

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-144

XXXXXX, Xxxxxx, X.
xxx xx xxxx, XXXX

FINAL DECISION

GARMON, Attorney-Advisor:

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 July 23, 2002, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated July 24, 2003, 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 her military record by changing the narrative reason and reenlistment code on her discharge form (DD form 214). Specifically, she asked that her narrative reason be changed from "personality disorder" to "convenience of the government," and that her reenlistment code be upgraded from RE-4 (not eligible for reenlistment), accordingly. She also asked that the corrected discharge form reflect all medals and awards she was issued during her Coast Guard enlistment.

The applicant alleged that her due process rights were violated in connection with her discharge from the Coast Guard when she was "falsely labeled" with a personality disorder. She alleged that her records contain no evidence that she ever had or was ever diagnosed with a personality disorder. She contended that if her records are not corrected, it would be "detrimental to [her] career" to be "unjustly labeled for life"

SUMMARY OF THE APPLICANT'S RECORD

On September 17, 19xx, the applicant enlisted in the Coast Guard for a term of four years. Her record contains a medical report of her pre-enlistment medical examination, dated June 25, 19xx, which states that the applicant was qualified for her original enlistment. Her record also contains a medical history form, dated September 18, 19xx, which the applicant completed during recruit processing at a Military Entrance Processing Station (MEPS). On that form, the applicant answered "no" in response to whether she (a) had attempted suicide; (b) had or has depression or excessive worry; (c) had or has nervous trouble of any sort; and (d) had or has any illness or injury other than those already noted. Based on her MEPS evaluation and initial physical examination, the applicant was found to be in good health. After completing boot camp, she was assigned to a unit.

Beginning in September 19xx, the applicant sought treatment at a Coast Guard clinic for "interpersonal conflicts, disturbed sleep pattern, and tearfulness." She attended counseling sessions with a certified Physician's Assistant (PA) and a licensed clinical social worker from the Air Force—neither of which was a licensed psychiatrist. According to the PA's notes, he assessed her as having a "mild depressive episode." During a later session, he noted that her depression had "stabilized" when the applicant reported that her mood had improved with prescribed medication. With respect to her visits with the clinical social worker, the applicant's military medical record contains no medical notes.

On January 9, 19xx, the applicant was seen by the PA and told him that she had been sexually assaulted on the previous evening. She was diagnosed as having "major depressive episode, post traumatic stress, and insomnia and adjustment disorder with anxiety and depressed moods." Also on this day, the applicant was seen by the licensed clinical social worker. Again, there are no medical notes for the visit.

On January 10, 19xx, the PA completed a one-page narrative summary on the applicant's condition. In that report, the applicant was diagnosed with "adjustment disorder with mixed anxiety and depressed moods, insomnia, major depressive episode, and post traumatic stress." The PA also stated that the applicant's prognosis was "poor," that she was "not fit for full duty," and that she "should not be returned to her present command." The PA recommended that she receive a "medical separation [in accordance with] Chapter 5 of the Medical Manual ... and Chapter 12 of the Personnel Manual, ... for the convenience of the government."

On January 12, 19xx, the applicant was referred by the PA to a civilian medical facility for evaluation and counseling. Based on that consultation, a narrative clinical summary, dated January 16, 19xx, was prepared on the applicant's evaluation. Her record contains only one page of the two-page clinical summary, which documents that

she had attempted suicide at 17 years old, that she had a pre-enlistment history of bulimia and of self-harming behavior (cutting and/or burning herself when angry). During counseling, she denied that any of these behaviors had occurred between the start of her military service and before the time she was sexually assaulted. She was diagnosed with acute stress reaction.

On January 20, 19xx, the applicant's commanding officer (CO) forwarded a copy of the January 10, 19xx narrative summary prepared by the PA to the Group Commander and recommended that the applicant be separated for convenience of the government, under the provisions of Article 12.B.12. of the Personnel Manual.

On January 21, 19xx, the applicant was formally notified that the Group Commander had initiated action to discharge her based on unsuitability, pursuant to Article 12.B.16. of the Personnel Manual. The Group Commander also notified her that she had a right to submit a statement on her own behalf. On the same day, the applicant signed a statement acknowledging the notification, indicating that she waived her right to submit a statement and did not object to being discharged.

