

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-158

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

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 Chair docketed this case on September 6, 2005, upon receipt of the applicant's completed application.

This final decision, dated June 20, 2006, 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, a former seaman apprentice (SA; pay grade E-2) in the Coast Guard, asked the Board to correct his military record by upgrading his reenlistment code from RE-4 (ineligible to reenlist) to RE-1 (eligible) or RE-3 (eligible with waiver of disqualifying condition). The applicant stated that when he was honorably discharged on January 15, 1995, he had been having "personal marital problems." He argued that it is erroneous and unfair that his reenlistment code prevents him from reenlisting even after those problems have been straightened out. He alleged that he has grown more mature since his discharge and now handles problems in an adult manner.

SUMMARY OF THE RECORD

On August 17, 1993, at the age of 18, the applicant enlisted in the Coast Guard. Upon completing boot camp, he advanced from seaman recruit to SA. He was initially assigned to a unit in Hawaii.

On April 14, 1994, the applicant sought help for "personal problems." He complained of feeling depressed since his enlistment. He stated that he felt stressed and had had thoughts of suicide. He complained of low self-esteem and decreased enjoyment in his usual recreational activities. The doctor diagnosed him with mild depression. In May 1994, at his own request and expense, the applicant was transferred to a unit close to his home in Texas.

On August 1, 1994, a chief warrant officer counseled the applicant that "being late for work is not acceptable. ... Any further incidence of this sort will result in more drastic administrative action."

On September 6, 1994, the unit's Executive Officer (XO) counseled the applicant about a "continued pattern in arriving late to work. Member has been counseled on his tardiness on several occasions. ... [M]ost recently a Report of Offense and Disposition (CG-4910) was executed and fully investigated. Because of the personal reasons related to member reporting late to work, CG-4910 was dismissed. As a result, a follow-up professional counseling has been arranged and member is advised that any further tardiness or actions in non-conformance with military regulations will result in absolute disciplinary action and punishment."

On September 7, 1994, the applicant was referred to a psychologist by the Coast Guard Employee Assistance Program. The psychologist reported that the applicant complained of marital problems and suicidal ideations. The applicant admitted to drinking about one beer per weekend and to having been drunk just one time three years earlier. The psychologist diagnosed him with marital discord and "Major Depression, Single Episode without psychotic features [but] with suicidal ideations." The psychologist noted that the applicant refused to take medication.

On September 16, 1994, the applicant was escorted to a mental health facility after voicing suicidal ideations to his supervisors. The applicant admitted to having written letters to his wife with threats of suicide to get her attention. He alleged that his wife had been unfaithful to him twice and planned to leave him. Upon admittance to the hospital, he was provisionally diagnosed with "Major Depression, Single Episode without psychotic features [but] with suicidal ideations." The doctors' notes indicate that he had been married for five months to a 17-year-old girl who refused to go to counseling with him because she had previously spent time in an institution. The applicant complained that his wife had been unfaithful and had separated from him twice since the wedding to live in their hometown in order to be with her child. Upon discharge from the hospital on September 23, 1994, the applicant was diagnosed with an adjustment disorder,¹ marital problems, and depression.

¹ Adjustment disorders are defined as psychological responses to identifiable stressors that result in the development of clinically significant emotional or behavioral symptoms. Adjustment disorders are usually temporary and disappear when the stressor does. Adjustment disorders are not personality

On October 7, 1994, the applicant's commanding officer (CO) notified him in writing that his previous four months of performance had been unsatisfactory and that he was being placed on performance probation. The CO noted that he was frequently late to work, did not perform his duties to standard, was financially irresponsible, and was making no effort to advance. The CO advised the applicant that if his performance did not improve within six months he would be discharged. The CO also advised the applicant that he could be discharged "at any time during the six-month probationary period if you are not making an effort to overcome these deficiencies." The applicant acknowledged being informed of his probation in writing.

On October 10, 1994, the XO counseled the applicant about failing to report for watch duty that day.

On his performance evaluation dated October 31, 1994, the applicant received very low marks and was not recommended for advancement to seaman. The XO counseled him about being frequently late to work, returning from lunch late, having a poor demeanor, and showing no effort to qualify as a boat crewman.

