

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-136

FINAL DECISION

Author: Ulmer, D.

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was docketed on June 4, 2004, upon receipt of the applicant's completed application and military records.

This final decision, dated March 31, 2005, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, who apparently had prior active and reserve Naval service and prior National Guard service, enlisted in the Coast Guard on January 6, 1997. He was honorably discharged on July 1, 1997, by reason of "involuntary discharge directed by established authority," with a JFX (personality disorder) separation code, and with a RE-3G (eligible for reenlistment, except for disqualifying factor personality disorder) reenlistment code. His most recent period of active duty totaled five months and twenty-six days. However, at the time of discharge he had served a total of four years, five months, and twenty-six days on active duty, most of which was Naval service.

The applicant asked the Board to correct his DD Form 214 to show that he was voluntarily discharged from the Coast Guard by reason of hardship; that his separation code be changed to MDB (hardship); and that his reenlistment code be changed to one corresponding with a hardship discharge.

APPLICANT'S ALLEGATIONS

The applicant alleged that the reason listed for discharge on his DD 214 is unjust because it does not reflect his family hardship at the time of his discharge.

The applicant stated that he joined the Coast Guard in 1997 to provide a better future for his family, but it did not go as he and his wife thought it would. He stated that the pay was one of the biggest problems. He claimed that his first check after joining the Coast Guard did not cover the cost of his housing or the household expenses of his wife who remained in Arizona. He submitted a March 18, 1997, letter from his CO explaining to the applicant's wife that the Coast Guard was having difficulty starting the applicant's BAQ (basic allowance for quarters) with dependents pay.

The applicant stated that after two months in the Coast Guard, his wife thought he had abandoned her and their two children; so, she filed for divorce. He stated that he was depressed over possibly losing everything he had worked for. He stated that he was allowed to go home to Arizona on leave and attempt to work things out with his wife. After he returned to his command, he fell into a depressive state. He further stated the following:

I wanted to keep my responsibilities, job, possible future, but my family was pulling at me hard. I went to the physician on ship and requested counseling. I went to a private psychologist. During these sessions my depression and drive to return home took over and was speaking for me instead of what I had truly felt inside and what I believed in. I was messed up because I had never been tugged and pulled in every direction. My wife was pressuring me every other day on the phone to do something to get . . . home. That's not what I wanted; I wanted to stay in the service.

I was stuck and we were sinking fast. I said something in those counseling sessions that I shouldn't have, but one clear fact remains . . . that there were no tests given to support what was said in those sessions.

I returned home after being discharged to salvage what was left of the marriage, but in the end it didn't matter; I lost everything within six months after getting off active duty. Things were beyond repair. She hated the fact that the Coast Guard ruined our lives and our family. I got off active duty in June 97 and in November 97 we were divorced.

I have been penalized enough. I had a clean military DD 214 from the U. S. Navy with a Reentry code of RE-R1 . . . before the Coast Guard, and I

have one now with the Michigan Army National Guard even after the Coast Guard. I spent a year as a requirement away from the armed forces. I finally joined the Michigan Army National Guard in 1999 after being cleared with normal mental status and no signs or symptoms of what I was discharged for by a [Coast Guard] psychologist . . . as part of the waiver to join.

In 1999, the applicant joined the Michigan Army National Guard. He subsequently applied for a full-time Active Guard Reserve position within the Michigan Army National Guard, but his application was returned to him without action. On May 24, 2001, the Adjutant General for the Michigan National Guard told the applicant that his application was returned for the following reason:

[I]nvoluntary removal from a unit for cause is considered to be a nonwaivable disqualification for entry into AGR program. Your latest DD Form 214 reflects a RE Code of **RE3G**, with a narrative REASON FOR SEPARATION of **"INVOLUNTARY DISCHARGE DIRECTED BY ESTABLISHED DIRECTIVE."**

Unless the current regulation changes, you will not be considered eligible for future AGR positions.

After the Adjutant General stated that he did not have the authority to waive the RE-3G reenlistment code or change the reason for the applicant's discharge, the applicant applied to the Coast Guard Discharge Review Board (DRB) for an upgrade in his reenlistment code. On November 5, 2001, a lieutenant with the DRB told the applicant that his request to change his reenlistment code did not fall within the parameters of the DRB. The LT told the applicant to take his DD Form 214 to any military recruiter and they could instruct the applicant on what specific documentation would be required for the applicant to qualify for reenlistment. The applicant stated that this advice led to a dead end.

