

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

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2002-061

FINAL DECISION

ULMER, Chair:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on March 13, 2002, upon the Board's receipt of the applicant's complete application for correction of her military record.

This final decision, dated March XX, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former member of the Coast Guard, asked the Board to upgrade her discharge under other than honorable conditions to an honorable discharge by reason of physical disability.

The applicant enlisted in the Coast Guard on July 7, xxxx. She was discharged under other than honorable conditions on October 1, xxxx in lieu of trial by special court-martial, with a KFS (voluntary discharge allowed by established directive when separated for conduct triable by court martial for which the member may voluntarily separate in lieu of going to trial) separation code and an RE-4 (not eligible for reenlistment) reenlistment code.

EXCERPTS FROM RECORD AND SUBMISSIONS

The applicant alleged that she was discharged "for a criminal offense which was precipitated by medication [she] was [placed] on by [her] acting psychologist." She stated that the Department of Veterans Affairs [DVA] has granted her a service-connected disability for bipolar disorder, for which she was diagnosed while on active duty.

The applicant denied on her pre-enlistment and enlistment medical report forms that she had ever been treated for mental illness. Based on her representations in this regard and a medical examination, she was found to be qualified for enlistment. She enlisted on July 7, xxxx.

The applicant had a somewhat uneventful enlistment until on or about April 13, xxxx, when she reported to the health clinic complaining about feeling angry most of the time. She stated that she had experienced the same feelings in childhood. The medical note for this visit indicated that while a freshman in high school, the applicant had been diagnosed with manic depression and was prescribed medication, which she refused to take. The medical personnel at the health clinic referred the applicant to a psychiatrist, Dr. H.

On May 17, xxxx, the applicant had an initial diagnostic interview with Dr. H to rule out bipolar disorder and depression. At the time, her symptoms were mood swings and difficulty controlling anger for the past year. Dr. H's report noted that the applicant, as an 11 or 12-year-old child, had periods of increased anxiety-palpitations, shortness of breath, and feelings of dying, for which she was not treated. The psychiatrist, Dr. H. diagnosed the applicant as suffering from Generalized Anxiety Disorder and prescribed Paxil to treat the condition.

A June 15, xxxx, medical note in the applicant's record stated that Paxil was discontinued due to side effects but the drug Wellbutin was prescribed on a trial basis. At this visit, the applicant was found fit for light duty, but not fit for boat/sea duty or driving a government vehicle.

On July 16, xxxx, the applicant visited the health clinic for an update of her duty status. The medical note indicated that Wellbutin had been discontinued and that she had been placed on Celexa for depression. The applicant reported feeling less anger and moodiness with Celexa. The medical note indicated that the applicant was diagnosed at that time with anxiety and that she was continued on light duty with no driving, climbing, or sea duty.

On or about September xx, xxxx, the applicant was arrested for using a stolen credit card to pay for her gambling activity. The applicant reported that she began gambling in April 1999. On November 24, xxxx, a civilian medical care provider requested one on one counseling for the applicant.

On December 3, xxxx, the applicant became the subject of a criminal investigation because she was suspected of making fraudulent credit card purchases, threatening her boyfriend, and forging checks.

On December 17, xxxx, the Commanding Officer of a Naval hospital determined that the applicant met the diagnostic criteria for pathological gambling. The hospital recommended that the applicant receive outpatient treatment for her gambling.

January 5, xxxx, the applicant was charged with two specifications of attempted larceny and 56 specifications of larceny. The charges were referred to a special court-

martial. Forgery charges were not pursued because the handwriting analysis comparing the applicant's signature to that on the checks was inconclusive.

In a February 1, xxxx, medical evaluation report, Dr. H, the applicant's psychiatrist, wrote that in April/May xxxx, the applicant reported a history of mood swings over many years, but a careful evaluation at that time did not reveal that she suffered from a hypomanic or manic episode. He stated that her history at that time appeared to be more compatible with generalized anxiety disorder rather than bipolar disorder, despite the fact that her mother had been diagnosed with bipolar disorder.

