

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-165

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

ANDREWS, Deputy Chair:

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 application was docketed on September 9, 2002, upon the BCMR's receipt of the applicant's completed application and military records.

This final decision, dated July 24, 2003, is 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 her record by upgrading her 1989 OTH discharge ("under other than honorable conditions") to an honorable discharge by reason of physical disability. She alleged that her disability, schizophrenia,¹ was diagnosed while she was in the service and that it caused her to commit the crimes for which she was court-martialed. She alleged that because of her mental illness, she should have been fully processed under the Coast Guard's Physical Disability Evaluation System (PDES) and administratively separated. She alleged that it was

¹ Schizophrenia is a serious organic mental disorder characterized by loss of contact with reality (psychosis), hallucinations, delusions, abnormal or disorganized thinking, bizarre behavior, and great difficulty functioning in social and work settings. People with schizophrenia often have a blunted or flat affect, with poor eye contact, one- or two-word answers for questions, lack of emotional expressiveness, and lack of motivation and interests. Stressful life events or substance abuse may trigger the onset of schizophrenia in biologically vulnerable individuals. The onset may be sudden, over a period of days or weeks, or gradual, over a few months or years. The peak age of onset for women is between 25 and 35 years old. See American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS*, Fourth Edition, Text Revision (DSM-IV-TR) p. 297 *et seq.* (Washington, D.C., 2000).

unjust for her to receive an OTH discharge that denies her veterans' benefits since her mental illness caused her misconduct.

The applicant alleged that she discovered the error in her records on August 1, 2001. She asked the Board to find it in the interest of justice to waive the three-year statute of limitations in her case because she "did not know [her] options" when she was discharged and has been under a doctor's care ever since.

In support of her allegations, the applicant submitted one page of a report from a state Department of Mental Health dated April 17, 1974, when the applicant was eight years old. The report indicates that her father was in prison and that she was being treated for "behavioral difficulties which are exhibited by lying, stealing, unattentiveness in school and 'hard-headed,' over activity at home." She also submitted a report from her military medical record (summarized below) and a Criminal Record Check of county records showing that she has no criminal record from May 1988 to June 2003.

In addition, the applicant submitted two reports from her state's Division of Mental Health, which show that on July 10, 2001, after having been released from five years' incarceration in a women's prison, the applicant was being treated for "Schizoaffective Disorder, Depressed Type, which included racing thoughts, history of neuro-negative depressive symptoms, paranoia and auditory hallucinations."² A week later, a psychiatrist noted that she had some "racing thoughts" but no "psychotic symptomatology."

SUMMARY OF THE APPLICANT'S MILITARY RECORD

On March 31, 1986, at the age of 20, the applicant enlisted in the Coast Guard for four years. At her pre-enlistment physical examination, it was noted that she had had a significant head injury (cerebral contusion) in a car accident in 1984 and had been raped in 1985. She completed boot camp and, on July 24, 1986, was transferred to a cutter based in XXXXXX.

In early September 1986, the applicant was treated for smoke inhalation. She stated that her trash can caught fire while she was asleep.

On September 16, 1986, the applicant was found to be absent without leave (AWOL) from her unit. She surrendered herself in Baltimore on September 21, 1986, and reported that she had been raped again. She was returned to XXXXXX and evaluated by a Navy psychiatrist. The psychiatrist stated that the applicant was "alert, ori-

² "Schizoaffective disorder" is a psychotic disorder with many of the same symptoms as schizophrenia. It is distinguishable by pervasive mood symptoms, either depressed or manic. See DSM-IV-TR, p. 319 *et seq.*

ented ... [with] minimal cooperation. Appears deliberately evasive and attempting to be more confused than reality, e.g. 'I don't remember my mother.' No signs of delusions, racing thoughts or paranoia. Mood, affect mildly depressed—admits to being AWOL and pending 2 previous rapes within the past 6 months. Insight & judgment fair. Speech slow in passive aggressive style. 'Atypical' presentation for rape. 'Amnesia' appears selective & feigned, e.g. approximate answers."

On September 25, 1986, the psychiatrist noted that she seemed quiet and depressed. She told him that her "thoughts surround fears of sexual assault." She denied suicidal ideations but complained of having difficulty sleeping. The psychiatrist prescribed Elavil, an anti-depressant and referred her for counseling.

On September 29, 1986, the applicant was admitted to a hospital, stating that she had overdosed on her anti-depressant medicine. The doctor diagnosed it as a "suicidal gesture" and an "acute situational reaction." Tests showed that she had consumed alcohol and ipecac, which induces vomiting.

In accordance with Article 15 of the Uniform Code of Military Justice (UCMJ), on October 20, 1986, the applicant was taken to captain's mast for non-judicial punishment (NJP) for her five days of AWOL in violation of Articles 86 (unauthorized absence) and 87 (missing movement) of the UCMJ. She was restricted to the cutter for 14 days and assigned two extra hours of duty per day. On October 25, 1986, she was transferred off the cutter to a station in XXXXXXXXXXXXXXXXXXXX.

On November 5, 1986, the applicant told her counselor that she had been drinking alcohol and related a history of drinking alcohol. Her counselor told her not to as she was underage and should not try to escape her problems with alcohol.