The DRB received a second application on behalf of the applicant requesting a change in the reason for his separation and his RE-3G reenlistment code. In an April 30, 2003 letter, the supervisor of the Discharge Review Board wrote the applicant stating that although CGPC had directed that the applicant receive a discharge by reason of personality disorder, the applicant actually received an "involuntary discharge established by directive." The supervisor stated that the DRB would not change the reason for discharge to personality disorder because it would be more negative than the reason already listed on the DD Form 214. The supervisor further stated, "You were given the RE-3G reentry code because at the time of your separation you had a condition interfering with performance of duty, therefore, with verification that the condition no longer exists, a recruiter may request a waiver for your reentry."

The applicant stated that he has been a part of the armed forces for approximately 13 years and is currently a member of the Michigan Army National Guard. Before he was accepted into the Michigan Army National Guard, the applicant underwent a mental examination. On January 13, 1999, the physician examining the applicant described the applicant's mental status as normal with no current psychological problems. He found the applicant qualified to join the Michigan National Guard. In addition, the physician wrote that the applicant had served for four years on active duty in the Navy, then four years in the Navy reserve,¹ and then three years in the National Guard Reserve for a total of approximately eleven years prior service before joining the Coast Guard. Since joining the Michigan National Guard, the applicant has undergone a periodic examination and was found qualified for retention.

The applicant submitted evidence that he is in receipt of an Office Professions/Administrative Assistants AA degree; that he is currently employed by the State of Michigan in the Office of the Secretary of State; and that he is involved in several community organizations. He also submitted several very complimentary references as to his character and work.

The applicant stated that he has accomplished the following as part of the Michigan National Guard: mobilized in support of Operation Sinai, Egypt in October 2003, promoted to staff sergeant (E-6) in February 2003, received the Army Commendation Medal for performance of duties to ensure the company was prepared for the National Guard Bureau CLRT inspection, and permitted his picture to be used on a recruiting poster for the National Guard.

The applicant submitted a DD Form 214 from the Army Reserve National Guard showing that he served for nine months and twelve days on active duty from October 29, 2003 to August 10, 2004 in the Sinai Peninsula of Egypt. He stated that while the Coast Guard DD Form 214 does not prevent him from being recalled to active duty or being deployed, it does prevent him from joining the Active Guard Reserve program because the position is through the State of Michigan.

The applicant stated that he would like to have an active duty position with the Active Guard Reserve Program, but he needs to have the reason for his Coast Guard discharge changed, as well as his RE-3G reenlistment code.

SUMMARY OF THE COAST GUARD RECORD

The applicant enlisted in the Coast Guard on January 6, 1997. Subsequently, on April 8, 1997, he was the subject of a medical board (MB). The MB diagnosed the

¹ The applicant's DD Form 214 from the Navy shows that he was released into the Naval Reserve.

applicant as suffering from "major depression, moderate, first episode" that did not exist prior to enlistment. The MB recommended that the applicant be placed on limited duty for six months and kept at a shore station so that he could continue in individual psychotherapy and have his medications monitored. The MB report indicated that the applicant was expected to return to full duty within six months and reported the applicant's then current history as follows:

This service member is sent from his home base in Michigan for complaint that he does not show emotions, does not communicate well, has memory lapses, has difficulty concentrating, isolates himself, has a lack of friends and difficulty trusting others. He perceives nagging when others speak to him. Two weeks prior to evaluation, he became overwhelmed when his wife served him with divorce papers and he seemed to have a "breakdown," with crying, bad dreams, depressed mood and a suicidal plan consisting of intention to obtain a rifle, isolate himself and shoot himself. Sleep was reported to be alright and his appetite diminished with a reported loss in weight. At the time of evaluation, the patient was not suicidal and was not homicidal. According to the patient, the origin of his problems is in the fact he rejoined the military and left his wife and two children in Arizona where they had been residing. [The wife] was reluctant to come [with him] because of the cold weather and because of that and financial problems she finally had [the applicant] served with divorce papers. The [applicant] exhibited the aforementioned symptoms and was referred by his command to a psychologist in the area . . . who evaluated him and found him to be depressed. [The psychologist] referred the [applicant] to his physician who recommended Paxil, which the patient is now taking at a level of 20 mg a day orally. The [applicant] states there is some improvement and he has benefited from the initial encounters with the psychologist and is no longer suicidal. Because of these problems his command allowed him to stay ashore when the ship went to sea for the next 1-1/2 months.