Dr. H stated that medication trials were initiated with paroxetine (Paxil), bupropion (Wellbutin), and finally citalopram (Celexa). He further stated the following:

There was no response with the first 2 medications, but within 4 weeks of starting the citalopram she began to have marked hyperactivity, compulsive gambling, insomnia without feeling tired, spending sprees, inflated self-esteem, talking fast, and excessive involvement in pleasurable activities -- gambling and indiscrete sexual activity. This manic episode persisted until she was arrested for illegal activity of multiple thefts to support her gambling losses.

Following her arrest, she has continued on the medication and continues to note hyperactivity and compulsive behaviors. She has not engaged in any illegal activities and has been working hard to find an explanation for her behavior.

Dr. H described the applicant's mental status as anxious and her affect as appropriate, although she working hard to control it. He stated that the applicant was nervous and "very depressed and confused about why she could have engaged in such antisocial [stealing] behavior." He stated that the applicant had no homicidal or suicidal ideation, delusions or hallucinations. He found that the applicant's insight and judgment were good and her impulse control was adequate. Dr. H's report also stated the following:

It appears, in retrospect, that this individual has bipolar disorder. The medical literature documents the following adverse psychiatric disorders resulting from Citalopram (Celexa) "Frequent: impaired concentration, amnesia, apathy, depression, increased appetite, aggravated depression, suicide attempt, and confusion. Infrequent: increased libido, aggressive reaction, paranoia, drug dependence, depersonalization, hallucinations, euphoria, psychotic depression, delusions, emotional liability, panic reaction, and psychosis"-- This section was quoted directly from the package insert--

IN SUMMARY THIS INDIVIDUAL HAD A MANIC EPISODE PRECIPITATED BY CITALOPRAM WHICH WOULD EXPLAIN MOST OF HER ILLEGAL BEHAVIOR FROM APPROXIMATELY 1 AUGUST TO 30 OCTOBER xxxx.

Inquiry into the Applicant's Mental Status

On February 10, xxxx, pursuant to R.C.M. 706 of the Manual for Courts-Martial, the applicant's commanding officer (CO) requested an inquiry into the applicant's mental status to determine whether she had a severe mental disease or defect at the time of the alleged criminal conduct.

On May 8, xxxx, the mental inquiry board composed of Dr. B issued its report, which described the history of the applicant's illness as follows:

In May xxxx the defendant presented to her medical department complaining of a one-year history of increased anxiety, rapid mood swings, irritability, and anger. She was referred to the Mental Health Department at xxxxx xxxx Medical Center (xxxxx). [Dr. H] (psychiatrist) diagnosed her with Generalized Anxiety Disorder, prescribed paroxetine (Paxil), 20 mg orally once per day and recommended that she begin individual counseling through the Coast Guard Employee Assistance Program (EAP). After three weeks of compliantly taking paroxetine (Paxil) the [applicant's] mood swings significantly decreased and her anger dissipated. However, the defendant experienced side effects of decreased sexual drive, impaired sexual functioning, and anorgasmia. The command arranged a follow up appointment with [Dr. H] to address side effect issues. [Dr. H] reevaluated [the applicant] and decided to discontinue [Paxil]. She was then prescribed bupropion (Wellbutrin SR) which she took compliantly for four weeks. However, this antidepressant medication worsened her mood swings, irritability, and anger. [The applicant] stated "It made me angry. It was like I wasn't taking anything." In late June xxxx [Dr. H] discontinued bupropion (Wellbutrin SR) because of ineffectiveness. She was then prescribed citalopram (Celexa), 20 mg orally once per day. She began compliantly taking the new medication in early to mid July xxxx. Within a two to three week period she noticed that her mood had elevated beyond normal. She stated, "I always felt anxious with nervous energy. I would always be excited. It felt like the medication was some sort of upper." Between August xxxx and February xxxx, [the applicant] experienced an abnormally and persistently elevated and irritable mood with associated symptoms of grandiosity, decreased need for sleep, pressured speech, racing thoughts, and excessive involvement in pleasurable activities that have a high potential for painful consequences (i.e. stealing, spending and gambling). She stated, "I spent