On November 12, 1986, the applicant threatened a female sentinel, hit her in the face, and threw a heavy metal shackle at her. She was charged with assault and battery on a sentinel in execution of her duty. She told a doctor that she hit the sentinel because the woman had rudely interrupted a conversation she was having and the applicant thought the sentinel might hit her. On November 13, 1986, the applicant saw the counselor again and told her that she would not be coming again because she had no issues to work on and that everything would be fine if the charges were dropped.

On November 25, 1986, the applicant was counseled about asking for rides to Navy base clubs since she was underage and not allowed to drink alcohol. On November 28, 1986, she sought and received a prescription for birth control pills.

On December 17, 1986, the applicant was convicted of assault and battery by a special court-martial. She was restricted to base for two months, reduced to pay grade

E-1, fined \$600, and ordered to perform hard labor without confinement for three months.

On January 26, 1987, the applicant was admitted to a hospital in xxxxxxxxx, xxxxxxxxxxxxxx. She stated that she "had a bad day at work so I took some pills." She stated that she had taken Vibramycin, Septra, Motrin, cocaine, and alcohol, and then walked up to a guard and reported what she had done. She was admitted to the psychiatric ward for observation.

On February 2, 1987, the applicant was discharged from the hospital. Her psychiatrist reported that she had admitted that she smoked marijuana and cigarettes, but denied other recent drug use, although she admitted that she had used cocaine as a teenager. He reported that her urine had tested positive for cocaine use. She told the psychiatrist that she had joined the Coast Guard after two years of college because she was bored. Her father had graduated from college and was an officer in the Army. The psychiatrist found that her "affect was ambivalent and at times inappropriate," but that there was "no evidence of delusions, paranoia, or perceptual impairments. ... Oriented in three spheres, cognition was adequate. Abstractions were simplistic. Recent and remote memory were intact. Judgment and insight were fair." He stated that the staff was impressed by her "impulsivity, affective instability, history of physically self-damaging acts, feelings of boredom, and manipulation." He diagnosed her with "1. Suicide gesture—Resolved; 2. Borderline Personality Disorder—manifested by impulsivity, manipulation, anger, affective instability, physically self-damaging acts, and impairment of social and occupational spheres; 3. Bilateral keratoconjunctivitis—Resolving; 4. Cocaine abuse—Unresolved." He further stated that she was fully accountable for her actions and fit for duty. He recommended that she be administratively discharged because of her personality disorder.

Also on February 2, 1987, the applicant's commanding officer forwarded the record of the special court-martial to the convening authority. The sentence was approved on February 10, 1987.

On February 11, 1987, the applicant underwent a physical examination and reported that she was in good health and taking no medications. The doctor reported that she had no conditions that were physically disabling.

On February 13, 1987, the applicant was supposed to appear at a summary court-martial for having broken the restrictions of her special court-martial by leaving the base. However, that morning she was found to have been AWOL since the night before, February 12th, and was declared a deserter. She was apprehended on February 15th.

On February 15, 1987, the applicant was admitted to the same hospital after noting on a brig questionnaire that she felt suicidal. She told the psychiatrist that she still felt suicidal but had no specific plan to kill herself. She also told him that she drank alcohol every weekend and could "easily handle a twelve pack of beer" but denied being alcoholic or having blackouts. She reported feeling bad, guilty, worthless, dirty, sleepy, sleepless, and sad. She "denied paranoid ideation but did report hearing a low, muffled, disguised voice that allegedly God had put into her head. She reported she last heard the voice this morning and first heard it in XXXXXX when she had the suicide attempt with the antidepressants. The voice tells her how bad, dirty, and undeserving she is." The psychiatrist stated that "[a]side from her admitting auditory hallucinations, she [in] no other way appears psychotic. Suspect coercive manipulation. Cognition is intact." She admitted to having previously set a fire in the barracks and said that a voice told her to do it. She was diagnosed with "1. Borderline Personality Disorder; 2. Suicidal ideation—Unresolved; 3. Cocaine abuse by history." The psychiatrist recommended further evaluation.

On February 17, 1987, the applicant was removed from the xxxxxxxxxx hospital and taken to the Philadelphia brig, where she again stated that she felt suicidal. She was initially taken to a Navy hospital in Philadelphia. However, since that hospital had no female inpatient care, on February 18, 1987, she was transferred to the Navy hospital in xxxxxxxx, xxxxxxxxxx. At this hospital, the applicant told a psychiatrist that she had been physically and sexually abused by her father many times and that she had begun using cocaine after she turned 20 years old. She also complained of hearing voices in her head since she started work in XXXXXX. She said that the voices had told her to attack her best friend, which had resulted in her being court-martialed in December. The doctor decided to prescribe Haldol, an anti-psychotic medication, and diagnosed her with "Schizophreniform disorder (based on the uncertainty of the exact cause of her mental status whether it's a latent drug reaction that precipitates a pre-existing psychotic condition and certainly of such short duration that it does not appear to be a full blown schizophrenic disorder at this time)." He recommended that she should be further evaluated to determine whether she was experiencing symptoms of cocaine abuse or schizophrenia.

On February 26, 1987, the applicant was transferred to the psychiatric ward of an Air Force hospital in xxxxxx for observation and evaluation. A psychiatrist noted that she "is an extremely poor historian with a history of giving numerous contradictory, evasive, and incorrect histories on previous admissions." She told the psychiatrist that she was admitted because she had had a nervous breakdown due to trouble with her supervisor and that she had started hearing the voice of the deceased father of her child in her head in December 1986. It was this voice that told her to attack her coworker. She admitted to "a history of cocaine use, with snorting and smoking cocaine occasionally." The psychiatrist further reported that the applicant later told her that her father

had served eight years in prison for murder and that he was abusive and alcoholic. The applicant later admitted that the father of her child was not actually dead.

