

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-042

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

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 December 18, 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 September 11, 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 changing the reason for his discharge from unsuitability due to a personality disorder to something more suitable and by changing his RE-4 (not eligible to reenlist) reenlistment code to RE-3 (eligible for reenlistment with waiver) so that he can reenlist in the Coast Guard. However, because the Discharge Review Board (DRB) has granted the applicant certain relief, the only issue before the BCMR is whether the applicant's RE-4 reenlistment code should be upgraded to RE-3.

The applicant alleged that his command discriminated against him while he was in the Coast Guard. He also stated that his father passed away while he was on active duty and he was never contacted by the Department of Veterans Affairs to pick up his father's flag.

Discharge Review Board (DRB) Decision

On November 7, 2007, the BCMR learned that the DRB directed that the applicant's DD Form 214 be corrected to show "condition, not a disability, as the narrative reason for discharge, to show JFV (condition, not a disability) as the separation code, and to show Article 12.B.12. (convenience of the government) of the Personnel Manual as the separation authority. The DRB noted that the applicant was not diagnosed with a personality disorder, but rather with a specific phobia. His DD Form 214 was corrected to reflect the changes directed by the DRB.

On November 30, 2007, after reviewing the DRB decision, the BCMR informed the applicant that the DRB had corrected his DD Form 214 as discussed above and that the BCMR would only review the issue of his RE-4 reenlistment code.

SUMMARY OF THE RECORD

The military record indicates that the applicant enlisted in the active duty Coast Guard on April 2, 2002. He was honorably discharged on January 20, 2006, by reason of unsuitability, with a JFX (personality disorder) separation code and an RE-4 reenlistment code. At the time of his discharge he had served three years, nine months, and nineteen days on active duty.

On July 12, 2005, the applicant underwent a mental health evaluation at the request of his command to determine if the applicant suffered from a mental condition that precluded him from dealing effectively with trauma, suicide, expired individuals, and rescue cases. The psychiatrist diagnosed the applicant as suffering from a specific phobia (aversion/fear of exposure to corpses) that presented an occupational problem. The psychiatric report stated the following:

[The applicant] has been diagnosed with a mental disorder. Specifically, he has demonstrated a marked and persistent fear that is excessive and is cued by the presence/anticipation of being exposed to dead bodies in the course of his duties. Given the nature of the search and recovery mission that is inherent in the U.S. Coast Guard mission, such exposures are highly likely, particularly in the content of his current job at USCG Station [G]. He has demonstrated that exposure and anticipation of these events evokes an immediate anxiety response and he has made multiple attempts to avoid such duties (including purposefully being late for boat movements). This problem is so severe as to significantly interfere with his ability to perform his required duties. In addition to the above, [the applicant] has exhibited problems with interpersonal interactions with co-workers and his chain of command, often stemming from the perception that he is not being treated fairly. While he has a history of being treated for depression (related to difficulties adjusting to USCG duties) there is no current evidence of depression or other emotional distress outside of the context of his work-related problems.

Exposure-based behavioral treatments are effective in the treatment of specific phobia; however, [the applicant] is not interested in participation in this course of treatment. His phobia is likely to persist without this treatment.

[The applicant] is able to distinguish between right and wrong, appreciating the possible consequences of his actions, and controlling his behavior. From a mental health standpoint he is fully accountable for his actions and any further misconduct should be dealt with administratively.

Given the nature of [the applicant's] mental disorder, he is not likely to perform effectively in situations where there is a potential for exposure to corpses; it is unknown how he might respond to exposure to trauma cases where he would be

required to render aid to victims. It is my recommendation that you consider transferring [the applicant] to a position that does not require him to be exposed to such duties (if such an assignment exists within the USCG). If he cannot be reassigned, it is my opinion the he is not suitable for continued service in the USCG and administrative separation action should be initiated.

On August 3, 2005, the commanding officer (CO) informed the applicant that the CO was recommending that the applicant be discharged from the Coast Guard by reason of unsuitability due to personality disorder: namely, a specific phobia that interfered with the applicant's ability to perform his required duties. The applicant was advised of his opportunity to make a statement and that his statement, if any, would be forwarded to the Commander, Coast Guard Personnel Command (CGPC).