On November 23, 1994, the applicant submitted a request to be discharged. He stated that he had "had extreme difficulty adjusting to the military style of life"; was "experiencing extreme difficulties in my marriage"; was "undergoing financial difficulties" that could not be resolved on his military income; and had lost interest in the Coast Guard.

On November 25, 1994, while on liberty and still underage, the applicant was picked up by military police after consuming "a large amount of prescription medication and alcohol," which the MPs reported as a "suicidal gesture." The applicant was treated at a hospital for an "alcohol-related overdose of Erythromycin." The event was documented as the applicant's first "alcohol incident," and he was advised that any further alcohol incident would result in his discharge.

On November 29, 1994, the applicant underwent a psychiatric evaluation at the hospital. The psychiatrist diagnosed him with a "personality disorder not otherwise specified, [with] borderline [and] dependent traits";² episodic alcohol abuse; and

disorders. American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-TR)*, p. 679. The Coast Guard relies on the DSM when diagnosing members with mental conditions. See Coast Guard Medical Manual (COMDTINST M6000.1B), Chap. 5.B.1.

² A "personality disorder" is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment." *DSM-IV-TR*, p. 685. Types of personality disorders include paranoid, schizoid, schizotypal, antisocial, borderline,

marital problems. The psychiatrist marked the applicant as having "chronic situational maladjustment" and "deficiency in attitude and motivation for continued military service." He reported that the personality disorder resulted in "significant impairment in functioning" and made the applicant "incompatible with continued military service." The psychiatrist opined that the personality disorder "will not respond to Command efforts at rehabilitation ... nor to any treatment methods currently available in any military mental health facility." He reported that the applicant's "behavior is part of a long-standing, deeply ingrained pattern of maladaptive behavior that is unlikely to change. He is poorly motivated for continued military service." The psychiatrist recommended that the applicant be administratively discharged "for personality disorder."

On December 7, 1994, the applicant's CO informed the applicant that he had initiated action to separate him with an honorable discharge due to the applicant's poor performance, habitual tardiness, desire to be discharged, and psychiatric diagnosis. The CO informed the applicant that he had a right to object to the discharge and to submit a statement in his own behalf. The applicant acknowledged the CO's notification, waived his probationary period, waived his right to submit a statement in his own behalf, and stated that he did not object to being discharged.

On December 8, 1994, the applicant's CO recommended that the applicant be discharged "by reason of unsuitability." The CO stated that the applicant had been transferred to the unit from Hawaii "because of personal insecurities, low performance and suicidal tendencies." The CO stated that "[t]hroughout his entire enlistment, there has been no indication whatsoever in [the applicant] making progressive steps for improvement or advancement." The CO stated that the applicant had been "receiving psychiatric counseling because of marital complications and suicidal tendencies. ... His condition is not critical to the point of being recommended for medical discharge. However, in accordance with the latest evaluation at ... [the Army hospital], he is not suited for military duty and is recommended to be separated from the service."

The CO also reported that on November 8, 1994, the applicant had been discovered sleeping in the XO's office while on watch. The CO stated that the applicant had been taken to mast, admonished, and informed that he would be recommended for an unsuitability discharge. The CO forwarded the applicant's request for discharge and stated that it had not been processed because of the applicant's alcohol incident and hospitalization on November 25, 1994.

histrionic, narcissistic, avoidant, dependent, and obsessive-compulsive. *Id.* "The diagnosis of Personality Disorders requires an evaluation of the individual's long-term patterns of functioning The personality traits that define these disorders must also be distinguished from characteristics that emerge in response to specific situational stressors or more transient mental states The clinician should assess the stability of personality traits over time and across different situations." *Id.* at 686.

On December 12, 1994, the applicant underwent alcohol screening. The applicant told the screener that he usually drank just "one beer a weekend monthly" and had "only been drunk four times since 31 October 1992." Based on these answers, the screener concluded that the applicant "does not appear to have an alcohol problem at this time. He fails to meet any of the [Diagnostic and Statistical Manual of Mental Disorders-IV] criteria for alcohol abuse or dependence." However, the screener recommended that the applicant be "screened by medical officer or clinical psychologist to rule out dependency."