The psychiatrist noted that the applicant's supervisor provided a "remarkably different" history of the applicant. Her supervisor stated, among other things, that the applicant had been using claims of feeling suicidal in order to get out of the brig. She had been found drunk three times and had been taken to mast for that. She had tried to get someone to buy cocaine for her while she was in the hospital in January and had told someone else that "being in the hospital, acting crazy and suicidal was a great way to keep her from going to the brig." In addition, she was awaiting a general court-martial on two counts of arson since she had admitted to setting fires in the barracks twice and on counts of disobeying orders and insubordination. The supervisor stated that the applicant had a "long history of lying and manipulative threats."

The psychiatrist stated that the applicant's movements were normal and that her speech rhythm was normal and "goal directed." Apart from the applicant's complaint of hearing voices, the psychiatrist found "no looseness of associations, circumstantiality or tangentiality." When confronted with her contradictions and told that she would most likely go back to the brig, the applicant said she would rather die than go back. The applicant said that she "shouldn't be held responsible for her actions in the past since a voice told her to do them." The psychiatrist stated that the applicant's complaint of hearing a voice in her head is "most likely malingering" and that her "main diagnosis is of an anti-social personality." "[S]he is prone to making manipulative threats [of suicide]." The psychiatrist stated that the applicant's primary diagnosis is (1) an anti-social personality disorder but that the applicant also had diagnoses of (2) cocaine abuse, (3) alcohol abuse, (4) an "adjustment disorder with mixed emotional features characterized by depression, anger and threats of suicidal gestures secondary to not wanting to go to jail," and (5) malingering, in that "the patient's complaint of auditory hallucinations are a voluntary production on her part in order to avoid responsibility for the actions that she has done in the past and is responsible for." The psychiatrist stated that the applicant's "complaints of hearing voices telling her to hurt herself or others is a manipulative attempt on her part to avoid responsibility for her actions. ... If she does go to jail, this is a person who is prone to act out and possibly do suicidal gestures to avoid punishment." The psychiatrist also noted that the applicant was no longer taking Haldol.

On March 11, 1987, the applicant was transferred back to the brig in Philadelphia pending her general court-martial. The charges against her now included arson, cocaine abuse, soliciting another to purchase illegal drugs, unauthorized absence, insubordination, and disobeying orders. A general court-martial was scheduled, and she was assigned counsel.

On March 20, 1987, the applicant again complained of hearing voices and was evaluated by a psychiatrist. He reported that her symptoms might be due to "cocaine

withdrawal." He found that she was reasonably bright, reported no current hallucinations or suicidal ideations, and showed no symptoms of an organic brain disease. He diagnosed her with a borderline personality disorder and a history of cocaine and alcohol abuse.

At the request of the applicant's counsel, she was seen by a psychiatrist in two sessions on May 8 and 12, 1987, for the purpose of a Sanity Board to determine whether she was competent to stand trial. She told the psychiatrist that she had been physically and sexually abused by her alcoholic father as a child and that she had started using cocaine after she turned 20 years old and had used cocaine every day until she was put in the brig. She told him that her troubles began after she was sexually assaulted in XXXXXX. The psychiatrist reported that the applicant showed an unconcerned, bland affect, had vague and circumstantial thought processes, and had paranoid delusions about the entire Coast Guard. He described her delusions as follows:

When asked what the judge's function was [as her upcoming court-martial], she stated "he's the one who's going to send me to jail ... but they are all out to get me." When asked what her defense attorney's function was, she stated "to work with the prosecuting lawyer ... they all work together ... he's probably working for them." She went on to state that "nobody on the whole Base likes me, so they can't get any character witnesses ... they know I didn't do it. I'm a scapegoat."³

The psychiatrist concluded that her insight and judgment were psychotically impaired. The results of a Minnesota Multiphasic Personality Inventory were consistent with psychosis but a Rorschach test was inconclusive because of her "inability or unwillingness to cooperate."

On May 15, 1987, the Sanity Board, composed of the same psychiatrist and one other doctor, reported that the applicant's diagnoses were (1) schizophrenia, paranoid type, (2) cocaine abuse, (3) borderline personality disorder. It found that, at the time of her criminal conduct, she "did not lack substantial capacity to appreciate the criminality of her conduct of all charges except that of arson (Article 126). In regard to that charge, it is the opinion of this board that the accused did lack substantial capacity to appreciate the criminality of her conduct." Similarly, the Sanity Board stated that the applicant's schizophrenia caused her to lack substantial capacity to conform her conduct to the requirements of the law only with respect to the charge of arson. The Sanity Board concluded that she "does have sufficient mental capacity to understand the nature of the proceedings but she does not have sufficient mental capacity to conduct or cooperate intelligibly in the defense." The Sanity Board reported that, in light of its finding that

³ In light of the fact that the applicant's conviction was later overturned when the judge learned that her defense attorney was in fact supervised by the prosecutor, the "delusional" nature of the applicant's statements to the psychiatrist and the conclusions of the Sanity Board are questionable.

the applicant was incompetent to stand trial, arrangements had been made to transfer her to a psychiatric facility at the Naval hospital in xxxxxxxx, xxxxxxxx, for treatment.

