

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2001-072

FINAL DECISION

ANDREWS, Attorney-Advisor:

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 BCMR docketed the application for correction on April 12, 2001, upon receipt of the applicant's completed application and military records.

This final decision, dated February 28, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a former seaman apprentice (SA; pay grade E-2) in the Coast Guard, asked the Board to correct his military record by upgrading the reenlistment code on his discharge form (DD 214) from RE-4 so that he would be eligible to reenlist. He was discharged on March 21, 2001, with an RE-4 reenlistment code (ineligible for reenlistment), a JFX separation code (unsuitable for service due to a personality disorder), and "Personality Disorder" as the narrative reason for separation shown on his DD 214.

APPLICANT'S ALLEGATIONS

The applicant alleged that he was assigned an RE-4 through no fault of his own. He alleged that he was suffering from depression and was encouraged to request a discharge. He alleged that although he requested the discharge, he had no intention of staying out of the military permanently and now cannot reenlist. He alleged that he discussed the matter with the executive officer of his cutter, but that officer must have misunderstood his intention.

SUMMARY OF THE RECORD

On _____, the applicant enlisted in the Coast Guard for a term of four years. After completing boot camp, he was assigned to a cutter. The applicant had difficulty adjusting to shipboard life and sought treatment through the Coast Guard's Employee Assistance Program. He began attending counseling sessions with a clinical psychologist. After he had exhausted his permitted number of counseling sessions, the psychologist recommended that he be allowed to continue therapy.

On _____, with the applicant's agreement, the clinical psychologist reported to his command that "[a]t best, this is a chronic adjustment disorder with periods of intense anxiety and depression. At worst, he is experiencing a syndrome referred to as schizotypal¹ disorder, which has more of a long-term impact on social, vocational and personal adjustment. Because of the severity of the potential impact on his career if the diagnosis is overstated, I am led to diagnose a moderately severe adjustment disorder at this time."

On _____, the applicant was seen by another clinical psychologist because he was feeling stressed and depressed. The psychologist diagnosed him with another adjustment disorder, "depressed mood," and recommended that he continue psychotherapy.

On _____, the applicant submitted the following statement to his command:

In my short stint in the service, I have worked to the best of my ability. It's been difficult for me at times on the boat to deal with shipboard life. To explain in detail all my reasons would be ineffectual because many of my concerns I can't change. With respect to all parties concerned, I request discharge.

On _____, the applicant underwent a medical evaluation pursuant to his possible discharge. He told his cutter's health specialist that he was suffering from bouts of depression, anxiety, and mood swings. He stated that sometimes he felt well but sometimes felt afraid to stand watches. He indicated that he was not having suicidal ideations but sometimes "wanted to cut his face off." He reported that his mother was bipolar.

¹ Schizotypal personality disorder is a "pervasive pattern of social and interpersonal deficits marked by acute discomfort with, and reduced capacity for, close relationship as well as by cognitive or perceptual distortions and eccentricities of behavior, beginning by early adulthood and present in a variety of contexts" American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH ED., TEXT REV. (DSM-IV-TR) (Washington, D.C., 2000). The diagnosis may be made when the person experiences at least five of nine described symptoms.

At the bottom of the health specialist's notes, a doctor who was not a psychiatrist wrote that he had "reviewed psych consult," diagnosed the applicant with "schizotypal disorder," and "recommend[ed] admin[istrative] separation" since the condition was not a physical disability. The extent to which the doctor actually examined and spoke with the applicant is unclear.

On January 31, 2001, the applicant's commanding officer (CO) formally notified him that he was initiating his discharge under Article 12.B.16. of the Personnel Manual because of his "inability to adjust to military life and duly diagnosed adjustment and personality disorders." The CO also notified him that he was entitled to submit a statement on his own behalf. The applicant signed a statement acknowledging the notification and indicating that he did not object to being discharged. He submitted a copy of the letter he had written on January 28, 2001.

Also on January 31, 2001, the CO recommended to the Coast Guard Personnel Command (CGPC) that the applicant be honorably discharged for unsuitability, in accordance with Article 12.B.16., based on his diagnosed personality and adjustment disorders. The CO wrote that he believed the conditions would persist and that treatment would be ineffective.

