

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-127

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FINAL DECISION

This proceeding was conducted under 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 May 20, 2008, upon receipt of the completed application, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 25, 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, who was honorably discharged from the Coast Guard on January 18, 2000, after just four months and five days on active duty, asked the Board to correct his discharge form, DD 214, by upgrading his reenlistment code from RE-4 (ineligible) and by changing his separation code and narrative reason for separation to reflect a cause for separation other than “personality disorder.”¹ The applicant alleged that he has never had a personality disorder. In support of his allegation, the applicant submitted copies of the following documents:

- In a letter dated December 8, 2003, a licensed psychologist states that he had conducted an MMPI-2 personality test on the applicant on January 20, 2002, pursuant to his attending a security officer training academy, and that the test showed that the applicant was “in

¹ 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.” American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-TR)*, p. 685. Types of personality disorders include paranoid, schizoid, schizotypal, antisocial, borderline, 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. The Coast Guard relies on the DSM when diagnosing members with psychological conditions. *See* Coast Guard Medical Manual (COMDTINST M6000.1B), Chap. 5.B.1.

compliance with the psychological aspects of Lethal Weapons Training Act 235 at that time.”

- In a memorandum dated September 16, 2004, the Chief Surgeon of the Army National Guard stated that a medical waiver had been approved to allow the applicant’s enlistment based on a favorable report of a psychiatric evaluation regarding the personality disorder noted by the Coast Guard.
- In a letter dated January 9, 2004, the applicant’s supervisor at Leonard Security Services stated that the applicant is an excellent employee.

SUMMARY OF THE RECORD

On September 14, 1999, at age 19, the applicant enlisted in the Coast Guard. The report of his pre-enlistment physical examination, dated July 20, 1999, indicates that he was fit for enlistment. Other medical records indicate that he complained of chest pain during boot camp, but testing revealed no physical cause for his symptoms.

Upon completing boot camp, the applicant was assigned to Station Cleveland Harbor. On January 4, 2000, a psychologist reported that the applicant had been referred for evaluation by his command “because of recurrence of panic attacks and difficulty adjusting to military.” The applicant complained of frequent insomnia, migraine headaches, shortness of breath, stomach cramping, chest pain, light headedness, and inability to concentrate. A medical evaluation had shown no physical cause for his symptoms, and taking the antidepressant Zoloft for two months had not relieved his symptoms. The psychologist cited his “diagnostic impression” as “Axis I: Panic Attacks, Adjustment Disorder with Depressed Mood, Occupational Problem; Axis II: No diagnosis.”² The psychologist noted that the applicant suffered from no disqualifying mental or physical defect ratable as a disability and recommended that he be administratively discharged.

On January 10, 2000, the applicant’s command reported to the Coast Guard Personnel Command (CGPC) that the applicant had been diagnosed by a clinical psychologist with “309.0,” which is the code for an adjustment disorder with depressed mood; that the command requested authorization to discharge him for unsuitability; and that the applicant had waived his right to submit a statement.

On January 11, 2000, CGPC authorized the command to discharge the applicant with an honorable discharge under Article 12.B.16. of the Personnel Manual, an RE-4 reenlistment code, a JFX separation code (involuntary discharge due to a diagnosed personality disorder), and “the appropriate narrative reason for disch[arge] found in the Separation Program Designator Handbook.”

² Panic attacks are not personality disorders or any kind of coded disorder but are noted under anxiety disorder as discrete periods of intense fear. DSM-IV-TR, pp. 429-30 and 685. Adjustment disorders are psychological responses to identifiable stressors that result in the development of emotional or behavioral symptoms. Adjustment disorders are not personality disorders and normally disappear when the stressors disappear. *Id.* at 679. Personality disorders are coded on Axis II. *Id.* at 686.

On January 18, 2000, the applicant was honorably discharged with an RE-4 reenlistment code; a JFX separation code; “personality disorder” as the narrative reason for separation; and Article 12.B.16. of the Personnel Manual as the authority for separation.

In a decision dated July 26, 2004, the Discharge Review Board (DRB) denied the applicant’s request to be discharged “for the good of the service” with an upgraded reenlistment code based on the lack of “a definitive diagnosis concerning the applicant’s mental well being but noted that a dissenting member felt that the applicant should have the opportunity to provide such documentation.

VIEWS OF THE COAST GUARD

On October 14, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief in this case pursuant to the recommendation in a memorandum by CGPC.

