

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-211

**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 after receiving the applicant's completed application on July 28, 2009, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated March 26, 2010, 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 change his separation and reenlistment codes so that he is eligible to reenlist in the military. The military record indicates that the applicant enlisted in the active duty Coast Guard on March 15, 1994 and was discharged on May 29, 1994. He was honorably discharged by reason of unsuitability, with a JFX (personality disorder) separation code and an RE-4 (not eligible to reenlist) reenlistment code.

The applicant alleged that the codes should be changed because the reason for his discharge no longer exists. The applicant stated that at the time he was married and his wife was pregnant. Upon learning after recruit training that he would be assigned to a cutter that was scheduled to deploy for six months, his wife suffered severe separation anxiety. He stated that his 16-year marriage is stable and that he has 4 children. His wife is a nurse and interested in joining the military. They would like to enlist together.

The applicant submitted a June 29, 2009 psychological evaluation from Dr. R, who made the following diagnosis of the applicant's current mental state: "Axis I – No condition or Diagnosis . . . Axis II – Compulsive Personality Traits." Dr. R concluded his evaluation with the following:

In general the testing results suggest an underlying characterological presentation to his personality style. There was no indication in the testing results to suggest

any significant emotional illness, nor was there any evidence of any personality disorder indicated on his separation papers. There was nothing in the testing to suggest that he will have any difficulty emotionally in handling military service. Based on his personality description it is easy to see that once he sets his mind to something, he will not stop until he has accomplished his goal. Having worked with veterans for 31 years, I would view this as a very favorable personality trait that would serve him well in the military.

The applicant also submitted a letter of support and recommendation from his wife. She expressed her desire to enlist in the military with the applicant.

Pertinent Documents in the Applicant's Medical Record

A medical entry dated April 26, 1994, indicates that the applicant wanted to leave the Coast Guard because he could not handle the separation from his wife and because had no will to stay in the Coast Guard.

The applicant was referred to a psychiatrist for a psychological evaluation on April 26, 1994. The psychiatrist diagnosed the applicant with separation anxiety disorder and recommended him for discharge from the Coast Guard.

On April 26, 1994, the senior medical officer for the battalion informed the Battalion Officer that the applicant was disqualified for enlistment due to separation anxiety disorder and stated that his prognosis for future service was poor.

On April 26, 1994, the applicant acknowledged the proposed discharge due separation anxiety disorder. He was also informed that he could make a statement regarding the proposed discharge, but he elected not to submit a written statement.

The discharge recommendation was approved and the applicant was honorably discharged on April 29, 1994 due to unsuitability, with a JFX (personality disorder) separation code and an RE-4 reenlistment code.

VIEWS OF THE COAST GUARD

On December 18, 2009, 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 Service Command (PSC) as the advisory opinion.

PSC noted that the application was not timely and that the applicant had not provided any justification for not filing his application sooner. With respect to the merits, the PSC stated the following:

h. According to [the Medical Manual], Chapter 5 part B, the applicant was found to have met the definition of adjustment disorder as the precise cause for

discharge. Here it states: “These disorders are generally treatable and not usually ground for separation. However, when these conditions persist or treatment is likely to be prolonged or non-curative (e.g., inability to adjust to military life/sea duty, separation from family/friends) process in accordance with Chapter 12, Personnel Manual, if necessary.

* * *

j. In accordance with [the Separation Program Designator [SPD] Handbook], a separation code of JFX was correctly applied, as the narrative reason for this code “Personality Disorder” with the given explanation for its proper use as, “Involuntary discharge directed by established directive when a personality disorder exists, not amounting to a disability, which potentially interferes with assignment to or performance of duty.” The only authorized reentry code for JFX is either RE-3G or RE-4. The applicant received a reentry code of RE-4 based upon the findings of the staff psychiatrist of Training Center Cape May, as per [the medical recommendation].

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 22, 2009, the Board sent the applicant a copy of the views of the Coast Guard. He did not submit a reply.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6)

Article 12.B.16. of the Coast Guard Personnel Manual authorizes 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 sexual harassment.