On February 27, 2001, CGPC ordered the CO to discharge the applicant, in accordance with Article 12.B.16., no later than March 21, 2001, with a separation code of JFX (personality disorder). The applicant was discharged on March 21, 2001, with the JFX separation code, an RE-4 reenlistment code, and "Personality Disorder" as the narrative reason for separation.

On June 26, 2001, after the applicant filed his BCMR application, CGPC asked a psychiatrist to review his military medical record. The psychiatrist wrote that the record "supports diagnosis of personality disorder made by [the first clinical psychologist on , and by the doctor on]."

VIEWS OF THE COAST GUARD

On September 14, 2001, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny the requested relief for lack of merit.

The Chief Counsel argued that the applicant had "no absolute legal right to remain in the service until the expiration of his enlistment" and could be appropriately administratively discharged before that time. *Giglio v. United States*, 17 Cl. Ct. 160, 166 (1989). He also argued that, "[a]bsent strong evidence to the contrary," the Board must presume that the Coast Guard officers involved in the applicant's discharge "carried out their duties correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). He argued that the applicant had not submitted sufficient evidence to prove by a

preponderance of the evidence that the Coast Guard committed any material error or injustice in discharging him with a JFX separation code and an RE-4 reenlistment code.

The Chief Counsel alleged that the only error that occurred in processing the applicant for discharge was that the doctor who evaluated him on _____, failed to write in his report that the applicant was “mentally responsible” and able “to distinguish right from wrong and to adhere to the right” and that he had “the mental capacity to understand the action being contemplated,” as required under Article 12.B.16.h. However, the Chief Counsel argued, the error was harmless because the applicant’s competency was not then and is not now in question. Moreover, the Chief Counsel pointed out, the psychologist who examined the applicant on _____, reported that the applicant had “adequate judgment; no memory impairment; congruent thought control; coherent thought process, ... etc.”

The Chief Counsel alleged that there is no evidence in the record that the applicant’s personality disorder is not a permanent condition and no basis for changing the nature of his discharge. He pointed out that the applicant did not allege that he had been denied due process or that he did not have a personality disorder: he only asked for his RE code to be upgraded, and he submitted no evidence to support an upgrade.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 17, 2001, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. No response was received.

APPLICABLE LAW

Article 12.B.16. of the Coast Guard Personnel Manual authorizes enlisted personnel with diagnosed personality disorders that are listed in Chapter 5 of the Medical Manual to be discharged by reason of unsuitability at the direction of the Commandant.

Chapter 5.B.2 of the Medical Manual lists personality disorders that qualify a member for administrative discharge pursuant to Article 12.B. of the Personnel Manual. The list includes schizotypal personality disorders. Chapter 3.F.16.c provides that personality disorders “may render an individual administratively unfit [for duty] rather than unfit because of a physical impairment. Interference with performance of effective duty will be dealt with through appropriate administrative channels (see Section 5-B).”

Adjustment disorders are not included among the personality disorders listed in Chapter 5.B.2. of the Medical Manual. Chapter 5.B.3 of the Medical Manual states that adjustment disorders “are generally treatable and not usually grounds for separation,” but that members with adjustment disorders may be administratively discharged “when these conditions persist or treatment is likely to be prolonged or non-curative (e.g. inability to adjust to military life ...).” Chapter 3.F.16.d of the Medical Manual states that adjustment disorders “do not render an individual unfit because of physical impairment. However, if these conditions are recurrent and interfere with military duty, are not

amenable to treatment, or require prolonged treatment, administrative separation should be recommended (see Section 5-B).”

Article 12.B.16.d. of the Personnel Manual provides that every member discharged under the article shall be notified of the reason for he is being considered for discharge and shall be allowed to submit a statement on his own behalf.

Article 12.B.16.h. provides that every member “under consideration for discharge for unsuitability must have a physical examination performed by a Public Health Service or Armed Forces medical officer. If one is not available locally, a contract physician may perform the exam.” In addition, “when psychiatric considerations are involved, the medical officer should be a psychiatrist, if available. His or her report will include [a statement about whether the member has a physical disability] and a statement whether the individual was and is mentally capable both to distinguish right from wrong and adhere to the right and has the mental capacity to understand the action being contemplated in his or her case.”