\$500.00 at a time on clothing that wouldn't even fit me." Her manic episode was of such severity that it caused significant interpersonal, occupational, and legal impairment. She experienced some mild depressive symptoms with intermittent suicidal ideation in the context of being arrested and restricted to base in mid September. The intensity of her depressive symptoms was minimal compared to her ongoing manic symptoms. She stated, "after I got arrested I felt down, but I continued taking Celexa and the depression quickly went away." [The applicant] continued to experience excessive talking, decreased need for sleep, grandiosity and impulsiveness. She stated, "I still felt the desire to gamble despite being on restriction. My stealing behavior continued up until February xxxx when I was taken off Celexa." In February xxxx, [the applicant was prescribed olanzapine (Zyprexa), 10 mg orally once per day for the purpose of mood stabilization. She took the medication compliantly for approximately three weeks, but had to stop because of akathisia. In early March xxxx, Dr. H discontinued olanzapine . . . and reinstated [Paxil] . . . Since that time the applicant's expansive mood has decreased and stabilized . . . She currently attends weekly group psychotherapy for bipolar patients. She also continues in treatment with [Dr. H] for psychotropic medication management.

In April xxxx [the applicant] went gambling for the first time with a group of friends. Her frequency of gambling dramatically increased to every day. She gambled during her mid day lunch break and she left work early to gamble before she returned home. [The applicant] gambled by herself and she kept her gambling activity hidden from her boyfriend and command . . . [A]s the month of August progressed, [the applicant's] gambling began taking up excessive time and money. . . . She . . . lost enormous amounts of money and couldn't stop without gambling away all of her winnings. This quickly led to illegal activities to secure financing for her gambling addiction. [The applicant's] gambling stopped on September xx, xxx when she was arrested.

Dr. B, the mental inquiry board psychiatrist, diagnosed the applicant as suffering from Bipolar I Disorder, Single Manic Episode, 296.0 (Axis I); problems related to the legal system/crime, problems with primary support group, and economic problems (Axis IV); and 50 on the Global Assessment of Functioning Scale (Axis V). He stated that the applicant's historical data, her mental status examination, and the accompanying collateral information supported the argument that the applicant suffered a manic episode, which was of such severity that it caused significant interpersonal, occupational, and legal impairment. He further stated as follows:

The timeline of treatment with citalopram in conjunction with citalopram's potential to induce manic-like behavior clearly shows that

citalopram was probably the inciting etiologic factor responsible for her abnormal behavior. Technically, if one were to apply an exact timeline in conjunction with strict diagnostic guidance from the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), the applicant would have a diagnosis of Substance (citalopram) Induced Mood Disorder. However, additional evidence suggests that her period of abnormal behavior was not solely substance induced. When [the applicant] initially presented in April/May xxxx she had been complaining of a one-year period of mood swings and irritability. In retrospect, it is my opinion that these symptoms were the harbinger of a more severe mood disturbance that was to follow . . . It is also my opinion that [the applicant] is genetically predisposed to develop bipolar and that citalopram sparked a manic episode that was already beginning to manifest. It is also my opinion that [the applicant's] probability for developing future manic and major depressive episodes is high even in the absence of substance use, psychopharmacotherapy, or significant environmental stress. [The applicant] has also been diagnosed with Pathological Gambling . . . Once again, if one were to apply an exact timeline in conjunction with strict diagnostic guidance from the Diagnostic and Statistical Manual of Mental Disorders (DSM IV), the applicant would not have pathological gambling because her abnormal behavior occurred during the course of a manic episode. However, it is my opinion that [the applicant] does warrant a diagnosis of Pathological Gambling. Despite stabilization of [the applicant's] mood since February xxxx, she continues to have a preoccupation with gambling and recurrent thoughts of stealing as a means to finance gambling. These thought processes continue to occur in the absence of mania. The desire to gamble continues to excite her and at the same time upset her because she is quite aware of the detrimental consequences of that activity.