CGPC noted that the application was not timely filed because it was submitted more than three years after the applicant was notified of the decision of the DRB. However, CGPC stated, the applicant was not diagnosed with a personality disorder, but with an adjustment disorder. CGPC noted that the BCMR often corrects applicants’ DD 214s in such cases to reflect “condition, not a disability” as the narrative reason for discharge under separation code JFV, rather than “personality disorder” under JFX. CGPC recommended that the Board grant similar relief but stated that the narrative reason for discharge should be “convenience of the government,” which is the title of Article 12.B.12. of the Personnel Manual, wherein lies the authorization for discharging members with medical conditions that are not disabilities. CGPC recommended that the applicant’s reenlistment code be upgraded from RE-4 (ineligible) to RE-3G (eligible with waiver).

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 23, 2008, the applicant responded stating that he has no objection to the recommendation of the Coast Guard. The applicant also submitted a copy of a letter from a recruiter for the United States Marine Corps. The recruiter stated that he has been working with the applicant to enlist him and that the “only thing that is holding him back is his reenlistment code.” He asked that the applicant’s request for an RE-3 reenlistment code be considered so that he may be enlisted in the Marine Corps.

APPLICABLE REGULATIONS

Article 12.B.16. of the Coast Guard Personnel Manual in effect in 2000 authorized enlisted personnel with diagnosed personality disorders listed in Chapter 5 of the Medical Manual to be discharged by reason of unsuitability at the direction of the Commandant.

Chapter 5.B.2 of the Medical Manual lists personality disorders that qualify a member for administrative discharge pursuant to Article 12.B. of the Personnel Manual. Neither panic disorders nor adjustment disorders are included among the personality disorders listed in Chapter

5.B.2. of the Medical Manual. Chapter 3.F.16.d of the Medical Manual states that adjustment disorders “do not render an individual unfit because of physical impairment. However, if these conditions are recurrent and interfere with military duty, are not amenable to treatment, or require prolonged treatment, administrative separation should be recommended.”

Article 12.B.16.d. of the Personnel Manual provides that every member discharged under the article shall be notified of the reason he is being considered for discharge and shall be allowed to submit a statement on his own behalf.

Article 12.B.12.a.12. of the Personnel Manual authorizes enlisted personnel with a diagnosed “condition that, though not a physical disability, interferes with performance of duty” to be discharged for the convenience of the Government.

Article 1.E. of COMDTINST M1900.4D, the manual for completing DD 214s, states the following:

Block 25. Separation Authority.

1. Enlisted Personnel. Enter the appropriate separation authority associated with a particular authority and reason for separation as shown in the SPD Handbook, unless otherwise directed by the MPC-SEP. ...

Block 26. Separation Code. Enter the appropriate separation code (SPD) associated with a particular authority and reason for separation as shown in the SPD Handbook or as stated by the MPC-SEP in the message granting discharge authority.

Block 27. Reenlistment Code.

1. Enlisted Personnel. Enter the appropriate reenlistment code to denote whether or not the member is recommended for reenlistment. Use only the proper reenlistment code associated with a particular SPD Code as shown in the SPD Handbook....

Block 28. Narrative Reason for Separation. Only the narrative reason, i.e. UNSUITABILITY, MISCONDUCT, etc. is to be entered--do not enter additional information, i.e. "Due to frequent involvement with civil authorities, financial irresponsibility, etc."

1. Enlisted Personnel. The MPC-SEP will specify entries to be made in this item by pertinent letter or orders issued. ...

The SPD Handbook includes the following combinations of codes and narrative reasons for separation which might apply to the applicant’s case:

SPD Code	Narrative Reason for Separation	RE Code	Separation Authority	Explanation
JFX	Personality Disorder	RE-4 or RE-3G	12.B.16.	Involuntarily discharge [by direction] when a personality disorder exists, not amounting to a disability, which potentially interferes with assignment to or performance of duty.
JFV	Condition, Not a Disability	RE-4 or RE-3G	12.B.12.	Involuntarily discharge [by direction] when a condition, not a physical disability, interferes with the performance of duty (Enuresis, motion sickness, allergy, obesity, fear of flying, et al.)

ALCOAST 562/08, issued on November 14, 2008, stated the following in pertinent part:

2. Inconsistencies have been noted in the way some field units have completed the DD-214, specifically with regard to blocks 24 and 28 of the form.

3. COMDT (CG-1221) recently met with DOD officials to review the policies and guidance that must be followed when completing the DD-214. A determination was made that the Coast Guard's guidance in [COMDTINST M1900.4 (series)] for completing blocks 24 (character of service) and 28 (narrative reason for separation) are not consistent with DOD directives, prompting this clarification of policy.

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5. Block 28 must only state the narrative reason found in the Separation Program Designator (SPD) Code Handbook. Narrative reasons such as Unsuitability and Convenience of the Government are not found in the SPD Code Handbook and, therefore, are not considered narrative reasons.

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. The applicant has exhausted his administrative remedies by applying to the DRB.