Article 1.E. of the Coast Guard Instruction for completing discharge forms states that a member’s DD 214 should show a separation code and reenlistment code “as shown in the SPD Handbook or as stated by [CGPC] in the message granting discharge authority.” The narrative reason for separation on the DD 214 must be whatever is specified by CGPC.

The SPD Handbook includes the following combinations of codes and narrative reasons for separation which might apply to the applicant’s case:

SPD Code	Narrative Reason for Separation	RE Code	Separation Authority	Explanation
JFX	Personality Disorder	RE-4 or RE-3G	12.B.16	Involuntarily discharge [by direction] when a personality disorder exists, not amounting to a disability, which potentially interferes with assignment to or performance of duty.
JFV	Condition, Not a Disability	RE-4 or RE-3G	12.B.12	Involuntarily discharge [by direction] when a condition, not a physical disability, interferes with the performance of duty (Enuresis, motion sickness, allergy, obesity, fear of flying, et al.)

Under Article 12.B.4. of the Personnel Manual, a member’s commanding officer has authority to decide which of the permissible RE codes list in the SPD Handbook the member is assigned.

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. The application was timely.

2. The applicant has not submitted any evidence to suggest that he is suitable for military service or that his CO erred in determining that he is not suitable for further military service. The preponderance of the evidence in the record indicates that the applicant was unable to adapt to military life and that his mental state made him unsuitable for military service. Members diagnosed with either a recurring depressed mood (adjustment disorder) or with a schizotypal personality disorder may be administratively discharged and assigned an RE-4 reenlistment code. Personnel Manual, Article 12.B.16.; Medical Manual, Chapter 5.B.; SPD Handbook. Therefore, the Board concludes that the Coast Guard committed no error in assigning the applicant an RE-4 reenlistment code.

3. The Board agrees with the Chief Counsel that the doctor's failure to certify that the applicant was "mentally responsible" and able "to distinguish right from wrong and to adhere to the right" and that he had "the mental capacity to understand the action being contemplated," as required under Article 12.B.16.h. of the Personnel Manual, was harmless. There is no evidence in the record that the applicant was mentally incompetent, and a psychologist's report dated _____, indicates that he was mentally competent.

4. The applicant was evaluated twice by clinical psychologists who both diagnosed him with an adjustment disorder. After he requested to be discharged, he was sent to a doctor who was not a psychiatrist but who, on the basis of a single consultation and review of the psychologists' notes, diagnosed him with schizotypal personality disorder. Nevertheless, on the basis of the doctor's diagnosis, the applicant was assigned the JFX separation code and "Personality Disorder" as the reason for his discharge on his DD 214.

5. In the Board's experience, members assigned the separation code JFX usually have been diagnosed by one or more psychiatrists with a personality disorder or a chronic adjustment disorder that repeatedly leads to inappropriate behavior or misconduct which fully supports their diagnoses.² There is no evidence of misconduct or inappropriate behavior in the applicant's record. Furthermore, members correctly assigned the separation code JFX often are given "Unsuitability" as a narrative reason for

² See, e.g., BCMR Docket No. 2000-142 (member who made "suicidal gesture" by warning guard at historic tower that he would use a dog collar and leash to hang himself off the top of the tower was diagnosed with a personality disorder and discharged with a JFX separation code and narrative reason for separation of "Personality Disorder"); BCMR Docket No. 1999-037 (member frequently exhibiting inappropriate sexual behavior over _____ period was twice diagnosed with "adjustment disorder with disturbance of conduct" and discharged with JFX separation code and narrative reason for separation of "Unsuitability"); BCMR Docket No. 1998-099 (member _____ arrested for indecent exposure was diagnosed with narcissistic personality disorder and discharged with a GFX separation code ("involuntary discharge approved by recommendation of a board when a personality disorder exists, not amounting to a disability, which potentially interferes with assignment to or performance of duty") and a narrative reason for separation of "Unsuitability"); BCMR Docket No. 1997-097 (member suffering severe chronic depression was diagnosed with passive-aggressive personality disorder and discharged with JFX separation code and narrative reason for separation of "Unsuitability").

