

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-200

**XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX**

FINAL DECISION

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 the case on August 30, 2007, upon receipt of the applicant's completed application, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated May 29, 2008, is approved and 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 his record by removing personality disorder as the narrative reason for his discharge. The applicant's military record indicates that he enlisted in the Coast Guard on February 4, 2003. He was honorably discharged on December 15, 2003, by reason of unsuitability, with a JFX (personality disorder) separation code and an RE-4 (not eligible for reenlistment) reenlistment code.

The applicant stated that at the time of his discharge he was mentally distressed due to the deaths of his father and brother within a four-day period. He submitted the following short statement dated April 27, 2007, from his psychiatrist: "[The applicant] is currently receiving treatment from me . . . He is not diagnosed with a personality disorder."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 4, 2003. After completing recruit training the applicant reported to a Coast Guard cutter for duty.

On July 21, 2003, a staff psychologist assigned to a Navy clinic, evaluated the applicant. The psychologist's report was reviewed and approved by a psychiatrist. The psychologist diagnosed the applicant with the following:

A: Axis I: Adjustment Disorder with mixed anxiety and depressed mood, Severe Occupational problems
Axis II: Personality Disorder NOS (Schizoid, Borderline and Avoidant traits)
Axis III: Stomach pain
Axis IV: Routine Military Stressors
Axis IV: GAF=55-60
Non-employment related

The psychologist reported that the applicant stated that he was not experiencing suicidal thoughts as he had previously. The psychologist further reported:

The patient continues having violent fantasies and thoughts, but he remains in control of these. Patient is not considered an imminent danger. It appears that the patient has become much more stable and he has been benefiting from medication and psychotherapy. However, these benefits are not sufficient to consider returning the patient to full duty. The goal of stabilizing the patient has been met at this time and ongoing treatment and evaluation has led to the conclusion that the individual's symptoms are likely a byproduct of his personality structure and inability to cope in the military environment. His axis I conditions are greatly influenced and exacerbated by his personality disorder, which is longstanding and pervasive in nature and which is not likely to be successfully treated with short-term therapy. At this point, it is recommended that this patient be administratively separated.

On August 23, 2003, the applicant's commanding officer (CO) informed the applicant that the CO had initiated action to discharge the applicant from the Coast Guard because the applicant had been diagnosed with a personality disorder. The CO advised the applicant that he could submit a statement in his own behalf and that if he disagreed with the discharge, his rebuttal would be forwarded with the CO's recommendation.

On August 23, 2003, the CO requested permission from Commander, Coast Guard Personnel Command (CGPC) to discharge the applicant due to his personality disorder. The CO recommended that the applicant be given an honorable discharge and noted that the applicant had no disciplinary or adverse administrative actions during his enlistment.

On October 14, 2003, the applicant acknowledged notification of the proposed discharge, waived his right to submit a statement in his behalf, and did not object to the discharge.

On November 14, 2003, CGPC approved the applicant's discharge by reason of unsuitability due to a personality disorder with an RE-4 reenlistment code.

Discharge Review Board (DRB)

On July 18, 2006, the DRB reviewed the applicant's request to have his reenlistment code upgraded from RE-4 to RE-3F or 3-P. The DRB recommended by a vote of 4 to 1 that the applicant's reenlistment code be changed to RE-3G for the following reason:

The [majority] of the Board felt that the discharge was carried out in accordance with Coast Guard policy. Under the Separation Code Designator (SPD) Handbook a reentry code of RE-3G was an option for the separation given. The Board is providing the applicant a chance to show to a recruiter the condition under which he was discharged has been corrected.

On October 5, 2006, the President of the DRB wrote a memorandum to the Commandant through the Deputy Judge Advocate General apparently in response to a memorandum from the Coast Guard Office of General Law, requesting comments on whether the narrative reason for the applicant's discharge should be changed from unsuitability to personality disorder. The President of the DRB stated that in accordance with COMDTINST M1900.4D (Certificate of Release or Discharge from Active Duty) unsuitability was the correct reason for the applicant's discharge and that the narrative reason should remain as stated on the DD Form 214.

On October 23, 2006, the Chief of the Office of General Law concurred with the President's recommendation that no change be made to the DD Form 214. The Chief found the DRB's decision to be legally sufficient.

On November 29, 2006, the Commandant (CG-09) disapproved the recommendation of the DRB and stated that the applicant's DD Form 214 shall stand as issued. The approving official did not state the basis for the decision to disapprove the recommendation of the DRB majority to upgrade the applicant's reenlistment code.