The mental inquiry board concluded that at the time of the applicant's alleged criminal conduct, she had a severe mental disease or defect, "Bipolar I Disorder Single Manic Episode." It further concluded that the applicant, at the times of the alleged criminal conduct, was able to appreciate the nature of her action or wrongfulness of her conduct despite having a severe mental disease or defect. "However, it is my opinion that at the times of the alleged criminal conduct, the [applicant] possessed diminished mental capacity to control her impulses. This state caused her to act in a reckless manner in which she consciously disregarded the substantial and unjustifiable risks of her actions." Dr. B also found that the applicant "has sufficient mental capacity to understand the nature of the proceedings against her and she is able to cooperate intelligently in her defense."

The applicant's treating psychiatrist, Dr. B, wrote a memorandum for the record dated May 8, xxxx. He stated that the applicant's condition was under control and that

she was participating in psychotherapy and taking her medication as prescribed. He gave the applicant an excellent prognosis, stating, "it is unlikely that there will be a reoccurrence of any hyperactive behavior."

The record contains an undated letter from the applicant's CO's supervisor to the Commander, Coast Guard Personnel Command (CGPC) with the subject "REQUEST FOR DISCHARGE UNDER OTHER THAN HONORABLE CONDITIONS FOR THE GOOD OF THE SERVICE." This letter favorably endorsed a request from the applicant to be discharged under other than honorable discharge in lieu of a special court-martial.¹ This endorsement further states, "Approval of [the applicant's] request for an other than honorable discharge is in the best interest of the Coast Guard. This request is a key component of the negotiated resolution of serious UCMJ charges previously referred to a special court-martial. Other elements included the imposition of non-judicial punishment and significant restitution. [The applicant's] admitted misconduct warrants a discharge under other than honorable conditions."

On August 10, xxxx, the applicant was found medically qualified for discharge, although the doctor noted that she had been diagnosed with bipolar disorder. CGPC approved the applicant's discharge under other than honorable conditions on September 13, xxxx, and she was discharged on October 1, xxxx.

Department of Veteran's Affairs (DVA) Decision

On January 3, xxxx, the DVA determined that for its purposes the applicant's Coast Guard service had been honorable. It stated that the applicant was not sane at the time she committed the acts that led to her discharge. The DVA gave the applicant a 10% disability rating for Bipolar Disorder effective from October 2, xxxx. The DVA noted that the applicant was diagnosed with multiple psychiatric conditions between July 11, xxxx and June 8, xxxx. "[T]he final [diagnosis] settled upon bipolar disorder following an extreme manic episode set off by treatment with Citalopram, an antidepressant. Subsequent evidence shows that once a correct diagnosis was made and the veteran was treated with appropriate medication, her condition was brought under control significantly." The DVA stated that the most recent medical evidence in the applicant's military medical record indicates that the applicant's condition was well under control on current medications, and therefore, warranted a 10% evaluation for mild symptoms. On August 17, xxxx, the DVA increased the applicant's disability rating for bipolar disorder to 30% effective October 2, xxxx.

¹ The applicant's letter requesting a discharge under other than honorable conditions is not in the military record.

Views of the Coast Guard

On September 27, xxxx, the Chief Counsel of the Coast Guard recommended that the Board deny relief to the applicant. He stated that the applicant failed to prove that the Coast Guard committed either an error or an injustice by separating her under other than honorable conditions.