On May 19, 1987, the applicant was transferred to the hospital in xxxxxxxx for treatment so that she might become competent to stand trial. There, she told the doctors that she had drunk alcohol since she was 14 years old and suffered frequent black-outs and that she had frequently used cocaine and marijuana. A psychiatrist noted that the applicant was angry but that her thought processes were "logical, goal-oriented, and without evidence of overt disorder. Thought content was without evidence of delusional material or hallucinatory experiences on initial interview. ... Insight and judgment were influenced by her character traits but appeared to be sufficient to assure responsibility for her actions." While at the hospital, the applicant had several "verbal and physical outbursts which were unaccompanied by any overt evidence of psychosis." The applicant's mother reported that she had a long-standing history of violent behavior and anger and altercations with authorities. When asked about her outbursts after the fact, the applicant first stated that they were preceded by racing thoughts that "progressed to a vaguely described internal 'voice' which lasted briefly and was not described as compelling or commanding." Rorschach testing provided "compelling evidence for formal thought disorder when evaluated by several different methods." After two weeks of observation and evaluation, the hospital staff met and concluded that the applicant "most likely suffered from an atypical psychosis⁴ in addition to anti-social personality disorder, cocaine abuse, and alcoholism." These findings were later confirmed by a conference of staff psychiatrists. While at xxxxxxxx, the applicant was prescribed thiothixene, an anti-psychotic medicine.

On June 16, 1987, an Initial Medical Board (IMB) found that the applicant had a diagnosis of atypical psychosis, which did not exist prior to her enlistment, and cocaine abuse, alcohol abuse, and an anti-social personality disorder, which were found to have pre-existed her enlistment. The IMB found that the conditions rendered her unfit for further military service and referred her for evaluation by a Central Physical Evaluation Board (CPEB). The IMB further found that the applicant was mentally capable of handling her own financial affairs, competent to be discharged to her own custody, and also competent to stand trial. However, it stated that "[a]ttention is invited to the Sanity Board of 12 May 1987 for the findings concerning responsibility."

On July 30, 1987, the applicant was discharged from the xxxxxxxxxx Naval hospital. Upon her discharge, she was diagnosed with paranoid schizophrenia (instead of atypical psychosis), cocaine abuse, alcoholism, and "anti-social personality disorder

⁴ There is no definition of "atypical psychosis" in the American Psychiatric Association's *Diagnostic And Statistical Manual Of Mental Disorders, Fourth Edition, Text Revision*. See DSM-IV-TR, p. 297 *et seq.* (Washington, D.C., 2000). The BCMR presumes that it is a form of psychosis whose array of symptoms does not meet the criteria for any of the defined psychoses in DSM-IV-TR.

with borderline features." She was also found to be pregnant, and she alleged that a guard at the Philadelphia brig had sexually assaulted her. Therefore, she was no longer given thiothixene, and she was incarcerated at Quantico Marine Base in Virginia.

On August 10, 1987, the applicant complained of hearing voices that told her to hurt people and that she was going to die that night. She was admitted to the xxxx Naval hospital. Her psychiatrist found that she presented a bland affect but that her thoughts processes were linear and goal directed and her judgment and insight were fair. During her 11 days in the hospital, she continued to complain of hearing voices and therefore was prescribed 5 milligrams of Haldol twice a day. However, she "demonstrated no overt evidence of grossly psychotic behavior through both observation and serial mental status evaluations." Upon the advice of her defense counsel, she "refused to discuss any aspect of the charges against her, and the content of her discussions was superficial." Upon her discharge from the hospital, the psychiatrist repeated the final diagnoses that she had received at xxxxxxxxxx but reported that she "does have sufficient mental capacity to conduct and cooperate intelligently in her defense." He further recommended that upon resolution of the charges against her, she be readmitted to a hospital for execution of a medical board.

From August 25 to 29, the applicant was tried by general court-martial at her duty station in xxxxxxxxxx, xxxxxxxxxxxxxx. The court-martial had been convened by the Commander of the XXX Coast Guard District. The applicant pled not guilty to charges of cocaine use, disrespect, unauthorized absence, breaking restriction, soliciting to commit an offense, and arson, in violation of Articles 86, 91, 112a, 126, and 134 of the UCMJ. She was convicted and sentenced to a bad conduct discharge and incarceration for three years and three months.⁵ On August 29, 1987, the convening authority approved the sentence.

On September 2, 1987, upon arriving at Fort Leavenworth to serve her sentence, a doctor noted that the applicant was four months pregnant and was still taking Haldol for her paranoid schizophrenia.

In October 1987, the applicant began to refuse to take Haldol because she disliked the side effects. On October 8, 1987, her psychiatrist noted that she had not had a psychotic episode for three weeks. On October 11, 1987, he reported that she was still refusing to take Haldol and that her diagnosis was either (1) borderline personality disorder with decompensation, (2) paranoid schizophrenia, or (3) depression with psychotic features.

⁵ It is unclear from the record whether the applicant was convicted of arson, since the Sanity Board had held that she lacked "substantial capacity to appreciate the criminality of her conduct" in committing arson and that she lacked "substantial capacity to conform her conduct to the requirement of the law." The Board notes that the IMB, although it found her to be competent for trial, referred to these findings regarding the applicant's responsibility for her crimes.

