

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2007-202**

**XXXXXXXXXXXXXXXXXX  
XXX XX XXXXXXXXXXX**

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**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 requested the "reinstatement of [his] rank, pay, schooling, sea time, training, and [Department of Veterans Affairs (DVA)] benefits."

The military record indicates that the applicant enlisted in the Coast Guard on October 25, 1982, at the age of 17. He was honorably discharged on August 1, 1984, by reason of unsuitability, with a JMB (personality disorder) separation code and an RE-4 (not eligible to reenlist) reenlistment code. He had served one year, nine months, and seven days on active duty.

The applicant stated that he has a number of medical problems that resulted from his exposure to unhealthy environmental, chemical, and noise conditions while on active duty. He stated that has applied for DVA benefits and has been told that he is not eligible for them because he did not serve on active duty for 24 months. He alleged that he was discharged unjustly from the Coast Guard two months before he would have become eligible for DVA benefits.

## SUMMARY OF MILITARY RECORD

On March 4, 1984, the Officer of the Deck (OOD) placed an administrative remarks page (page 7)<sup>1</sup> in the applicant's record documenting that the applicant told the OOD that he had swallowed pills mixed with alcohol. When the OOD told the applicant that the hospital would probably pump his stomach, the applicant "decided that he was not feeling quite that bad[ly] and would try getting some fresh air and sleeping off the ill feeling." The OOD stated that the next day the applicant appeared to be fine.

On March 12, 1984, the applicant was counseled on a page 7 about not performing his assigned duties. The page 7 stated:

You have been an unproductive member of the crew since reporting aboard approximately four months ago. You have become a burden in the engineering department by not doing your share of the work and requiring constant supervision for all tasks. You have not accepted criticism, are not motivated to do anything Coast Guard oriented, show little pride in the unit or the Coast Guard, and can not be counted on in any situation.

[Y]ou have been counseled many times in the past by your chief, division officer and myself with little results. You are directed to improve your attitude, become motivated, show initiative, in short, to become a productive member of the team

...

On April 16, 1984, the applicant was punished at captain's mast with 20 days of extra duties for disobeying a lawful order and for using disrespectful language toward his superior, a master-at-arms.

On May 24, 1984, the applicant's commanding officer (CO) requested that the applicant receive a 30-day temporary duty assignment because he had acquired contact dermatitis.

On June 21, 1984, the applicant was punished at captain's masts for failing to keep a medical appointment. He was punished with a reduction in rate to pay grade E-1.

On July 10, 1984, the CO informed the applicant that the CO intended to recommend that the applicant be honorably discharged from the Coast Guard by reason of unsuitability due to personality disorder. The CO stated that the applicant's unsuitability was manifested through his inability to respond to counseling, his poor performance, his substandard conduct, his lack of potential for advancement, and his improbable completion of enlistment.

On July 10, 1984, the applicant acknowledged the proposed discharge and did not object to it. He signed a statement that he agreed with the discharge and requested an honorable discharge.

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<sup>1</sup> An administrative remarks page provides a means of recording miscellaneous entries, which are not recorded elsewhere in a Personnel Data Record (PDR). Administrative Remarks entries are made to document counseling or to record any other information required by current directives, or considered to be of historical value. Section 10.A. of the Pay and Personnel Manual (HIRSICINST M1000.6A).

In a July 25, 1984 message to the commandant, the CO recommended that the Commandant approve the applicant's discharge by reason of unsuitability due to a personality disorder. The CO wrote that the applicant had been diagnosed by a psychiatrist with a passive-aggressive personality disorder and had been recommended for discharge from the Coast Guard. The CO stated that the applicant was a marginal performer and had not responded to counseling. The CO further noted that the applicant was unable to adapt to the requirements of military service.

On July 28, 1984, the Commandant directed that the applicant be discharged from the Coast Guard by reason of unsuitability. The Commandant further directed that the applicant be assigned separation code JMB (personality disorder).

### **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. The JAG asked that the Board accept the comments from Commander, Coast Guard Personnel Command (CGPC) as the advisory opinion. CGPC noted that the application was not timely and that the applicant had not provided any justification for not filing his application sooner. CGPC also commented on the merits of the application should the Board decide to waive the statute of limitations. In this regard, CGPC stated the following:

The applicant was processed for discharge due to unsuitability due to diagnosis of a personality disorder. On July 10, 1984, the applicant was diagnosed by a psychiatrist with passive-aggressive personality disorder . . . The applicant was notified of the intent to discharge him for unsuitability, and the applicant did not make a statement, and patently agreed with the discharge recommendation . . . In addition to his personality disorder, the applicant's behavior as evidenced by two commanding officer's NJPs . . . [is] evidence [of] the applicant's unsuitability and most likely precipitated [his] mental health evaluation. The applicant was properly processed for discharge . . . for unsuitability.