VIEWS OF THE COAST GUARD

On January 15, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief to the applicant. In this regard, the JAG agreed with comments submitted by CGPC, who wrote the following in pertinent part:

The processing of the applicant's discharge is proper and in accordance with applicable Service regulations for processing a member for unsuitability due to a personality disorder. The applicant was diagnosed with a personality disorder by a psychologist and psychiatrist. He was notified of the intent to discharge him and did not object to discharge from the Coast Guard. The Coast Guard acted appropriately and in accordance with applicable law and regulations in processing the applicant's discharge. The applicant does not meet his burden of proving an error or injustice.

The applicant's record was reviewed by the DRB and the DRB recommended an upgrade in the applicant's reenlistment code to RE-3G. However, the Commandant disapproved the findings and directed that the applicant's reenlistment code remain unchanged . . .

The evidence the applicant presents . . . is insufficient in substance to substantiate that there was an error in his diagnosis of a personality disorder . . . At the time of

his evaluation with the military psychologist and psychiatrist the applicant met the diagnostic criteria for personality disorder. The assignment of the SPD code of JFX is the appropriate code given the applicant's diagnosis and administrative processing. The SPD code handbook [is] for internal use "official use only" and is not releasable to outside agencies or persons under 5. U.S.C. § 552(b)(6). The applicant alleges that his DD214 indicates he was separated for personality disorder, yet the SPD code system is intended to protect privacy of individuals with regards to the circumstances surrounding their discharge and to protect the integrity of the honorable discharge. The applicant has not substantiated any prejudice or inappropriate disclosure by the Coast Guard [in] this regard. The applicant does not meet his burden of proving error or injustice.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 16, 2009, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond. The Board did not receive a response from the applicant.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

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)

Chapter 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).

Separation Program Designator (SPD) Handbook

According to the Separation Program Designator (SPD) Handbook the JFX separation code means that an involuntary discharge is directed when a personality disorder exists, not amounting to a disability, which potentially interferes with assignment to or performance of duty. It also authorizes the assignment of an RE-3G or an RE-4 reenlistment code with the JFX 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 concerning this matter pursuant to section 1552 of title 10 of the United States Code.

2. 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 his discharge. The applicant was required to exhaust his administrative remedies by applying to the DRB before filing an application with the Board. See 33 CFR § 52.13. According to Ortiz v. Secretary of Defense, 41 F. 3d. 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. The applicant applied to the DRB approximately three years after his discharge, and the DRB issued a final decision on November 29, 2006. Therefore, the applicant's BCMR application, received by the Board on August 30, 2007, was timely.

3. The applicant asked this Board to correct his record by removing personality disorder as the narrative reason for his separation from the Coast Guard. In support of his request, he submitted a letter consisting of two lines from his current psychiatrist that the applicant is in treatment but does not have a personality disorder. This letter is insufficient to prove that the applicant did not have a personality disorder in 2003 as diagnosed by the military doctors. Moreover, the letter from the applicant's civilian psychiatrist fails to state how that psychiatrist reached the conclusion that the applicant does not currently suffer with a personality disorder. The applicant has failed to prove that he did not have a personality disorder at the time of his discharge or that that diagnosis was in error or unjust.

4. Pursuant to Article 12.B.16 of the Personnel Manual, a personality disorder may cause a member to be unsuitable for continued military service and is a valid ground on which to base a discharge. The Board notes that the applicant's DD Form 214 documenting his separation from the Coast Guard states that the applicant was discharged by reason of unsuitability. Article 1.D.28. of COMDTINST M1900.4.D. states that unsuitability is to be entered as the narrative reason for separation for individuals discharged under Article 12.B.16 of the Personnel Manual. Therefore, personality disorder was a proper basis for discharge in this case and the DD Form 214 properly records unsuitability as the reason for discharge.

5. In addition, according to SPD Handbook, JFX is the correct separation code for a member involuntarily discharged due to a personality disorder. However, the SPD Handbook authorizes either an RE-3G (eligible for reenlistment with a waiver) or an RE-4 (not eligible to reenlist) reenlistment code with the JFX separation code. The applicant was given the RE-4 reenlistment code despite the fact that he had no non-judicial punishments or negative page 7s during his approximately 10 months of Coast Guard service. The applicant's current request does not challenge his reenlistment code and the Board will not render a decision on it at this time, but will allow the applicant six months from the date of this final decision to request a review of his reenlistment code. The applicant is reminded that if he submits a new application challenging the reenlistment code, he has the burden of proving that the RE-4 reenlistment code is in error or unjust.

6. Accordingly, the applicant is not entitled to the relief on the request currently before the Board. However, the applicant is allowed six months from the date of the final decision in this case to file a new application challenging the correctness of his reenlistment code.

ORDER

The application of former XXXXXXXXXXXXXXXXXXXX, USCG, for correction of his military record is denied. However, he is granted six months from the date of this final decision to file a new application challenging the correctness of his RE-4 reenlistment code.

Donna M. Bivona

Diane L. Donley

Richard Walter