On November 4, 1987, a doctor noted that the applicant was showing no evidence of any thought disorder, that she was showing good judgment and insight, and that he planned to taper her off medication. On November 19, 1987, the doctor reported that she was still showing no signs of psychosis and that he would taper off her medications. Reports of her later pre-natal examinations indicate that she was no longer taking Haldol but was taking Benadryl because of the remaining side effects of the Haldol.

The applicant gave birth to her second child on February 20, 1988.

On March 10, 1988, the applicant "acted out" in some way and was disciplined. A doctor reported that there was no evidence of thought disorder and that her thoughts were clear and coherent, although she was angry and sulked when told she was responsible for her own behavior.

On March 24, 1988, the applicant sought medication for insomnia. The doctor refused her request. He reported that she had no condition that required a sleeping aid and no psychotic symptoms. He reported that her insight and judgment were fair. Thereafter, until her release from confinement in August 1989, the applicant was treated only for such physical ailments as an ingrown toenail, a cold sore, an irregular heartbeat, conjunctivitis, a urinary tract infection, and a hurt finger. No further complaints of or treatment for psychotic symptoms were reported.

On May 24, 1989, the applicant's conviction was overturned on appeal because it was discovered that the prosecuting attorney was the immediate supervisor of her defense counsel for all of his duties except his trial work. Although her defense counsel had informed her of this fact, the judge found that, being on an anti-psychotic medication at the time, she did not appreciate the full implications of his revelation. In rendering his decision, the court noted that the Coast Guard had assigned a recent law school graduate to represent her on very serious charges. The court also granted authority to retry to the applicant. She was removed from the prison at Leavenworth and returned to her prior command for pre-trial confinement, pending a new trial.

On June 12, 1989, the applicant underwent a physical examination. A psychiatrist noted that she had not needed any anti-psychotic medications for over two years, that she had completed a drug rehabilitation program and a year of college courses while at Leavenworth. He reported that she was "fully oriented, alert, cooperative. Good eye contact. ... Mood euthymic. ... Thoughts logical/goal directed. ... No recent [history] of hallucinatory phenomena. No evidence of perceptual disturbance, incoherence, loosening of associations, [or] disorganized behavior. ... Cognitive functions/memory unimpaired. Judgment/insight appropriate." The psychiatrist reported that

her schizophrenia, drug and alcohol abuse, and anti-social personality disorder were all in remission and that she was “psychiatrically fit.”

On August 4, 1989, the applicant, represented by new counsel, formally requested an OTH discharge “for the good of the Service in lieu of [another] trial by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge.” The letter indicates that she was “completely satisfied” with her new counsel and that her request “stems from [her] misconduct contained in the court-martial charges” against her. The letter states that she understood that “such a discharge may deprive [her] of all veterans’ benefits” and that she could “expect to encounter substantial prejudice in civilian life” because of the OTH.

On August 8, 1989, the Commander of the Seventh District forwarded the applicant’s request to the Commandant with a recommendation that it be approved. He pointed out that the applicant had served most of the sentence handed down in her original conviction and that some of the witnesses had left the Service, which would make re-proving the case “an expensive and difficult proposition.” He included with his endorsement a medical report on the applicant.

On August 11, 1989, the Commandant ordered that the applicant be administratively discharged within 30 days under other than honorable conditions for the good of the service, in accordance with Article 12-B-21 of the Personnel Manual.

On August 28, 1989, the applicant was discharged in accordance with Article 12-B-21 of the Personnel Manual. Her DD 214 shows “under other than honorable conditions” as the character of discharge; “for the good of the service” as the narrative reason for separation; RE-4 (ineligible for reenlistment) as her reenlistment code; and KFS (which means “voluntary discharge allowed by established directive when separated for conduct triable by court martial for which the member may voluntarily separate in lieu of going to trial”) as her separation code. She had served 3 years, 2 months, and 16 days on active duty, including the time she was in confinement from March 12, 1987, to August 9, 1989, but not including her days AWOL.

On December 29, 2001, the applicant applied to the Coast Guard’s Discharge Review Board (DRB) for the same relief she seeks in this application. On June 28, 2002, the DRB informed the applicant that it could not act on her request because it involves a medical condition.⁶ The DRB advised her to apply to the BCMR.

⁶ The DRB’s enabling statute, 10 U.S.C. § 1553, does not authorize the Secretary to pay any money found to be owed to an applicant upon the correction of the record by the DRB. Therefore, the DRB does not normally handle cases in which an applicant requests a medical discharge that could result in money being owed to the applicant.

VIEWS OF THE COAST GUARD

On February 27, 2003, the Chief Counsel submitted an advisory opinion in which he recommended that the Board deny relief in this case. Copies of the advisory opinion and an attached memorandum on the case prepared by the Coast Guard Personnel Command (CGPC) are attached to this Final Decision below.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 28, 2003, the Chair sent the applicant a copy of the advisory opinion and invited her to respond within 15 days. No response was received.