Article 12.B.16.b of the Personnel Manual authorizes unsuitability discharges for members diagnosed with one of the “personality behavior disorders ... listed in Chapter 5, CG Medical Manual”

Medical Manual (COMDTINST M6000.1B)

Chapter 5.B.2 of the Medical Manual (COMDTINST M6000.1B) lists the personality disorders that qualify a member for administrative discharge pursuant to Article 12.B.16. of the Personnel Manual. They are Paranoid, Schizoid, Schizotypal, Obsessive Compulsive, Histrionic, Dependent, Antisocial, Narcissistic, Avoidant, Borderline, Passive-aggressive, and Personality disorder NOS. Neither anxiety disorders nor disorders usually first evident in infancy, childhood or adolescence are included in the list of personality disorders.

Chapter 5.B.17. of the Medical Manual lists separation anxiety disorder under the heading "Disorders, Usually First Evident in Infancy, Childhood, or Adolescence." It is disqualifying for appointment, enlistment, or induction or a member diagnosed with the condition after entry into the military shall be processed in accordance with Chapter 12 of the Personnel Manual.

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

Article 4.a. states that the DD 214 provides a concise record of a period of service with the Armed Forces at the time of a member's discharge. Further, Article 1.D.2. states that the DD 214 must be accurate and complete in order for it to fulfill the purposes for which it was designed.

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 twelve years beyond the statute of limitations and the applicant did not provide the date on which he discovered the alleged error or injustice. However, he knew at the time that he was being discharged due to a separation anxiety disorder that the Coast Guard determined to be unsuitable for military service. Unsuitability is listed as the narrative reason for discharge and the reenlistment code is listed as RE-4 on the applicant's DD 214, which he signed. Therefore, the applicant knew or should have known of the alleged error at the time of his discharge from the Coast Guard.

3. 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. The applicant did not state why it is in the interest of justice for the Board to excuse his untimeliness and consider the merits of his application. While evidence in the record suggests that the applicant only recently on June 29, 2009, obtained evidence that he no longer suffers from separation anxiety disorder he provided no explanation why he waited for approximately 15 years to obtain a second opinion as to his mental status. Therefore, the Board

is not persuaded to waive the statute of limitations based solely on the submission of the newly acquired relevant evidence.

5. However, a cursory review of the merits of the application indicates that the Coast Guard committed an error by listing JFX (personality disorder) as the separation code, unsuitability as the narrative reason for separation, and RE-4 as the reenlistment code on the applicant's DD214. Therefore, it is probably in the interest of justice for the Board to consider this application on the merits.

6. It was error for the Coast Guard to describe the applicant's discharge based on a diagnosis of separation anxiety disorder as a personality disorder. According to Article 5.B.17. of the Medical Manual, separation anxiety disorder is a "disorder usually first evident in infancy, childhood or adolescence," and a basis for an administrative discharge under Article 12 of the Personnel Manual. Separation anxiety disorder is not a personality disorder. Article 5.B.2. of the Medical Manual lists the following as personality disorders: paranoid, schizoid, schizotypal, obsessive compulsive, histrionic, dependent, antisocial, narcissistic, avoidant, borderline, personality disorder NOS, and personality traits.¹ Additionally, there is no evidence in the military record that the applicant was ever diagnosed with a personality disorder.

7. Although separation anxiety disorder is not a personality disorder, it was a proper basis for the applicant's discharge. Therefore, the issue is whether the separation authority (Article 12.B.16. (unsuitability) of the Personnel Manual), the narrative reason for separation (unsuitability), and the corresponding JFX (personality disorder) separation code listed on the applicant's DD 214 accurately and fairly describe the reason for his discharge. Chapter 1.D.2. of the DD 214 instruction states that the DD 214 must be accurate and complete to fulfill the purposes for which it was designed. As stated above, the Medical Manual does not list separation anxiety disorder as a personality disorder. Nor does separation anxiety disorder fit within any of the other eight grounds for an unsuitability discharge under Article 12.B.16 of the Personnel Manual, which are inaptitude, apathy, defective attitudes, and inability to expend effort constructively, unsanitary habits, alcohol abuse, financial irresponsibility, sexual harassment, and not adhering to Core Values.