* * *

MENTAL STATUS EXAMINATION: Mental status examination revealed a tall and lanky young man in uniform but with a sober and detached countenance. He was responsive and cooperative and fully oriented. There was no evidence of thought disorder and he denied hallucinations or delusional thinking. His mood was depressed and the affect showed some mobility. His judgment and insight were good.

The military record indicates that after the MB the applicant had two visits with a psychologist, who diagnosed the applicant as suffering from major depressive

disorder, attention-deficit/hyperactivity disorder (ADHD), NOS (not otherwise specified), and anti-social personality disorder (R/O (rule out)). The report from his last visit on May 12, 1997, stated that the applicant "no longer expresses suicidal thoughts, feelings, or impulses."

On May 27, 1997, the applicant's commanding officer (CO) informed the applicant that he was recommending that the applicant be discharged from the Coast Guard for unsuitability due to personality disorders. The applicant was advised that he could write a statement in his own behalf objecting to the discharge. The applicant, by his signature, stated that he concurred with the recommendation and did not intend to submit a statement.

On May 27, 1997, the applicant's CO recommended that the Commander, Coast Guard Personnel Command (CGPC), discharge the applicant by reason of unsuitability due to personality disorders. He stated that the applicant had been diagnosed with major depressive disorder, ADHD, and an indefinite diagnosis of anti-social personality disorder.

On June 3, 1997, CGPC directed that the applicant be discharged from the Coast Guard by reason of unsuitability with a JFX (personality disorder) separation code.

The applicant was honorably discharged on July 1, 1997 by reason of "involuntary discharge directed by established directive," with a JFX separation code and an RE-3G reenlistment code.

VIEWS OF THE COAST GUARD

On October 19, 2004, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief as recommended by the Commander, Coast Guard Personnel Command (CGPC) in a memorandum attached as Enclosure (1) to the advisory opinion. However, the JAG did not agree with CGPC that the application was not timely.

The JAG 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 the applicant offered no evidence to support his claim that he was improperly discharged from the Coast Guard or that he was treated in a way that shocks the sense of justice. Rather, he stated that a policy of the Michigan National Guard prevents him from getting a full-time job with them based on his performance in the Coast Guard. The JAG stated that although that is unfortunate, it doesn't work to transform the Coast Guard's actions into anything but what they were, an appropriate response to the applicant's medically diagnosed

mental health issues. He asserted that the applicant was afforded appropriate due process and that his administrative separation was proper.

CGPC stated that the applicant was diagnosed with a personality disorder, which was disqualifying for enlistment under Article 5-B-2 of the Personnel Manual. CGPC stated that any member found to have a personality disorder shall be processed for separation in accordance with Article 12 of the Personnel Manual. CGPC further stated that there is no evidence in the record that the applicant requested a hardship discharge and noted that the applicant agreed with his discharge by reason of personality disorder and declined to submit a statement objecting to it. Accordingly, CGPC recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 20, 2004, a copy of the Coast Guard's views was sent to the applicant and he was provided 30 days to submit a reply. On November 19, 2004, the Chair granted the applicant a 60-day extension to submit his reply to the views of the Coast Guard. The Board did not receive a response from the applicant.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 12.B.12 of the Personnel Manual lists condition not a disability as a basis for a convenience of the government discharge. Examples of such conditions are enuresis and somnambulism.

Article 12.B.16 provides for discharge by reason of unsuitability due to personality disorders as listed in the Medical Manual.

Medical Manual (COMDTINST M6000.1B)

Article 5.B.2. lists the following as personality disorders: Paranoid, Schizoid, Schizotypal, Obsessive Compulsive, Histrionic, Dependent, Antisocial, Narcissistic, Avoidant, Borderline, and Personality disorder NOS (includes Passive-aggressive).

Article 5.B.17 states that members of the Coast Guard with conditions such as ADHD shall be processed in accordance with Article 12 of the Personnel Manual. ADHD is described in this section as a "Disorder Usually First Evident in Infancy, Childhood, or Adolescence."