separation even though the SPD Handbook permits only the use of “Personality Disorder” with the separation code JFX.³

6. There are a limited number of separation codes available to the Coast Guard; they cannot be tailor-made to reflect exactly the circumstances of each member’s discharge. Therefore, members sometimes receive separation codes and narrative reasons for separation that do not perfectly reflect the causes of their discharge. Nonetheless, because civilian employers often demand to see former servicemembers’ DD 214s prior to hiring them, it is extremely important for DD 214s to be fair and not to unduly tarnish servicemembers’ records without just cause and substantial evidence.

7. The record indicates that the first clinical psychologist, who was the only medical authority who had any significant opportunity to examine and diagnose the applicant, considered the possibility that the applicant might have a schizotypal personality disorder but instead diagnosed him with an adjustment disorder. The doctor who made the diagnosis of schizotypal personality disorder after his command had decided to discharge him was not a psychiatrist, saw the applicant only once, and therefore presumably based his diagnosis on the psychologist’s notes, which the psychologist himself had deemed insufficient to support the diagnosis. Moreover, there is no evidence in the record that either of the psychologists who examined the applicant or the doctor made a finding that he had experienced at least five of the nine symptoms of schizotypal disorder, as required for a proper diagnosis under the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders.

8. In light of the findings 4, 5, 6, and 7, above, the Board finds that the Coast Guard committed an injustice that “shocks the sense of justice” when it assigned the applicant the JFX code and “Personality Disorder” as the narrative reason for separation shown on his DD 214. The Coast Guard is certainly entitled to discharge a member because he cannot adapt to military life or because he has a properly diagnosed personality disorder. However, it is not fair for the Coast Guard to saddle a veteran with the JFX code and “Personality Disorder” as a narrative reason for separation based on such an uncertain diagnosis by a doctor who is not a psychiatrist with no evidence that the applicant’s psychiatric condition, whatever it is, has caused him to commit any misconduct or inappropriate behavior. CGPC’s attempt to buttress the thin medical evidence in this record by having a psychiatrist review the applicant’s medical record and confirm the doctor’s diagnosis after the applicant had been discharged has not convinced the Board that the Coast Guard’s choice of separation code and narrative reason for separation was accurate or fair.

9. The Board finds that, given the applicant’s diagnosed adjustment disorder, inability to adapt to military life, and the provisions of the SPD Handbook, the Coast Guard should have assigned him the JFV separation code for having a condition that

³ *Id.*; see also BCMR Docket No. 2001-020. Although the SPD Handbook was revised in 1994 to remove “Unsuitability” as a proper narrative reason for separation, it apparently continues to be used by some commands in lieu of “Personality Disorder.”

precludes military service but does not amount to a physical disability. In the alternative, the Coast Guard could have ignored the SPD Handbook, as it has done in the past, and assigned the applicant “Unsuitability” as a narrative reason for separation along with the JFX separation code.

10. In light of the slim basis in the record for the applicant’s diagnosis of schizotypal personality disorder, the Board finds that it would be in the interest of justice to change the applicant’s separation code to JFV, his narrative reason for separation to “Condition, Not a Disability,” and the separation authority shown on his DD 214 to Article 12.B.12. of the Personnel Manual. However, as stated in finding 2, above, he has not proved that the RE-4 code on his DD 214 is in error or unjust.

11. Accordingly, the applicant’s request to have his RE code upgraded should be denied, but the alternative relief described in finding 10 should be granted.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of _____, USCG, for correction of his military record is granted as follows:

Block 25 on his DD 214 shall be corrected to show that he was discharged under the authority of Article 12.B.12. of the Personnel Manual (COMDTINST M1000.6A).

Block 26 shall be corrected to show that he received the separation code JFV.

Block 28 shall be corrected to show "CONDITION, NOT A DISABILITY" as the narrative reason for separation.

The Coast Guard shall issue the applicant a new DD 214 with these corrections made in the original (not by hand and not by issuing a DD 215).

No other relief is granted.

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John A. Kern

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