APPLICABLE LAW

The Chief Counsel and CGPC cited Article 12-B-1.e.1. of the Personnel Manual regarding "Cases Involving Concurrent Disability Evaluation and Disciplinary Action." This provision, which was added to the Personnel Manual with Change 13 in September 1991, two years after the applicant's discharge, states the following:

Disability statutes do not preclude disciplinary separation. The separations described here supersede disability separation or retirement. If Commander, (CGPC-adm) is processing a member for disability while simultaneously Commander, (CGPC-epm-1) is evaluating him or her for an involuntary administrative separation for misconduct or disciplinary proceedings which could result in a punitive discharge or an unsuspended punitive discharge is pending, Commander, (CGPC-adm) suspends the disability evaluation and Commander, (CGPC-epm-1) considers the disciplinary action. If the action taken does not include punitive or administrative discharge for misconduct, Commander, (CGPC-epm-1) sends or returns the case to Commander, (CGPC-adm) for processing. If the action includes either a punitive or administrative discharge for misconduct, the medical board report shall be filed in the terminated member's medical personnel data record (MED PDR).

Although the Chief Counsel and CGPC cited Article 2-C-11. of the PDES Manual, which reflects Article 12-B-1.e.1. of the Personnel Manual after 1991 and provides for the suspension of PDES processing when a member is undergoing disciplinary proceedings that could result in a punitive discharge, that article was not in the PDES Manual published in 1988. It appeared in the PDES Manual published in 1996.

The Medical Manual and the Physical Disability Evaluation System (PDES) Manual govern the separation or retirement of members due to physical disability. Under Chapters 3 and 5 of the Medical Manual, members diagnosed with schizophrenia are disqualified from further service and should be processed under the PDES for administrative medical discharges. Article 2-C-2.b. of the PDES Manual in effect in 1989 provided that the "law that provides for disability retirement or separation (Chapter 61, Title 10, U.S. Code) is designed to compensate members whose military service is ter-

minated due to a physical disability that has rendered the member unfit for continued duty.”

Article 12-B-11.h.(1) of the Personnel Manual in effect in 1989 provided that a member awaiting trial by court-martial should be retained on active duty until the trial was complete and the member had completed any sentence to confinement.

Rule 203(c)(1) of the Rules for Courts-Martial in 1987 provided that “[w]hen jurisdiction attaches over a servicemember on active duty, that servicemember may be held on active duty over objection pending disposition of any offense for which held and shall remain subject to the code during the entire period.”

Rule 706 of the Rules for Courts-Martial provided that, if an accused’s mental capacity or responsibility was called into question, the convening authority would order a mental examination by a board of one or more physicians to determine the mental capacity and mental responsibility of the accused. The board’s findings were to include the accused’s diagnosis at the time of the crime, whether she lacked substantial capacity to appreciate the criminality of the conduct, whether she lacked substantial capacity to conform her conduct to the requirements of law, and whether she had sufficient mental capacity to understand the nature of the proceedings and to assist in her defense. The mental capacity of a person to stand trial is ultimately decided by the military judge. If the military judge determines that the member lacks the mental capacity to stand trial, the member may be administratively discharged because of the mental disability. *See* Rules 801(e) and 909 (Discussion).

Article 12-B-21 of the Personnel Manual in effect in 1989 provided the following:

- a. An enlisted member may request a discharge under other than honorable conditions for the good of the Service in lieu of action under the UCMJ if punishment for alleged misconduct could result in a punitive discharge. ...
- b. [Such a request does not suspend legal proceedings.]
- c. A member who indicates a desire to submit a request for a discharge under other than honorable conditions for the good of the Service will be assigned a lawyer counsel. ...
- d. [Provides the exact wording of the letter to be submitted to make such a request.]
- e. The request for discharge shall be forwarded via the chain of command to the Commandant (G-PE). The member’s commanding officer shall recommend approval or disapproval of the member’s request with appropriate justification for his/her recommendation, certify accuracy of the court-martial charges, and enclose the following in the endorsement: (1) A report of medical examination and either an opinion from the medical officer that a psychiatric evaluation is not warranted as part of the evaluation processing or a copy of the psychiatric evaluation. ...
- f. The reason for discharge shall be for the good of the Service and the member shall not be recommended for reenlistment. If the Commandant is of the opinion that, based on the facts of the case, the member warrants a more favorable type discharge than discharge under other than honorable conditions, the Commandant may direct issuance of an honorable or general discharge.

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.

2. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in her record. 10 U.S.C. § 1552(b). Although the applicant stated that she did not discover the alleged error until August 1, 2001, and asked the Board to take into account her medical condition, the Board finds that she knew or should have known that she had not received an honorable discharge by reason of physical disability (schizophrenia) when she was discharged in 1989. Therefore, her application was untimely by approximately ten years.

3. Under 10 U.S.C. § 1552(b), the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should consider the reasons for the applicant's delay and conduct a cursory review of the merits of the case. *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

4. The applicant alleged that the delay was caused by her illness and her not knowing her options. However, the record indicates that, at the time of her discharge in August 1989, the applicant had not complained of or received medication for any psychotic symptoms since November 1987. Moreover, the applicant was represented by counsel. The Board finds that the applicant's explanation for her delay in applying for relief is not compelling.

5. The applicant alleged that because of her schizophrenia, she should have been processed under the PDES and received an honorable discharge by reason of physical disability. However, under Rule 202(c)(1) of the Rules for Courts-Martial and Article 12-B-11.h. of the Personnel Manual then in effect, the Coast Guard was entitled to retain the applicant on active duty pending proper disposition of the charges against her. Therefore, the Board finds that the applicant's diagnosis did not preclude the Coast Guard from retaining her in the service while she underwent a general court-martial on multiple criminal charges, served her sentence, and—after her conviction was set aside—awaited re-trial.