Separation Program Designator Handbook

The Separation Program Designator (SPD) Handbook authorizes either JFV or KfV as the separation code for a discharge by reason of condition not a physical disability that interferes with the performances of duties. The JFV separation code means that the separation was involuntary as directed by established directive and the KfV separation code means the discharge was voluntary as allowed by established directive. It also authorizes the assignment of an RE-3G or an RE-4 reenlistment code with the JFV or KfV separation code.

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 of this case pursuant to section 1552 of title 10 United States Code. The application was timely. An applicant has fifteen years from the date of discharge to apply to the Discharge Review Board (DRB) for an upgrade of or change of reason for his discharge. According to Ortiz v. Secretary of Defense, 41 F. 3rd. 738 (D.C. Cir. 1994), the BCMR's three year statute of limitations begins to run at the conclusion of DRB proceedings for an applicant who is required to exhaust administrative remedies by applying to the DRB before seeking redress from the BCMR. The BCMR requires exhaustion of administrative remedies. The applicant applied to the DRB approximately four years after his discharge, and the DRB advised the applicant on November 5, 2001 that it would not act on his application. Therefore, the applicant's BCMR application, received by the Board on October 20, 2003, was timely.

2. Although the applicant requested that his record be corrected to show he was discharged by reason of hardship, the Board agrees with the Coast Guard that no evidence exists in the record that the applicant ever requested a discharge by reason of hardship prior to his discharge from the Coast Guard. Moreover, the evidence of record does not establish that the applicant met the requirements for a discharge by reason of hardship at the time of his separation. Article 12.D.2.4. of the Personnel Manual states that "Undue hardship does not necessarily exist solely because of altered present or expected income or because the member is separated from his or her family and must suffer the inconveniences normally incident to a sea-going military service." Examples of meritorious hardship cases provided by Article 12.D.2.3. are (1) the service member is required to provide support and care in the death or disability of a family member; (2) the service member's family's hardship is more severe than the normal hardships encountered by other Coast Guard families and dependents; (3) the hardship discharge will eliminate or materially alleviate a long-term or permanent condition; or (4) the discharge is the only readily available means to alleviate the hardship. The applicant's situation was one of a shortage of finances and of marital discord. Many Coast Guard families experience these conditions. Therefore, the applicant has submitted insufficient

evidence to show that the Coast Guard committed an error by not discharging him by reason of hardship.

3. Although "involuntary discharge directed by established directive" is listed on the applicant's DD Form 214 as the narrative reason for his discharge, no such narrative reason exists in the Personnel Manual or in the SPD Handbook. It is clear from the CO's memorandum requesting permission to discharge the applicant, that personality disorder was the reason for his discharge. Moreover, CGPC approved the applicant's discharge by reason of personality disorder. The separation authority, Article 12.B.16. of the Personnel Manual and the JFX separation code support personality disorder as the reason for the applicant's discharge. Accordingly, the Board finds that listing "involuntary discharge directed by established directive" rather than personality disorder as the narrative reason for the applicant's discharge was an administrative error.

4. Personality disorder is a proper reason for an administrative separation, if supported by the evidence. Article 12.B.16. of the Personnel Manual authorizes discharge by reason of personality disorder for those conditions listed as such in Chapter 5 of the Medical Manual. The applicant's CO's recommendation for the applicant's discharge was based on the applicant's diagnoses of major depression, ADHD, and possibly an anti-social personality disorder. For the reasons discussed immediately below, even though personality disorder was the intended reason for the applicant's discharge, the evidence of record is insufficient to support a discharge by reason of personality disorder.

a. Major depression is not a personality disorder but a physical disability. Article 5.B.10.b. of the Medical Manual lists major depression as a mood disorder that should be processed under the Physical Disability Evaluations System (PDES), not under Article 12 of the Personnel Manual.² Accordingly, major depression cannot be the basis for the applicant's personality disorder discharge.

b. Anti-social personality disorder, properly diagnosed, is listed under Article 5.B.2 of the Medical Manual as a personality disorder. However, the medical reports of May 7, and May 12, 1997, listed anti-social personality disorder as a possible diagnosis, but indicated the need to rule it out. There is no evidence in the record that the anti-social personality disorder was ever confirmed as a diagnosis for this applicant. It was not mentioned in the MB report. Even the CO admitted in his letter requesting the applicant's discharge that the "Antisocial Personality Disorder [diagnosis] was not