On January 22, 19xx, the Group Commander recommended to Coast Guard Personnel Command (CGPC) that the applicant be discharged for unsuitability. The message indicates that the PA (who prepared the narrative summary) diagnosed the applicant with adjustment disorder, unspecified.

On January 23, 19xx, a report was prepared by a civilian doctor, "Dr. S," upon the applicant's discharge from the civilian medical facility. That report indicated a discharge diagnosis of "adjustment disorder with mixed emotional features and bulimia nervosa" and, according to CGPC, specifically ruled out "borderline personality." There was only one page of this two-page report included in her record, and it does not state the credentials of Dr. S.

On February 2, 19xx, CGPC ordered the Group Commander to discharge the applicant by reason of unsuitability pursuant to Article 12.B.16. of the Personnel Manual, no later than February 26, 19xx, with a separation code of JFX (personality disorder). The applicant was honorably discharged on February 6, 19xx, with a JFX separation code, an RE-4 reenlistment code, and "Personality Disorder" as the narrative reason for separation. The applicant's DD form 214 also indicates that she was awarded the Coast Guard Pistol Marksman Ribbon and the Coast Guard Rifleman Marksman Ribbon.

At the time of her separation, the applicant was serving in the grade of E-2 and was credited with 1 year, 4 months, and 20 days of active duty service.

VIEWS OF THE COAST GUARD

On December 19, 2002, the Chief Counsel of the Coast Guard provided comments to the Board. He attached to his advisory opinion a memorandum on the case prepared by Coast Guard Personnel Command (CGPC). In concurring with CGPC's analysis, the Chief Counsel recommended that the Board grant partial relief.

The Chief Counsel argued that the Coast Guard committed no error when it discharged the applicant with an RE-4 reenlistment code. He asserted that he opposes upgrading her reenlistment code because she did not reveal her pre-enlistment attempt at suicide and her pre-enlistment history of bulimia and self-harming behavior. He asserted that although the applicant may not have been automatically disqualified for enlistment, she denied the government the opportunity to evaluate her condition fully.

The Chief Counsel argued that a service member "has no absolute right to remain in the service" and "may be appropriately and administratively discharged" prior to the end of his or her enlistment, provided that all applicable laws and regulations are complied with. Giglio v. United States, 17 Cl. Ct. 160, 166 (1989); Rowe v. United States, 167 Ct. Cl. 468, 472 (1964), *cert. denied*, 380 U.S. 961 (1965); Keef v. United States, 185 Ct. Cl. 454, 463 (1963); McAuley v. United States, 158 Ct. Cl. 359, 364 (1962).

The Chief Counsel stated that as a member with less than 8 years of service, under Article 12.B.16.i. of the Personnel Manual, the applicant was entitled only to (1) notice of the reason for discharge, and (2) an opportunity to make a written statement. He argued that because the applicant acknowledged her rights and declined to make a statement, the record establishes that she did not object to being discharged from the Coast Guard.

The Chief Counsel admitted that the Coast Guard committed error when it discharged the applicant with a separation code of JFX and "Personality Disorder" as the narrative reason for separation. He stated that when the CO provided the applicant with notice and the opportunity to make a statement, he should have also advised the applicant that the nature of her "unsuitability" for military service was her alleged "personality disorder." Moreover, he stated that the applicant was not evaluated by a psychiatrist, as required by Article 12.B.16.h of the Personnel Manual. He asserted that the applicant's history may arguably establish that she should have been discharged for "Personality Disorder." However, her command failed to follow the Personnel Manual requirements to actually establish her condition. Therefore, he stated, the Coast Guard does not oppose changing the applicant's separation code to JND and the narrative reason to "separation for miscellaneous/general reasons."

The Chief Counsel recommended that the applicant be issued an Honorable Discharge Certificate and an Honorable Discharge Button, as she had requested. He

stated that Coast Guard buttons are not, however, listed on DD form 214s. He stated that the applicant did not earn a Coast Guard Good Conduct Medal because she had not completed three years of active duty service. Therefore, he stated that the listing of awards on her DD form 214 is correct.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 23, 2002, the Chair sent a copy of the views of the Coast Guard to the applicant and invited her to respond within 15 days. The applicant responded on January 6, 2003, informing the Board that she accepts the Coast Guard's advisory opinion.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 12-B-16.h. of the Personnel Manual in effect in 19xx required that a member being considered for discharge for 'unsuitability' receive a physical examination. It also requires that when there are psychiatric considerations involved as the reason for the discharge, the member be evaluated by a psychiatrist, if available.