The applicant claims that he was improperly denied the right to veterans benefits, however, there is nothing in the record nor has the applicant provided any evidence to substantiate any unjust treatment.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On January 16, 2008, 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.

## APPLICABLE LAW

### *Personnel Manual (COMDTINST M1000.6)*

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, Passive-aggressive, and Personality disorder NOS.

### *Commandant Instruction (COMDTINST) M1900.4B (Instruction for the Preparation and Distribution of the Certificate of Release or Discharge from Active Duty, DD Form 214)*

Chapter 2 (Separation Program Designators) of COMDTINST M1900.4B authorized an RE-4 reenlistment code with the JMB separation code. This provisions states that a RE-3G may be assigned only when authorized by the Commandant.

## 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 not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered or should have discovered the alleged error or injustice. See 33 CFR 52.22. This application was submitted approximately twenty years beyond the statute of limitations. The applicant acknowledged that he discovered the alleged error on August 1, 1984. He stated that it is in the interest of justice to waive the statute of limitations because the Coast Guard is now under a different department and he can "now . . . appeal everything." However, the applicant knew in 1984 that he was being discharged by reason of unsuitability due to a personality disorder. In addition, his DD form 214, which he signed, shows that at the time of his discharge, he had less than two years of active duty. Therefore, the applicant knew or should have known of the alleged error at the time of his discharge from the Coast Guard.
3. Although the applicant's explanation for not filing his application sooner is not persuasive, the Board may still consider the application on the merits, if it finds it is in the interest of justice to do so. In Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further stated that "the longer the delay has

been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." Id. at 164, 165.

4. Based on a cursory review of the merits, the Board finds that the applicant is not likely to prevail on his claim. The Board notes that the applicant's request is for a correction to his record to show that he served on active duty for 24 months so that he is eligible for DVA benefits. However, the applicant has not proven that he served on active duty in the Coast Guard for 24 months. His DD Form 214 shows that he served one year, nine months, and seven days on active duty. The applicant has submitted nothing to show this calculation to be incorrect.

5. Moreover, the applicant has failed to prove that his unsuitability discharge was in error or unjust, and therefore, he is not entitled to have two additional months added to his active duty time. The applicant was discharged under Article 12-B-16 of the Personnel Manual by reason of unsuitability due to a diagnosed personality disorder. The applicant acknowledged the proposed discharge and offered no objection to it. In addition, he signed a statement that he was in agreement with the discharge.

6. The applicant complained that several of his current illnesses resulted from his exposure to unhealthy conditions while on active duty. However, except for contact dermatitis and personality disorder, there is no evidence that he was diagnosed with any other medical condition while on active duty. The applicant was not entitled to physical disability processing by the Coast Guard for either of the two diagnosed conditions. In this regard, Chapter 2 of the Physical Disability Evaluation System (PDES) Manual states that a personality disorder is not a physical disability, and there is no medical evidence that the applicant's contact dermatitis was unfitting for continued military service.<sup>2</sup>

7. It is not clear what the applicant meant by requesting the reinstatement of his rank, pay, schooling, sea time, training, and DVA benefits. The applicant's DD Form 214 states that at the time of his discharge, the applicant had 1 year, six months, and 28 days of sea time, that he was a seaman recruit (SR, pay grade E-1), and that he had completed Damage Control Team Training and Civil Rights Training. The applicant has not proven that any of this information is incorrect. Eligibility determination for DVA benefits is not within the purview of the Board.

8. Therefore, due to the length of the delay, the lack of a persuasive reason for not filing his application sooner, and the lack of probable success on the merits of his claim, it is not in the interest of justice to waive the statute of limitations in this case. The application should be denied because it is untimely and because it lacks merit.

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

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<sup>2</sup> Chapter 2.C.2.a. of the PDES Manual provides that 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 through military service." Chapter 2.C.2.f.i. makes it clear that a member may have physical impairments ratable by the DVA, but such impairments may not necessarily render the member unfit for military duty.

**ORDER**

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

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Donna M. Bivona

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Diane L. Donley

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Richard Walter