² A medical board diagnosed the applicant as suffering from major depression only on April 8, 1997 and placed him on limited duty for six months to receive treatment. However, on May 27, 1997, the Coast Guard began proceedings to administratively discharge the applicant under Article 12.B.16. of the Personnel Manual. The applicant was discharged on July 1, 1997, well short of the six-month period limited duty period.

definite." It was an injustice for the Coast Guard to use an uncertain diagnosis as a basis to discharge this applicant.

c. ADHD can be a basis for an administrative separation under Article 5.B.17. of the Medical Manual, but it is not listed as a personality disorder in Article 5.B.2. of the Medical Manual. According to Article 5.B.17. of the Medical Manual, ADHD is a disorder that usually presents itself in infancy, childhood or adolescence. It is described as a behavioral disorder in the Diagnostic and Statistical Manual of Mental Disorders (DSM IV), 4th edition, p. 85. It would be error for the Board to rely on ADHD as the basis for a personality disorder discharge in this case.

5. The Board finds, however, that the applicant's diagnosed ADHD will support a discharge by reason of condition not a disability that interferes with the performance of duty. According to the Medical Manual, ADHD is a ground for an administrative discharge. A psychologist diagnosed the applicant as having ADHD, which the applicant did not object to in 1997. The applicant in BCMR 2003-079 was discharged for a personality disorder based on his diagnosis of ADHD and his DD Form 214 listed personality disorder as the reason for discharge. In that case, the BCMR found that ADHD was not a personality disorder and directed the applicant's DD Form 214 to be corrected to show that he was discharged for the convenience of the government by reason of condition not a physical disability that interferes with the performance of duty under Article 12.B.12. of the Personal Manual. An applicant received similar relief in BCMR No. 1998-022. The Board will direct the reason for the applicant's discharge be changed from "involuntary discharge directed by established directive" to condition not a disability that interferes with the performance of duty. In doing so, the Board not only finds support in the record for this change, but further finds it to be a more positive reason than "involuntary discharge directed by established directive" or personality disorder.

6. The SPD Handbook authorizes an involuntary discharge or voluntary separation code for a discharge based on condition not a physical disability. The applicant's separation code should be changed to KFV (voluntary discharged allowed by established directive when a condition not a physical disability interferes with the performance of duty). Since the KFV separation code indicates a voluntary rather than an involuntary separation, the applicant's chances for obtaining a full-time Active Reserve Guard position should improve. Although the applicant did not object to his discharge at the time, the Board finds that in light of the errors committed by the Coast Guard in the reason for discharging the applicant and taking into consideration the applicant's post Coast Guard achievements, a KFV separation code is just. In addition, the Board notes the extraordinary manner in which the applicant has rebuilt his military and civilian careers. He is currently a Michigan State employee, a member of the Michigan National Guard, a community activist, holds an AA degree, and deployed for a nine-month period with his unit to Egypt. The applicant has also shown that he has

overcome whatever problems he had while in the Coast Guard, as evidenced by his ability to join the Michigan National Guard.

7. With respect to the reenlistment code, the Separation Program Designator Handbook authorizes an RE-3G reenlistment code for a discharge by reason of condition not a physical disability that interferes with the performance of duty. Since the applicant already has an RE-3G reenlistment code, no change will be directed in the reenlistment code. With this code, however, the applicant is required to submit proof that he is no longer suffering from this condition before he is allowed to enlist in another branch of the Service, as he has done with the Michigan National Guard. No basis exists on which to grant the applicant an RE-1 reenlistment code from the Coast Guard based on a discharge by reason of condition not a physical disability that interferes with the performance of duty.

8. Accordingly, the applicant is entitled to the relief discussed above.

[ORDER AND SIGNATURE APPEAR ON NEXT PAGE]

ORDER

The application of _____ USCG, for correction of his military record is granted. Specifically, his DD Form 214 shall be corrected to show the following:

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

Block 26 shall be corrected to KFV (condition not a physical disability) as the separation code.

Block 28 shall be corrected to show "condition not a physical disability" as the reason for separation.

The Coast Guard shall issue the applicant a new DD Form 214.

All other requests for relief are denied.

Bruce D. Burkley

Jordan S. Fried

George J. Jordan