. § 52.24(b). See *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

⁵ Rule 706 of the Rules for Courts-Martial, MANUAL FOR COURTS-MARTIAL, UNITED STATES (1995 ed.)

⁶ U.S. COAST GUARD, COMDTINST M1000.6A, PERSONNEL MANUAL, Art. 12.B.1.e.1. (Change 33, Sept. 19, 2000); U.S. COAST GUARD, COMDTINST M1850.2C, PHYSICAL DISABILITY EVALUATION SYSTEM MANUAL Article 2.C.11. (July 19, 1996).

ORDER

The application of former SR xxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is denied. However, she may seek further consideration within a year upon submission of additional medical evidence of the history and duration of her illness.

Jeff M. Neurauter

Lynda K. Pilgrim

Kenneth Walton