

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-142

FINAL DECISION

ANDREWS, Attorney-Advisor:

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. It was docketed on June 9, 2000, upon the BCMR's receipt of the applicant's complete application.

This final decision, dated April 19, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a formerxxxxxxx, asked the Board to correct his discharge form DD 214 by changing the narrative reason for separation from "personality disorder" to some other reason; by changing his Separation Program Designator (SPD) code from JFX (involuntary discharge due to a personality disorder that interferes with performance of duty but does not amount to a disability) to one that does not reflect a personality disorder; and by upgrading his reenlistment code from RE-3G (which means eligible to reenlist except for disqualifying factor; waiver required) to RE-1 (eligible to reenlist).

APPLICANT'S ALLEGATIONS

The applicant alleged that in 1997, while assigned to a cutter, he experienced significant stress when the cutter was underway. He alleged that because he was better able to deal with the stress when the cutter was in port, he requested a change in rating, but his request was denied. Therefore, he thought he had no other option but to leave the service. He alleged that while he was awaiting

separation, he should have been “moved to a more suitable place” and that his attempt to hang himself on xxxxxx, “could have been prevented if [his] situation was considered.” He alleged that his suicide attempt was a foolish mistake, “but at the time [he] felt it was the only way to end the situation.”

The applicant alleged that the narrative reason for his discharge, “personality disorder,” is erroneous and unjust because after his last appointment with a psychiatrist, it was determined that he was “psychiatrically fit for full duty” and that he had “no ongoing major mental disorder.” He alleged that a psychiatrist’s report dated December 23, 1997, accurately describes the problems he was experiencing but erroneously states that he had a long history of instability and temper control problems. He alleged that he saw a “specialist” only twice before he entered the Coast Guard and that it was not his personality that was to blame for what happened, but the stresses of being underway. He alleged that his five and one-half years of military service and the fact that his job performance justified an honorable discharge prove that he had no personality disorder.

The applicant further alleged that the narrative reason for discharge on his DD 214 are unjust because it “is currently preventing [him] from serving in the Reserve and may disqualify [him] from working as a government employee should [he] choose to apply for a position.”

SUMMARY OF THE RECORD

The applicant enlisted as a seaman in the Coast Guard on xxxxxxxx. He had previously completed a four-year enlistment as a fire protection journeyman in the Air Force and was released into the Air Force Reserve on December 5, 1993. He received an honorable discharge from the Air Force, with an MBK separation code; a 1-J reentry code; and “completion of required active service” as his narrative reason for separation.

On March 12, 1996, while undergoing physical examination prior to entering the Coast Guard, the applicant admitted that he had been treated for depression and stress management in the fall of 1993 when he was still in the Air Force. He attributed the depression to difficulties he had had with a girlfriend he was living with and denied ever having suicidal thoughts or ideation. A physician determined that his previous condition did not disqualify him from serving on active duty.

After joining the Coast Guard, the applicant was first assigned as a xxxxx, but then chose to attend “A” School to enter the xxxxxx rating. After finishing school, he was advanced to xxx and assigned to serve on a cutter beginning on February 28, 1997.

On September 19, 1997, while underway on the cutter, the applicant seemed to suffer an "anxiety attack," began to cry, and was taken to sickbay by the cutter's chief cook. The applicant told a health services technician in sickbay that he could not handle the stresses of being underway and was desperate to get out of his rate (xx). He also stated that he had undergone stress management therapy while in the Air Force; that he was taking St. John's wart and "Brain Pep" to improve his mood without success; and that within the past month he had devised a plan of suicide. He stated that he had not tried to commit suicide out of consideration for his family and because of his religious beliefs. The health services technician referred the applicant for psychiatric evaluation at xxxxxxxx hospital when the cutter entered port on xxxxxxxx.