In a memorandum dated August 3, 2005, the CO recommended to the Commander, Coast Guard District Eleven, that the applicant be discharged from the Coast Guard due to a personality disorder. The CO did not recommend the applicant's retention and attached a summary of the applicant's behavioral and disciplinary history. The summary included the following:

- On July 5, 2004, the applicant received a page 7 for arriving late to morning clean ups.
- On November 8, 2004, the applicant received a page 7 for not completing his boat crew qualification guide.
- December 29, 2004 the applicant received a page 7 for failure to maintain accountability of SAR gear.
- On January 5, 2005, the applicant was not recommended for advancement on his employee review ending on September 30, 2004, because of his inability to be a team player, because he was disrespectful, and because of his lack of boat crew qualification.
- On February 18, 2005, the applicant received a page 7 due to his failure to respond to a SAR case.
- On March 14, 2005, the applicant received a page 7 because he gave conflicting explanations for why he missed a boat movement.
- On March 16, 2005, the applicant was punished at captain's mast for being derelict in the performance of his duty by not responding to a SAR case. His punishment included a reduction in rate, which the CO suspended.
- On March 31, 2005, the applicant was not recommended for advancement on his employee review ending March 31, 2005.
- On April 12, 2005, the applicant received a page 7 advising him that he was a candidate for reduction in rate by reason of incompetence.

- On May 1, 2005, the applicant received a page 7 due to his failure to follow directions and pay attention to details.
- On May 19, 2005, the applicant received a page 7 placing him on probation due to a pattern of shirking his duties and responsibilities.
- On May 25, 2005, the suspension of the applicant's reduction in rate given as punishment at the March 16, 2005 captain's mast was vacated.

On August 8, 2005, the applicant objected to the discharge and submitted the following statement:

I respectfully write this letter to object [to] discharge. The condition that exists is treatable, and through time can be resolved. Two other individuals that were diagnosed with similar symptoms were treated and retained. They were both stationed at [G] where suicide bridge-jumpers are a constant burden. I have requested a humanitarian transfer, which was denied. I have had difficult times at Station [G] with the command, and respectfully request a change in rate. My marks are unsatisfactory due to the dilemmas that I have mentioned. Please consider giving me a second chance because before receiving orders to Station [G] these problems were not present.

On August 29, 2005, in response to the applicant's statement, the CO sent a further memorandum to CGPC, through the Commander, Coast Guard District Eleven, recommending the applicant's discharge. The CO stated that the applicant was not the first person from the station to have problems associated with bridge jumpers and picking up corpses. The CO further stated the following:

Station [G] makes sure that all personnel who have phobias regarding corpses are treated by medical professionals, and then placed in positions that allow them to make a positive contribution to Station [G], another Sector Station, or to the Sector in general. [The applicant] has not contributed in a positive manner since the situation occurred. Sector San Francisco assisted [the applicant] by sending him to work at Station Rio Vista, thus removing him from the atmosphere of retrieving corpses. Station Rio Vista returned him back to Station [G] within a week because he was having severe difficulties getting along with Station Rio Vista's crew. He was then reassigned to the Sector San Francisco Galley and immediately and conveniently developed a phobia of sharp objects and stated that he felt he was going to hurt himself. He was evaluated at Travis AFB for mental health and found fit for full duty.

On December 14, 2005, the Commander, Coast Guard District Eleven, recommended that CGPC discharge the applicant from the Coast Guard. The Commander stated that the applicant had been considered for a second chance waiver, but one had not been granted.

On December 20, 2005, CGPC approved the applicant's discharge from the Coast Guard and he was separated on January 20, 2006.

VIEWS OF THE COAST GUARD

On April 30, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board upgrade the applicant's reenlistment code from RE-4 to RE-3G (eligible for reenlistment with a waiver), as recommended by CGPC in an attached memorandum. The JAG adopted CGPC's comments.