The Chief Counsel stated that the applicant requested discharge under Article 12.B.21 of the Personnel Manual, which provides that an enlisted member, who has an assigned lawyer, may request a discharge under other than honorable conditions for the good of the Service in lieu of trial by court-martial if punishment for alleged misconduct could result in a punitive discharge or at any time after court-martial changes have been preferred against the member.

The Chief Counsel relied on the memorandum from the Chief Coast Guard Personnel Command (CGPC), attached as Enclosure (1) to the advisory opinion, to support his position that the applicant's discharge was appropriate. CGPC stated the following:

Per Article 12-B-1.e. of the [Personnel Manual] "Disability statutes do not preclude disciplinary separation." The separations described here supersede disability separation or retirement. If [CGPC] is processing a member for disability while simultaneously [another commander] is evaluating him or her for an involuntary administrative separation for misconduct or disciplinary proceeding which could result in a punitive discharge or an unsuspended punitive discharge is pending, [CGPC] suspends the disability evaluation and [the other commander] considers the disciplinary action. If the action taken does include punitive or administrative discharge for misconduct, the medical board report shall be filed in the terminated member's medical personnel data record.

The Chief Counsel stated that the applicant has the burden of proof but offered no evidence to rebut the findings by a board of medical officers that she was "able at the time [of her alleged] criminal conduct . . . to appreciate the nature and quality of wrongfulness of her conduct" and that she had a severe mental illness at the time of the alleged misconduct. He stated that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. Arens v. United States, 969 F.2d 1034, 1037 (1992). He stated that based on his review of the record, the Coast Guard did not commit any error or prejudice and properly followed its own regulations when in discharged the applicant with a general discharge under other than honorable conditions.

Applicant's Response to the Views of the Coast Guard

On January 27, 2003, the Board received the applicant's reply to the views of the Coast Guard. She stated that from xxxx until xxxx she had no problems with mood swings and began to experience them after her transfer to a new duty station. She stated when she began to feel moody and unmotivated she spoke to a BM1 who referred her to a nurse practitioner (NP). She told the NP that she had experienced similar feelings as a high school freshman and the school nurse referred her to a counseling center. According to the applicant, the nurse at this center did not believe the applicant was manic-depressive and suggested that the applicant take medication to help her sleep. The applicant stated that she never saw this nurse again, and she denied that she told the Coast Guard NP that she had been diagnosed with manic depression.

The applicant stated that she believed she suffered from panic attacks when she was a child, but she was never diagnosed with them. "I never knew what a panic attack was until I was researching mood conditions [recently] and then I figured out they are caused by high volumes of stress or anxiety and that [must have been] it."

The applicant stated that after she began taking Paxil her moods lightened a bit and there was a definite increase in her energy level, which she explained to Dr. H. who eventually placed her on Celexa. She stated that after two weeks of being on this drug, she had diminished mental capacity, was running around at all hours of the night, and was doing things that were out of character for her. She stated that although Dr. H seemed pleased that her moods had improved but also seemed concerned about them. The applicant further stated the following:

Well, I had [gone] into a "manic" phase and began gambling uncontrollably, stealing, lying, not showing up for work or making up excuses. This lasted a few months until finally I was thrown in jail. After that Dr. H realized he had mis-diagnosed me and I was actually suffering from Bi-Polar and the medication Celexa (which was known for this) had put me into a full blown manic phase and [Dr. H] quickly changed my medicine from an anti-depressant to a mood stabilizer . . . The Coast Guard then restricted me to the base for approximately 7 months before I went to trial. . . . I went to a Special Court Martial that lasted 8 days before the Coast Guard judge decided to throw out the case (for medical reasons). Then the Coast Guard asked my lawyer if I wanted to agree to a Captain's Mast [non-judicial punishment]. I said yes. I didn't want to go on because to my understanding it would have been a very drawn out process. I was mentally and physically exhausted and I wanted to go home. I had already been confined to base for so long and even though my lawyer wanted to proceed I decided the easiest thing to do at that time was to accept whatever the Coast Guard wanted and be discharged. In hindsight I would have fought them.