On xxxxxxx, the applicant was admitted to the hospital for psychiatric evaluation. He told a psychiatrist that he had been feeling depressed, couldn't "take it" anymore, and wanted out. He denied suicidal ideation but admitted that he had had suicidal ideation when he and his girlfriend broke up in 1993 because he had "anger control" problems and drank too much. He stated that he had felt unhappy and frustrated ever since he joined the Coast Guard and that lately his frustration had increased. The psychiatrist found that the applicant was suffering from an adjustment disorder, alcohol dependency, and a borderline personality disorder.¹ He also reported that the applicant had "impulse control problems with anger conflict." He recommended that the applicant be returned to duty "to await expeditious administrative separation" but not be allowed access to weapons. The psychiatrist reported that he would arrange for the applicant to receive outpatient therapy while he was awaiting separation.

¹ According to the fourth edition of the DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-IV), published by the American Psychiatric Association, a person who has a borderline personality disorder has unstable interpersonal relationships, affects, and self-image and manifests five or more of the following nine symptoms:

1. frantic efforts to avoid real or imagined abandonment;
2. a pattern of unstable and intense interpersonal relationships characterized by alternating between extremes of idealization and devaluation;
3. identity disturbance: markedly and persistently unstable self-image or sense of self;
4. impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating);
5. recurrent suicidal behavior, gestures, or threats, or self-mutilating behavior;
6. affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days);
7. chronic feelings of emptiness;
8. inappropriate, intense anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights);
9. transient, stress-related paranoid ideation or severe dissociative symptoms.

On October 28, 1997, the applicant's commanding officer notified him that he was requesting authority to discharge him by reason of unsuitability. He informed the applicant that he was recommending an honorable discharge and that the applicant had the right to submit a statement on his own behalf and to consult with legal counsel. He also stated that the decision as to what type of discharge the applicant would receive rested with the Coast Guard Personnel Command (CGPC).

On October 29, 1997, the applicant signed a statement in response to the notification. He stated that after having considered his situation for a "considerable time," he had "come to the conclusion that [separation is] the best possible solution to the problems [he had] been faced with over the past several months." On November 1, 1997, the applicant signed a statement indicating that he did not object to being discharged and waived his right to consult legal counsel.

On November 3, 1997, the applicant's commanding officer requested authority from CGPC to effect his honorable discharge by reason of unsuitability due to his diagnosed adjustment disorder and borderline personality disorder.

Onxxxxxx , the applicant went to a xxxxxxxx and told an attendant that he intended to hang himself from the top with a xxxxxx. He asked the attendant not to let anyone else up until he had finished. After climbing the xxxxxx, he contemplated the view and prayed, delaying his attempt at suicide long enough for the police to arrive and stop him.

The applicant was promptly admitted to the Army Medical Center in xxxxxxxx. He told a psychiatrist that he had suffered depression twice before following break-ups with two girlfriends. He reported having problems with "domestic violence" and "anger control." He had once been placed in a "partial hospitalization program" and prescribed an antidepressant, but he stopped both after a few days because he disliked them and thought they were not working. He told the psychiatrist that he had been experiencing depression and suicidal ideation since he was evaluated on September 21, 1997, because his command had "failed to follow through" on the recommendations of the psychiatrist at xxxxxxxx Hospital. The psychiatrist reported that the applicant "describe[d] a long history of affective instability, temper control problems, impulse control problems, pattern of unstable intense interpersonal relationships, identity disturbance, recurrent suicidal behavior, chronic feelings of emptiness, etc." He diagnosed the applicant with "depressive disorder, not otherwise specified" and "borderline personality disorder."

On December 19, 1997, the applicant was discharged from the hospital in stable condition with a prescription for Prozac and orders to attend weekly psychotherapy sessions. The psychiatrist reported that while the applicant was in the hospital, his command stated that it was "continuing to pursue the [administrative] separation from the Coast Guard for his personality disorder but that paperwork from psychiatry at xxxxxxxx Hospital was illegible, and xxxxxxxx could not produce another copy so that a new psychiatric examination was necessary." The psychiatrist immediately faxed his findings to the command so that they could continue processing his administrative discharge. The applicant told the psychiatrist that he was happy to hear he was being discharged.