2. An application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice.³ However, the Board's statute of limitations is tolled in a case over which the DRB has jurisdiction until the DRB renders a decision.⁴ The DRB rendered a decision upon the applicant's request in July 2004, and he did not file his application with this Board until more than three years later, on May 10, 2008. Therefore, the application was untimely.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if 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 to determine 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 instructed 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."⁵ Because the applicant's delay in filing his application was not very long and the evidence of record reveals significant merit in his claim, as explained below, the Board finds that it is in the interest of justice to excuse the untimeliness of the application.

4. The applicant's DD 214 indicates that he was diagnosed with and discharged because of a personality disorder even though the applicant was never diagnosed with a personality disorder during his four months in the Coast Guard. Instead, he was diagnosed with panic

³ 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

⁴ *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

⁵ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

attacks and an adjustment disorder, and the record indicates that he was discharged because of the adjustment disorder. As stated in Chapter 5.B. of the Coast Guard Medical Manual and the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, which the Coast Guard uses, adjustment disorders are not personality disorders. CGPC admitted this fact in the advisory opinion. Therefore, the Board finds that the Coast Guard erred in assigning the applicant the JFX separation code, which denotes a diagnosed personality disorder, and "personality disorder" as his narrative reason for separation. Article 12.B.16. of the Personnel Manual in effect in 2000 and the SPD Handbook do not authorize "personality disorder" discharges or the JFX code for members diagnosed with adjustment disorders. Because the applicant was never diagnosed with a personality disorder, the Board finds that the narrative reason for separation and JFX separation code shown on his DD 214 are erroneous, unjust, and unduly prejudicial.

5. In light of the highly prejudicial nature of a discharge by reason of "personality disorder," the Board has often ordered the Coast Guard to correct the narrative reason on a DD 214 to "condition, not a disability," under Article 12.B.12. of the Personnel Manual, and the separation code to JFV when the diagnosis of personality disorder was absent, uncertain, or not supported by inappropriate behavior.⁶ In this case, CGPC recommended that the Board correct the applicant's DD 214 to show separation code JFV and Article 12.B.12. but "convenience of the government," which is the title of Article 12.B.12., as the narrative reason for separation. This latter recommendation does not comport with the instructions in the applicant's discharge orders or with the narrative reason that corresponds to a JFV separation code in the SPD Handbook. As stated in ALCOAST 562/08, the Department of Defense requires that only narrative reasons shown in the SPD Handbook be used in block 28 of a DD 214. Therefore, the Board finds that, as in many past BCMR cases, the applicant's DD 214 should be corrected to show Article 12.B.12. as the separation authority in block 25; JFV as the separation code in block 26; and "condition, not a disability" as the narrative reason for separation in block 28.

6. The applicant also asked the Board to upgrade his reenlistment code, which is currently RE-4 (ineligible to reenlist). The SPD Handbook allows members discharged with the JFV separation code to be assigned either an RE-4 or an RE-3G, which allows them to reenlist with a waiver if they convince the accessing service that the condition that caused their discharge will not prevent them from successfully performing active duty in the future. Although the applicant was assigned an RE-4, there are no reports of misconduct or other behavioral problems in the record. In addition, the Board notes that the applicant was only 19 years old when the adjustment disorder prevented him from fulfilling his enlistment contract. Although personality disorders are considered permanent conditions, adjustment disorders and panic attacks are usually not permanent conditions.⁷ Therefore, the Board agrees with CGPC that it is in the interest of justice to upgrade the applicant's reenlistment code to RE-3G.

7. Accordingly, the applicant's DD 214 should be corrected to show "Condition, Not a Disability" as the narrative reason for separation, JFV as the separation code, an RE-3G reenlistment code, and Article 12.B.12. of the Personnel Manual as the separation authority. Moreover, these corrections should be made on a newly issued DD 214, rather than by means of

⁶ See, e.g., BCMR Docket Nos. 2005-082, 2005-045, 2004-044, 2003-015, and 2007-221.

⁷ DSM-IV-TR, pp. 429-30, 679, 685; Coast Guard Medical Manual, Chap. 5.B.2.

a DD 215, so that the incorrect, prejudicial information suggesting that he has a personality disorder need not be seen by any future employers.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SA xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

- Block 25 on his DD 214 shall be corrected to show that he was discharged under the authority of Article 12.B.12. of the Personnel Manual (COMDTINST M1000.6A).
- Block 26 shall be corrected to show that he received the separation code JFV.
- Block 27 shall be corrected to show reentry code RE-3G.
- Block 28 shall be corrected to show “CONDITION, NOT A DISABILITY” as the narrative reason for separation.
- The Coast Guard shall issue him a new DD 214 reflecting these corrections, rather than issuing him a DD 215.
- The following notation shall be made in block 18 of the new DD 214: “Action taken pursuant to order of BCMR.”

Donna M. Bivona

Robert F. Parker

Eric J. Young