On December 20, 1994, the Military Personnel Command directed the CO to discharge the applicant within 30 days by reason of unsuitability with a JFX separation code.

On January 15, 1995, the applicant was honorably discharged for "Unsuitability," pursuant to Article 12.B.16. of the Personnel Manual, with an RE-4 reenlistment code and a JFX separation code, which denotes an involuntary separation due to a diagnosed personality disorder.

On March 6, 2003, the Commandant approved a recommendation by the Discharge Review Board that the applicant's discharge should stand as issued.

VIEWS OF THE COAST GUARD

On January 24, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the requested relief. The JAG relied on and adopted the facts and analysis of the case provided in a memorandum from CGPC.

CGPC stated that under the Separation Program Designator (SPD) Handbook, a member discharged due to a diagnosed personality disorder with a JFX separation code may receive either an RE-3G or RE-4 reenlistment code. CGPC stated that the applicant's "discharge for unsuitability and assignment of reenlistment code RE-4 are consistent with Coast Guard policy." CGPC stated that the RE-4 code "is appropriate given his diagnosis and documented performance during his enlistment." CGPC noted that the applicant did not submit any evidence to show that the diagnosis was inaccurate.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 25, 2006, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The applicant did not respond.

APPLICABLE LAW

Article 12.B.16.b. of the Coast Guard Personnel Manual in effect in 1995 authorized enlisted personnel to be discharged by reason of "unsuitability" at the direction of the Commandant for inaptitude, personality disorders, apathy, defective attitudes, inability to expend effort constructively, unsanitary habits, alcohol abuse, financial irresponsibility, or homosexuality. Article 12.B.16.d. stated that members with less than eight years of service who were being recommended for discharge by reason of unsuitability were entitled to (a) notice in writing of the specific reason listed under Article 12.B.16.b. that they were being recommended for discharge, (b) an opportunity to make a statement in writing, and (c) an opportunity to consult with counsel if a less than honorable discharge was contemplated.

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

The SPD Handbook states that members involuntarily discharged due to a diagnosed personality disorder with the separation code JFX should be assigned either an RE-4 or RE-3G reenlistment code. An RE-3G code means that the member would be eli-

gible for reenlistment except for a disqualifying condition that is not a physical disability but that interferes with the member's performance of duty. Under Article 12.B.5., the choice of which reenlistment code to assign from those allowed by the SPD Handbook was to be made by the member's CO.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.

2. Although the applicant filed his application more than three years after he knew or should have known that he was assigned the RE-4 reenlistment code, he filed it within three years of having timely filed an application with the DRB, which has a fifteen-year statute of limitations. Therefore, the Board finds that the application must be considered timely in accordance with the decision in *Ortiz v. Sec'y of Defense*, 41 F.3d 738, 743 (D.C.C. 1994).

3. The applicant's military medical records show that he was diagnosed with a personality disorder prior to being properly processed for an administrative discharge in accordance with Article 12.B.16. of the Personnel Manual. The record contains ample support for the psychiatrist's diagnosis. The applicant was afforded his due process rights and did not object to being discharged. The Board finds no error or injustice in how the Coast Guard processed the applicant for discharge.

4. Because the applicant was being discharged with a JFX separation code, his CO had a choice of two reenlistment codes allowed by the SPD Handbook: RE-4 or RE-3G. The CO assigned the applicant the RE-4 code, which usually prevents someone from reenlisting in any military service. The CO noted in his letter recommending discharge that in addition to the diagnosed personality disorder, the applicant was habitually late to work, was a poor performer, and showed no motivation to advance. If the CO had chosen an RE-3G code, the applicant might be able to reenlist if a military service decided to waive his disqualifying diagnosis.

5. The applicant alleged that he has matured since his discharge and now deals with problems in an adult manner. Unfortunately, the applicant submitted no evidence to support his allegations. The applicant may well have matured in the past eleven years, achieved greater stability, and developed the motivation to work hard and advance, but he provided no proof of such. There is no evidence in the record that he is now better able to adapt to and advance in the military.

6. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

George J. Jordan

Adrian Sevier

Kenneth Walton