Also on December 19, 1997, CGPC responded to the applicant's commanding officer's November 3, 1997, request for authority to discharge him. CGPC ordered the commanding officer to discharge him no later than January 21, 1998, with an honorable discharge by reason of unsuitability, a JFX separation code, and the appropriate narrative reason for separation found in the SPD Handbook.

On December 22, 1997, the applicant reported to his new unit's health clinic. He told them that his suicide attempt had been serious. He had xxxxxxxxxxxxxxxxxxxxxx. A doctor at the clinic discussed the possibility of holding a medical board with the applicant but reported that he stated that he wanted "to waive Board & address depression [through the] VA."

On January 10, 1998, the applicant's commanding officer asked CGPC to cancel the discharge orders dated December 19, 1997, because the applicant had been "diagnosed with ICD 9 code 311 [depressive disorder] which is a ratable disability under provision of Medical Manual resulting [him] to be considered for MedBoard vice discharge."

On January 20, 1998, the applicant was transferred from the cutter to a shore unit pending his medical board or administrative discharge.

On February 2, 1998, during a follow-up visit, the applicant indicated that he was "doing well" on Prozac and wanted a medical board even if it extended his service by six to twelve months. The doctor reported that he would initiate an Initial Medical Board (IMB).

On February 4, 1998, the Coast Guard asked a psychiatrist to examine the applicant and review his medical history to determine whether his condition was service connected or whether it existed prior to his enlistment. The psychiatrist reported that the applicant was in a good mood and was satisfied with his current duty assignment. He also reported that the applicant "denied neurovege-

tative symptoms of depression or significant symptoms consistent with a depressive or anxiety disorder” and showed “no evidence of disorder of thought or process.” He found the applicant to be “psychiatrically fit for full duty” as there was “no evidence of an ongoing major mental disorder.” However, he diagnosed the applicant with a borderline personality disorder and recommended an administrative separation as being “in the best interests of the service member and the Coast Guard.”

On February 6, 1998, CGPC informed the applicant’s command that his medical history, including the reports of his psychiatric evaluations at the hospitals in xxxxx and xxxxxx, had been reviewed by the medical staff at CGPC. Because psychiatrists at both hospitals had diagnosed the applicant with a personality disorder, CGPC concluded that no medical board was required and ordered that he be discharged no later than February 15, 1998.

On February 9, 1998, the applicant visited the health clinic. His therapist reported that the applicant was upset because the diagnosis of borderline personality disorder might disqualify him from military or civilian flying and he had been planning on becoming a private pilot and flight instructor.

On February 13, 1998, the applicant’s command requested permission from CGPC to delay his discharge until March 5, 1998, to allow sufficient time for normal 21-day separation processing. CGPC responded on the same day that no further delay was authorized and ordered his command to effect discharge.

On xxxxxx, 1998, the applicant was honorably discharged under Article 12.B.16. of the Personnel Manual. He had served 1 year, 10 months, and 20 days on active duty in the Coast Guard in addition to his previous 4 years in the Air Force. The narrative reason for discharge shown on his DD 214 is “personality disorder”; the separation code is JFX (“involuntary discharge directed ... when a personality disorder exists, not amounting to a disability, which potentially interferes with assignment to or performance of duty”); and a reenlistment code of RE-3G (“eligible for reenlistment except for disqualifying factor: condition (not physical disability) interfering with performance of duty”).

VIEWS OF THE COAST GUARD

On December 21, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant’s request for lack of merit.