6. Moreover, Article 2-C-2.b. of the PDES Manual provided that the "law that provides for disability retirement or separation ... is designed to compensate mem-

bers whose military service is terminated due to a physical disability that has rendered the member unfit for continued duty.” As stated above, the applicant’s medical record indicates that she had not complained of or been treated for any symptoms of schizophrenia during the 22 months before her discharge. In addition, she had been found “psychiatrically fit” in June 1989, just two months before her discharge. Therefore, the Board finds that the preponderance of the evidence in the record indicates that, at the time of her discharge in August 1989, the applicant did not suffer from any psychotic symptoms that rendered her unfit for military duty.

7. The applicant alleged that her diagnosed schizophrenia caused her to commit the crimes that resulted in her being court-martialed and in her later request for an OTH discharge in lieu of re-trial. However, the applicant has submitted no evidence to contradict the findings of the Sanity Board in May 1987, which determined that despite her schizophrenia, she was responsible for most of her actions that resulted in the criminal charges against her. Absent evidence to the contrary, the Board presumes that government officials—including the doctors on the Sanity Board and the officers who charged the applicant under the UCMJ—have acted 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). The applicant has submitted no evidence to overcome the presumption of regularity accorded the actions of those doctors and officers.

8. The applicant’s original conviction was overturned because of a conflict of interest between her defense counsel and the prosecutor. The record indicates that she knew about the conflict of interest at the time of her trial, but the judge determined that she did not have the capacity to appreciate the implications of the conflict. The record indicates that the applicant was assigned new, more experienced counsel and that, with the advice of this counsel, she requested and was granted an OTH discharge, knowing that such a discharge would deprive her of veterans’ benefits. The applicant could have refused to request the OTH discharge and undergone the re-trial, risking the reimposition of the sentence imposed at her first trial. By requesting the OTH discharge, the applicant apparently avoided a punitive, bad conduct discharge and having to complete the remainder of her sentence. The record indicates that upon her voluntary request, the applicant was properly discharged in accordance with Article 12-B-21 of the Personnel Manual in effect in 1989.

9. Although the applicant submitted evidence showing that she is once again being treated for a psychotic illness, her military record shows that during her last 22 months in the Coast Guard, while she was incarcerated at Fort Leavenworth and could not get cocaine or alcohol, she was not psychotic and was in fact “psychiatrically fit.” The fact that the records of crime she later committed as a civilian have apparently been sealed is irrelevant to the Board’s determination of whether the Coast Guard committed any error or injustice in awarding her an OTH discharge.

10. The Board finds that the applicant has not proved that the Coast Guard committed an error in discharging her in accordance with Article 12-B-21 of the Personnel Manual, upon her voluntary request, in lieu of retrying her by court-martial. Nor has she proved that her OTH discharge "shocks the sense of justice." *See Reale v. United States*, 208 Ct. Cl. 949 (1976), and Decision of the Deputy General Counsel, BCMR Docket No. 2001-043.

11. Accordingly, the applicant's request should be denied based on its untimeliness and lack of merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SR xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is denied.

Julia Andrews

Nancy Lynn Friedman

George J. Jordan



Memorandum

Subject: ADVISORY OPINION IN CGBCMR
DOCKET NO. 2002-165 (XXXXX)

Date: 5420/3

From: Chief Counsel, U.S. Coast Guard

Reply to: G-LMJ
Attn. Of: CDR Vachon
70116

To: Chairman, Board for Correction
of Military Records (C-60)

Ref: (a) Applicant's DD Form 149 filed 9 September 2002

1. I adopt the analysis provided by Commander, Coast Guard Personnel Command in enclosure (1) and request you accept his comments and my following additional comments as the Coast Guard's advisory opinion recommending denying relief in the instant case.

2. The Applicant alleges that her mental disorder (schizophrenia) was the cause of her criminal actions that led to her "Other than honorable discharge" ("OTH") that she received in lieu of court-martial. Applicant asserts that she should have received a medical discharge rather than an "OTH" discharge.

3. Facts of the Case: See Matters of Records, Enclosure (1).

4. Analysis: The Board should deny relief in this case because the Applicant, who has the burden of proof, has failed to prove that the Coast Guard committed either an error or an injustice by discharging her with an OTH in lieu of court-martial.

a. *Applicant was properly discharged with an OTH discharge.*

(1) Applicant enlisted in the Coast Guard on March 31, 1986. Beginning in September of 1986, the Applicant began her journey of misconduct which included offenses such as assault, arson, and unauthorized absence.

(2) Applicant was court-martialed in 1987 for these offenses. However, because the Coast Guard Court of Criminal Appeals found a conflict of interest involving the trial counsel (prosecutor) and the Applicant's defense counsel, due to the fact that these two attorneys shared the same Supervisor, the Court set aside the findings and ordered a new trial. In August 1989, the XXX District Commander accepted the Applicant's request for an other than honorable discharge in lieu of court-martial.⁷ During the intervening time, the Applicant had been

⁷ The xxx District Commander had ordered a court-martial to re-try the Applicant for the offenses that she was previously found guilty of.

examined for mental illness and an Initial Medical Board diagnosed the Applicant with atypical psychosis, cocaine abuse in remission severe anti-social personality disorder and alcohol abuse, in remission. The IMB concluded that the Applicant's insight and judgment were influenced by her character traits but sufficient to assure responsibility for her actions. The IMB further stated that the Applicant's mental illness rendered her unfit for military service.