8. Because describing the applicant's discharge as unsuitability due to a personality disorder was erroneous, and because the reason for his discharge—separation anxiety disorder—does not fit within any of the other grounds for an unsuitability separation under Article 12.B.16. of the Personnel Manual, the Board must determine the narrative reason for the applicant's discharge that most accurately describes his situation. Chapter 12 of the Personnel Manual lists all of the reasons for administrative discharge. The reason that appears to most accurately fit the applicant's situation is discharge by reason of convenience of the government due to a "condition

¹ See, e.g., BCMR Docket No. 1998-099 (member twice arrested for indecent exposure was diagnosed with narcissistic personality disorder and discharged with a GFX SPD code ("involuntary discharge approved by recommendation of a board when a personality disorder exists, not amounting to a disability, which potentially interferes with assignment to or performance of duty") and a narrative reason for separation of "Unsuitability"; BCMR Docket No. 1997-097 (member suffering severe chronic depression was diagnosed with passive-aggressive personality disorder and discharged with JFX SPD code and narrative reason for separation of "Unsuitability").

that, though not a physical disability, interferes with performance of duty; e.g. enuresis or somnambulism,” which is described in the Separation Program Designator (SPD) Handbook as “condition, not a disability.”

9. Further, according to the SPD Handbook, the corresponding separation code should be JFV, which means an “involuntary discharge directed by directive when a condition [that is] not a physical disability . . . interferes with the performance of duty.” The SPD Handbook offers the following examples of such conditions: Enuresis, motion sickness, allergy, obesity, and fear of flying. The Board notes that enuresis and conduct disorders are listed as disorders usually first evident in infancy, childhood or adolescence, which also includes separation anxiety disorder.

10. By correcting the reason for the applicant’s discharge to convenience of the government due to “condition, not a disability” with the corresponding separation JFV separation code, the Board must review the correctness of the applicant’s RE-4 reenlistment code. The SPD Handbook authorizes an RE-3G or an RE-4 reenlistment code with a JFV separation code. In the circumstances of this case it appears to the Board that the RE-4 reenlistment code is unjust and should be corrected to RE-3G. The Board is persuaded to change the reenlistment code from RE-4 to RE-3G because the psychologist who recommended the applicant’s discharge did not state in that recommendation that it was unlikely that he could overcome his separation anxiety disorder nor did the psychologist recommend against granting a waiver for the condition. Additionally, the 2009 psychological evaluation, although not completely favorably to the applicant, did not diagnose him with a current separation anxiety disorder. The evaluation supports the applicant’s contention that he no longer suffers from that condition.² Further, there is no evidence in the record that the applicant was a disciplinary problem while in the Coast Guard. Therefore, an RE-3G is appropriate because it allows the applicant to reenlist, but only with a waiver for his separation anxiety disorder.

11. In light of the above findings, the Board finds that it is in the interest of justice to change the narrative reason for separation shown on his DD 214 to “Condition, Not a Disability” and the separation authority to Article 12.B.12 of the Personnel Manual. In addition, the applicant's SPD code should be changed to JFV and his reenlistment code should be changed to RE-3G, which means “eligible for reenlistment except for disqualifying factor: condition (not physical disability) interfering with performance of duty.”

12. Accordingly, the applicant’s request should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

² The 2009 psychological evaluation diagnosed the applicant with compulsive personality traits (which was not the basis for the 1994 discharge). Regardless, the psychologist stated that based on his 31 years of experience the applicants personality traits should serve him well in the military because once he sets his mind to something he will not stop until he accomplishes his goal.

ORDER

The application of former XXXXXXXXXXXX USCG, for correction of his military record is granted. His military record shall be corrected to show that he was discharged by reason of convenience of the government. Specifically his DD 214 shall be corrected to show the following:

Block 25 shall be corrected to show Article 12.B.12. of the Personnel Manual as the separation authority.

Block 26 shall be corrected to show JFV as the separation code.

Block 27 shall be corrected to show RE-3G as the reenlistment code.

Block 28 shall be corrected to show “condition, not a disability” as the narrative reason for discharge.

The Coast Guard shall issue a new DD Form 214 to the applicant with these corrections. Block 18 may be corrected to state, “Action taken as result of BCMR.”

No other relief is granted.

Jeff M. Neurauter

Lynda K. Pilgrim

Kenneth Walton