The Chief Counsel alleged that no procedural or substantive errors were committed during the applicant’s separation. He argued that, with less than

eight years of active service, the applicant was not entitled to an Administrative Discharge Board. Under Article 12.B.16.2., the Chief Counsel alleged, the applicant was entitled only to notice of the reason for his pending separation and his rights; an opportunity to consult with legal counsel if a less than honorable discharge was contemplated; and the opportunity to submit a written statement. The Chief Counsel alleged that the record indicates that the applicant was not denied any of the rights to which he was entitled and that he chose to submit a written statement. The Chief Counsel alleged that because the applicant was being considered for an honorable discharge only, he had no right to consult with counsel, but the Coast Guard offered him the opportunity anyway. However, he alleged, the applicant declined the offer.

The Chief Counsel further alleged that the Coast Guard complied with Article 12.B.h. of the Personnel Manual by having the applicant examined by a psychiatrist on February 11, 1998, prior to separating him. He alleged that the psychiatrist confirmed an earlier diagnosis that the applicant had a borderline personality disorder. He alleged that members with a borderline personality disorder are qualified for administrative separation under Article 5.B.2.j. of the Medical Manual and that such disorders do not constitute physical disabilities under the rating system of the Department of Veterans' Affairs (DVA). Therefore, he alleged, the applicant was not entitled to appear before a medical board.

The Chief Counsel argued that "[a]bsent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). Therefore, because the applicant has presented no evidence to rebut the psychiatric diagnoses made while he was in the service, the Board should find that the Coast Guard committed no injustice or error in determining that he had a personality disorder and was subject to administrative discharge.

The Chief Counsel alleged that as a member with a diagnosed personality disorder, the applicant was assigned the proper SPD code, reenlistment code, and narrative reason for separation under the provisions of the SPD Handbook. He pointed out that the applicant's commanding officer could have assigned him an RE-4 code, making him absolutely ineligible for reenlistment, but chose the more lenient RE-3G code because of the psychiatrist's determination that the applicant did not have a major mental disorder. With an RE-3G, the Chief Counsel stated, the applicant can reenlist in a military service if he proves that he has overcome his condition.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 21, 2000, the Board sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. The Board did not receive any response.

APPLICABLE REGULATIONS

Article 12.B.16.b. of the Personnel Manual (COMDTINST M1000.6A) authorizes enlisted personnel to be administratively discharged due to unsuitability if they have been diagnosed with one of the personality disorders listed in Chapter 5 of the Medical Manual.

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 of the Personnel Manual. Borderline personality disorders are included on the list.

Article 12.B.16.d. of the Personnel Manual states that members with less than eight years of service who are being recommended for discharge by reason of unsuitability must (a) be informed in writing of the reason they are being considered for discharge, (b) be afforded an opportunity to make a statement in writing, and (c) be afforded an opportunity to consult with counsel if a less than honorable discharge is contemplated.

Under the SPD Handbook, members who are being discharged because they have been diagnosed with a personality disorder that does not amount to a disability must be assigned a JFX separation code, "personality disorder" as the narrative reason for separation, and either an RE-3G or RE-4 reenlistment code.

Under Chapter 5.B.10.b.(3) of the Medical Manual, depressive mood disorders qualify as physical impairments, and members diagnosed with one should be evaluated by an IMB in accordance with the Physical Disability Evaluation System (PDES) Manual. The IMB must determine whether the member is (a) fit for duty; (b) unfit for duty because of physical impairment and referred to a Central Physical Evaluation Board (CPEB) for a determination of a percentage disability rating; (c) unfit for duty for a reason other than physical impairment; or (d) unfit for duty because of a physical impairment that existed prior to his enlistment and was not aggravated by his service. PDES Manual, Article 3.G. 4.a. If a member is referred to a CPEB, the CPEB reviews his record and makes the same fitness for duty determinations made by the IMB. The CPEB also assigns percentage disability ratings to each of the member's physical impairments and indicates what, if any, percentage of the disability is service connected because it was incurred during or aggravated by the member's military service. PDES Manual, Article 2.C.3. If a member, after consulting with counsel, rejects the

CPEB's findings, he is entitled to a hearing by a Formal Physical Evaluation Board (FPEB). PDES Manual, Article 4.B.2.b.