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 submission, and applicable law:

1. The Board has jurisdiction of this case pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant has shown by a preponderance of the evidence that the Coast Guard committed an injustice when it discharged her under other than honorable conditions. In this regard, the Board need only look to the psychiatric report inquiring into the mental capacity of the applicant pursuant to R.C.M. 706 of the Manual for Courts-Martial. This rule states that if there is reason to believe that the accused lacked mental responsibility for any offense charged or lacks capacity to stand trial, that fact and the basis of the belief or observation shall be transmitted to the official authorized to order an inquiry into the mental condition of the accused. Such an inquiry was ordered in the applicant's case. The psychiatrist conducting the mental inquiry found that at the time the applicant committed the alleged offenses, she was suffering from a severe mental illness, Bipolar Disorder. Although he found that at the time of the alleged misconduct the applicant was able to appreciate the nature of her actions or wrongfulness of her conduct despite the severe mental disease, he also found that she "possessed diminished mental capacity to control her impulses. This state caused her to act in a reckless manner in which she consciously disregarded the substantial and unjustifiable risks of her actions."

3. The applicant suffered from a severe mental illness with diminished capacity to control her impulses at the time she committed the alleged offenses. With such a diagnosis by competent medical authority, it was an injustice for the Coast Guard to discharge the applicant under other than honorable conditions. This is particularly so in light of the fact that the medication prescribed for her by a Coast Guard doctor contributed to her manic state resulting in the misconduct. Both the applicant's treating physician and the physician inquiring into the applicant's mental responsibility stated that Celexa, which was prescribed by Dr. H, a Coast Guard doctor, triggered her manic episode, which led to the misconduct. Discharging the applicant under other than honorable conditions for conduct precipitated in part by a drug prescribed by a Coast Guard treating physician is unfair.

4. Contrary to the Coast Guard's suggestion, a discharge under other than honorable conditions is not mandatory even though such a discharge is sought in lieu of court-martial. Article 12.B.21.e., of the Personnel Manual states that an honorable or general discharge may be granted if the Commander, CGPC believes a more favorable discharge is warranted. Many of the documents related to the applicant's request for a discharge are not in the record. However, Article 12.B.21.d. requires that a report of medical examination and a psychiatric evaluation be included as part of the applicant's

package requesting discharge under other than honorable conditions. It is difficult to see how a discharge under other than honorable conditions could have been approved in light of the medical evidence in this case. Accordingly, the Board is not persuaded that a discharge under other than honorable conditions was mandatory or appropriate in this case. For the reasons discussed above, the Board will direct that the applicant be given a general discharge under honorable conditions. In reaching this conclusion, the Board also notes that the applicant performed her duties in a satisfactory manner and was not a disciplinary problem until she suffered a manic episode that led to the misconduct.

5. The Board is not persuaded that an honorable discharge is appropriate in this case because there is insufficient evidence establishing that the medication Celexa was the sole cause for the applicant's misconduct. Absent such evidence, it is not appropriate to upgrade the character of the applicant's discharge to honorable.

6. The Board having determined that the applicant's discharge should be upgraded must also decide whether the applicant's record should be further corrected to show that she was discharged due to physical disability. Members discharged due to physical disability are normally processed through the physical disability evaluation system (PDES). The Coast Guard argued that based upon Article 12.B.1.e. of the Personnel Manual, it had little choice but to suspend any disability evaluation of the applicant under the physical disability evaluation system (PDES) in favor of the disciplinary action if such action would lead to an involuntary administrative separation for misconduct or an unsuspended punitive discharge. The Coast Guard further stated that since the administrative disciplinary proceedings in the applicant's case resulted in an administrative discharge due to misconduct, PDES processing was terminated. The Coast Guard's argument is problematic because there is no evidence in the record that the applicant's mental illness was never submitted to the PDES for evaluation. The psychiatric evaluation was ordered as a part of the legal proceedings, under Rule 706 of the Manual for Courts-Martial, to determine the applicant's legal responsibility for her alleged violations of the UCMJ. Therefore, the Board is not persuaded that this provision prohibits the applicant's discharge by reason of physical disability.