Article 12-B-12.a.(12) provides that the Commandant may authorize or direct the separation of enlisted personnel for the convenience of the Government for a "[c]ondition, not physical disability which interferes with performance of duty...."

Article 12-B-16.b.2. provides that members considered unsuitable for further service may be separated with "personality disorders," as determined by medical authority.

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

Medical Manual (COMDTINST M6000.1B)

Article 5.B.2. of the Medical Manual states that "adjustment disorders" are "generally treatable and not usually grounds for separation. However, when these conditions persist or treatment is likely to be prolonged or non-curative, (e.g., inability to adjust to military life/sea duty, separation from family/friends), [it is necessary to] process [the member] in accordance with Chapter 12, [of the] Personnel Manual...."

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 concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. As a member with fewer than eight years of active duty service, the applicant was entitled to notice of the reasons which she was being considered for discharge and an opportunity to make a written statement. The record indicates that the applicant was provided with notice that she was being recommended for separation under Article 12-B-16.d. of the Personnel Manual, and that she acknowledged notice of the discharge proceedings and waived her right to make a statement. However, the record also indicates that her CO failed to specify that she was being discharged due to an alleged "personality disorder." In failing to fully advise the applicant of the reason for her "unsuitability," the Coast Guard did not provide her with sufficient notice to give her informed consent to being discharged for "unsuitability" due to "personality disorder."

3. The Coast Guard admits that the applicant was not evaluated by a psychiatrist, as required by Article 12-B-16.h. of the Personnel Manual. Instead, she was evaluated by a Coast Guard PA and a licensed clinical social worker from the Air Force, despite there being no evidence to the effect that a psychiatrist was unavailable. The applicant was subsequently discharged for "unsuitability" due to "personality disorder" although her record fails to indicate that she was ever diagnosed with a personality disorder. Consequently, the Board finds that the Coast Guard committed an error by discharging the applicant for "Personality Disorder" with a separation code of JFX.

4. Under Article 5.B.2. of the Medical Manual, the diagnosis of adjustment disorder is normally not grounds for separation provided that the condition is not considered long-term or untreatable. In the applicant's case, the Coast Guard PA diagnosed the applicant on January 9, 19xx with an adjustment disorder and considered her prognosis to be "poor." The record also indicates that only 28 days after she was diagnosed, the applicant was separated from the Coast Guard. The record fails to indicate that the applicant was given sufficient time to receive treatment to determine her long-term prognosis; however, the diagnosis of adjustment disorder was confirmed by other medical personnel. Therefore, in light of the evidence of the applicant having a condition, not a disability, that interfered with her performance of duty, the Board agrees with the Chief Counsel that the applicant's DD form 214 should be corrected to show that she was separated for convenience of the government, under Article 12-A-12 of the Personnel Manual. Moreover, the applicant's SPD code should be changed from

JFX to JND and the narrative reason from "Personality Disorder" to "Separation for Miscellaneous/General Reasons."

5. The applicant requested that the Board upgrade her reenlistment code from an RE-4. The record indicates that during her pre-enlistment processing, the applicant failed to reveal her history of bulimia, self-harming behaviors, and attempted suicide. As a result, the Coast Guard was unable to fully evaluate her mental health with respect to her eligibility for enlistment. Members separated with a "Separation for Miscellaneous/General Reason" narrative reason with a JND separation code may be assigned an RE-4 reenlistment code. Consequently, the applicant has failed to prove that the Coast Guard committed error in assigning her an RE-4 reenlistment code.

6. The applicant alleged that she earned a Coast Guard Good Conduct award, but it was not reflected on her DD form 214. To earn a Coast Guard Good Conduct Medal, members must have continuously served on active duty for a minimum of three years. See Article 5.A.6.B.1.a. of the Coast Guard Medals and Awards Manual. Because, the applicant had served for 1 year, 4 months, and 20 days at the time of her discharge, she was not entitled to a Good Conduct award.

7. In accordance with the foregoing, the applicant should be granted partial relief.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of _____, for the correction of her military record is granted as follows:

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

Block 26 shall be corrected to show that she received the separation code JND.

Block 28 shall be corrected to show "SEPARATION FOR MISCELLANEOUS/GENERAL REASONS" as the narrative reason for separation.

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

No other relief is granted.

Julia Andrews

Nancy Lynn Friedman

George J. Jordan