Article 2.C.2.b.(2) of the PDES Manual states that a "member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in paragraphs 2.C.2.b.(1)(a) or (b) are met." Those paragraphs require that "(a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or (b) acute, grave illness or injury, or other deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation"

Under the SPD Handbook, members who are discharged upon the recommendation of a CPEB or FPEB because of a physical impairment that existed prior to their enlistment receive a JFM separation code; an RE-3P reenlistment code; and "disability, existed prior to service, PEB," as their narrative reason for separation. Members who are discharged upon the recommendation of a CPEB or FPEB because of a physical impairment that was aggravated by their enlistment receive a JFQ separation code; an RE-3P reenlistment code; and "disability aggravation" as their narrative reason for separation.

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 over this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The record indicates that on September 21, 1997, the applicant was diagnosed with an adjustment disorder and a borderline personality disorder by a psychiatrist atxxxxxx Hospital. Because of this diagnosis, the applicant was subject to administrative discharge under Article 21.B.16. of the Personnel Manual. On October 28, 1997, his command began processing him for an administrative discharge. The record indicates that the applicant was informed of his rights and submitted a statement in which he indicated that he did not object to being administratively discharged, in accordance with Article 12.B.16.d. of the Personnel Manual. However, the discharge proceedings were delayed, apparently because the hospital was unable to provide a legible copy of the psychiatrist's report.

3. The record indicates that in December 1997, the applicant grew tired of waiting to be discharged and wanted to avoid further sea duty, as his cutter was scheduled to get underway on December 19th. On XXXXXX, he got a xxxx, warned the attendant of xxxxxxx that he intended to hang himself off the top, climbed xxxxx, and waited until the police arrived. Following this "suicide gesture," the applicant was admitted to an Army Medical Center, where a psychiatrist diagnosed him with borderline personality disorder and a depressive disorder, not otherwise specified. Under Chapter 5.B.2. of the Medical Manual, the applicant remained subject to administrative discharge because of his personality disorder. Under Chapter 5.B.10., his depressive disorder called for processing through the PDES.

4. On December 19, 1997, CGPC finally responded to his command's request for discharge authority and ordered the applicant discharged no later than January 21, 1998, because of his personality disorder. However, on January 10, 1998, his command asked CGPC about whether he should be processed through the PDES because of the diagnosis of a depressive disorder. Under Article 2.C.2.b.(2) of the PDES Manual, because the applicant was already being processed for separation due to his personality disorder, CGPC was required to determine whether the applicant met the provisions of Article 2.C.2.b.(1)(a) and (b) of the PDES Manual.

5. CGPC extended the deadline for the applicant's discharge to xxxxxxx, and ordered him to undergo another psychiatric evaluation to determine whether he should be processed under the PDES. CGPC also had his records reviewed by medical authorities to determine whether his mental condition could be considered service connected. The psychiatrist reported that the applicant was in a good mood and satisfied with his new work and that he showed no symptoms of depression. The medical authorities reported that the applicant's condition pre-existed his enlistment in the Coast Guard and was not service connected. In light of these findings, the Board finds that CGPC properly concluded that under Article 2.C.2.b. of the PDES Manual, the applicant was not entitled to processing through the PDES. Because of his diagnosed personality disorder, however, the applicant remained subject to administrative discharge under Article 12.B.16. of the Personnel Manual.

6. In light of the applicant's medical record, the Board finds that he has not proved by a preponderance of the evidence that the Coast Guard erred or committed an injustice in diagnosing him with a borderline personality disorder. Nor has he proved that the Coast Guard committed any errors or injustices in processing him for discharge due to his personality disorder. In addition, the applicant's DD 214 reflects the proper separation and reenlistment codes and narrative reason for separation prescribed by the SPD Handbook.

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

ORDER

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

Nancy Lynn Friedman

Robert A. Monniere

Blane A. Workie