7. However, the Board is mindful of the fact that the applicant after consultation with her defense lawyer requested to be discharged, rather than face the risks of trial at a court-martial. With a viable defense, she could have chosen court-martial and if she had prevailed, evaluation by the PDES would probably have been available to her. Both her treating physician and mental inquiry board physician determined that she was able to participate intelligently in her defense. Therefore, the Board finds that by requesting a discharge she voluntarily relinquished any expectation she had to be processed through the PDES. In addition, there is no evidence in the record stating that

the applicant was unfit² to perform the duties of her rate at the time of her discharge. Although the medical inquiry board found that the applicant suffered from a severe mental illness with diminished mental capacity to control her impulses due to a drug induced manic episode at the time she committed the offenses, it also found that she "had sufficient mental capacity to understand the nature of the proceedings against her and [was] able to cooperate intelligently in her defense." In addition her treating psychiatrist stated in a May 8, xxxx letter that the applicant's "prognosis is excellent and it is highly unlikely that there will be a reoccurrence of any hyperactive behavior." The applicant has submitted insufficient evidence to establish she was unfit to perform the duties of her rate at the time of her discharge.

8. The fact that the DVA granted the applicant a service-connection for Bipolar Disorder is not proof by a preponderance of evidence that the Coast Guard committed an error or injustice by not granting her a discharge due to physical disability. The Court of Federal Claims has stated that "[d]isability ratings by the Veterans Administration [now the Department of Veterans Affairs] and by the Armed Forces are made for different purposes. The Veterans Administration determines to what extent a veteran's earning capacity has been reduced as a result of specific injuries or combination of injuries [citation omitted]. The Armed Forces, on the other hand, determine to what extent a member has been rendered unfit to perform the duties of his office, grade, rank, or rating because of a physical disability [citation omitted] Accordingly, Veterans' Administration ratings are not determinative of issues involved in military disability retirement cases." Lord v. United States, 2 Cl. Ct. 749, 754 (1983).

9. The applicant has failed to prove that her record should be corrected to show that she was discharged due to physical disability. However, she has produced sufficient evidence to persuade the Board that her discharge under other than honorable conditions is unjust under the circumstances and should be upgraded. The applicant's record should be corrected to show that she received a general discharge for general/miscellaneous reasons with the corresponding KND separation code. The Board will permit the RE-4 reenlistment code to stand because the applicant did receive NJP for approximately 58 specifications of larceny and attempted larceny. An RE-1 (eligible for reenlistment) reenlistment code would be inappropriate in this case because it would indicate that the applicant served her enlistment without any significant problems, which is simply not the case.

² Article 2.C.2. of the PDES Manual states the following: "The sole standard to be used in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay. Each case is to be considered by relating the nature and degree of physical disability of the service member concerned to the requirements and duties that service members may reasonably be expected to perform in their office, grade, rank or rating."

10. Accordingly, the applicant should be granted the relief discussed above.

ORDER

The application of former xxxxxxxxxxxxxx, USCG for correction of her military record is granted in part and denied in part. Her record shall be corrected to show that she received a general discharge under honorable conditions. Specifically, the applicant's DD Form 214 shall be corrected as follows:

Block 25 shall be corrected to show Article 12-B-12 of the Personnel Manual as the separation authority.

Block 26 shall be corrected to show KND as the separation code.

Block 28 shall be corrected to show "separation for miscellaneous/general reasons" as the narrative reason for separation.

All other relief is denied.

Julia Andrews

Stephen H. Barber

Christopher A. Cook