Although CGPC recommended that the applicant's reenlistment code be changed, he noted the applicant's numerous failures to follow orders, as well as issues related to his phobia. In this regard CGPC stated the following:

In light of the DRB's determination to change the SPD code and narrative reason/authority for separation and in the interest of justice it is reasonable that the BCMR should address changing the RE code to RE-3G. The RE-3 code does not bar reenlistment as does the RE-4. Rather, the applicant needs to substantiate to the gaining Service that the medical conditions which led to his original discharge have been overcome.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

In May 2008, the Board received the applicant's objection to the views of the Coast Guard. He argued that based upon his service he should have been assigned a reenlistment code of RE-1 (eligible to reenlist). In support of his contention, he submitted the following positive entries from his military record:

- On July 2, 2002, the applicant completed inport security watchstander job qualification requirements and was deemed qualified to stand inport security watches.
- On August 1, 2002, his performance and attitude during mess cook duty were noted as outstanding.
- On February 3, 2003, the CO documented that the applicant had completed the following damage control PQS: advanced damage control, advanced shipboard fire fighting, advanced first aid/stretching bearer, AFF station operator, and investigator.
- On November 28, 2003, the applicant received a page 7 thanking him for his tremendous contribution to the cutter's Tailored Annual Cutter Training.
- On April 27, 2004, the applicant received a page 7 commending him for completing machinery technician "A" school and for serving as the class yeoman.

- On May 7, 2004, the applicant was recognized for superior performance while representing the Coast Guard and Training Center Yorktown as a volunteer for the annual Hampton Roads USO Gala held on April 17, 2004.
- On August 6, 2004, the applicant was commended for his outstanding performance of duty while the engineering petty officer and senior leadership of Station G were away conducting other business.
- May 23, 2005, the applicant was commended for his outstanding performance of duty during the month of May, in which he worked many extra hours and volunteered to assist other departments in preparation for the unit's annual open house event.

The applicant also submitted four letters from previous employers who attest to his excellent work ethic and character.

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. The application was timely.

2 The DRB has corrected the applicant's DD 214 to show that he was discharged for the convenience of the government by reason of a condition, not a disability, with a JFV separation code. Therefore, the only issue before the BCMR is whether the applicant's request for an upgrade to his reenlistment code should be granted.

3. The Separation Program Designator (SPD) Handbook is the authority for assigning reenlistment codes. In this regard, the SPD Handbook authorizes the assignment of an RE-3G or an RE-4 reenlistment code with the JFV separation code¹. The JAG has recommended that the applicant's reenlistment code be upgraded to RE-3G (condition, not a disability), which is the code the applicant requested when he filed his BCMR application. The Board agrees with the Coast Guard and will direct that the applicant's reenlistment code be changed to RE-3G. While the applicant's negative behavior and performance would support an RE-4 reenlistment code, the Board finds that the RE-3G is the more appropriate code because it recognizes that the applicant's discharge was the result of a specific phobia condition that interfered with the performance of his duties and that it might have had some impact on his inability to adjust his behavior to the standards required by the Coast Guard.

4. The SPD Handbook does not authorize an RE-1 reenlistment code for a discharge by reason of condition, not a disability, that interferes with the performance of duty. The applicant's military record clearly established that he suffered from a specific phobia that

¹ The JFV separation code is assigned upon the involuntary discharge of a member diagnosed with a condition, not a disability, that interferes with that member's performance of duty.

interfered with his performance of duty. Therefore, he should not be allowed to reenlist unless he can show to the satisfaction of a military service that he longer suffers from this particular medical problem. Moreover, an RE-1 would be inconsistent with the applicant's disciplinary and behavioral problems during the approximately last two years of his active service and with the recommendation of his command that he should not be retained in the Coast Guard.

5. Other than his allegation, the applicant has not submitted any proof that his command discriminated against him while on active duty.

6. Accordingly, the applicant's request for an RE-1 should be denied, but his reenlistment code should be upgraded to RE-3G.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXXXXXXXX, USCG, for correction of his military record is granted as follows:

Block 27 of his DD Form 214 shall be corrected to show RE-3G as his reenlistment code. The Coast Guard shall issue the applicant a new DD Form 214 incorporating the changes directed by the DRB as well as that directed by this Board. The following notation shall be made in block 18 of the new DD 214: "Action taken pursuant to order of BCMR."

All other requests for relief are denied.

Philip B. Busch

Kathryn Sinniger

Dorothy J. Ulmer