(3) PERSMAN Article 12-B-1e which governs this type of circumstance involving concurrent disability evaluation and disciplinary action provides the following: "If Commander (CGPC-adm) is processing a member for disability while simultaneously Commander, (CGPC-epm-1) is evaluating him or her for an involuntary administrative separation for misconduct or disciplinary proceedings which could result in a punitive discharge or an unsuspended punitive discharge is pending, Commander, (CGPC-epm-1) considers the disciplinary action. If the action taken does not include punitive or administrative discharge for misconduct, Commander (CGPC-adm) sends or returns the case to Commander (CGPC-adm) for processing. If the action includes either a punitive or administrative discharge for misconduct, the medical board report shall be filed in the terminated member's medical personnel date record (MED PDR)." This same process is also set forth in the Physical Disability Evaluation System Manual, COMDTINST M1850.2C, Article 2.C.11.

(4) In the instant case, the Applicant was represented by legal counsel and acknowledged her understanding of the repercussions associated with an other than honorable discharge. Also, at the time of her OTH request, the Applicant's medical history was well-documented and -- on the basis of the IMB's findings -- the Coast Guard properly determined that it could properly discharge the member in accordance with the policy established under PERSMAN 12-B-1e.

(5) Absent 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 (1992); Sanders v. United States, 594 F.2d 804, 813 (Ct. Cl. 1979). Based on my review of the record, it is my opinion that the Coast Guard did not commit any error or prejudice and properly followed its own regulations when it discharged Applicant with an other than honorable discharge

5. Recommendation: The Coast Guard, therefore, recommends that the Board deny the relief requested. If the Board determines that other matters merit comment by the Coast Guard, we would welcome the opportunity to address such matters in accordance with 33 C.F.R. §52.64(b), 52.81, and 52.82.

GENELLE T. VACHON
By direction

Encl: (1) Commander, CGPC letter 5420 dated 4 Feb 2003
(2) Applicant's Service and Medical Record

U.S. Department
of Transportation

United States
Coast Guard



Commander
United States Coast Guard
Personnel Command

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CGPC-adm-2
Phone: (202) 267-6969
FAX: (202) 267-4381

5420

MEMORANDUM

From G. W. PALMER
: CGPC-c

Reply ENS Crespo
to 7-6969
Attn of:

To: Commandant
(G-LMJ)

Subj: PROGRAM INPUT ON CGBCMR APPLICATION (xxxxxxxxxxxxxxxx)

Ref: (a) CGBCMR Application 2002-165

1. Comments on the application contained in reference (a) are attached as enclosure (1).
2. I recommend that no relief be granted.

#

Enclosures (1) Comments concerning CGBCMR Application 2002-165
:

Enclosure 1 - CGBCMR 2002-165

RELIEF REQUESTED BY APPLICANT:

1. The applicant requests her 1989 discharge "Under Other than Honorable Conditions" for the good of the service (in lieu of re-trial by Court Martial) be corrected to reflect an Honorable Discharge due to physical disability (mental disorder).

APPLICANT'S STATED BASIS FOR RELIEF:

1. The applicant alleges that her behavior and illegal acts she committed which led to her "Under Other than Honorable Conditions" discharge were caused by her mental disorders. Therefore, she should never have been accountable for these acts within the military justice system and should have received a physical disability retirement due to her mental disorder.

MATTERS OF RECORD:

1. The application is not timely.
2. March 31, 1986: Applicant enlisted in the U.S. Coast Guard.
3. September 21, 1986: Applicant surrendered to authorities at Coast Guard Yard after being on unauthorized absence since September 15, 1986.
4. September 21, 1986: SF Form 513, Consultation Sheet. Applicant seen at Naval Station XXXXXX Medical Clinic and reports suicidal thoughts, previous rapes, attempted sexual assaults.
5. September 29, 1986: SF Form 513, Consultation Sheet. Applicant seen at Naval Station XXXXXX Medical Clinic for alleged rape attempts, suicide gesture and depression. She is diagnosed with adjustment disorder and histrionic personality traits. Applicant is found fit for full duty.
6. October 20, 1986. Applicant receives CO's NJP for the offense of Unauthorized Absence and receives 14 days restriction and 14 days extra duty.
7. October 25, 1986. Applicant transferred to Base xxxxxxxxxxxx, xx.
8. November 10, 1986. Applicant allegedly assaults two fellow Coast Guard members.

9. November 12, 1986. Administrative Remarks, CG-3307. Applicant counseled for fighting and harming another CG member.
10. November 25, 1986. Administrative Remarks, CG-3307. Applicant counseled for visiting navy base clubs for the purpose of drinking. The Applicant was advised against underage drinking.
11. December 17, 1986. Applicant convicted at Special Court-Martial at CGC Base xxxxxxxxxxxx for Assault & Battery . Applicant was sentenced to 2 months restriction, reduced to E-1, fined \$200 per month for 3 months, and hard labor without confinement for 3 months. The sentences was approved and ordered executed on February 2, 1987.
12. January 26, 1987. Applicant admitted to Naval Hospital xxxxxxxxxxxx for psychiatric treatment and evaluation after taking an overdose of pills. She was diagnosed with suicide gesture (resolved), borderline personality disorder and cocaine abuse. The Applicant was recommended for administrative separation. Applicant was discharged from hospital on February 2, 1987.
13. February 12, 1987. Group xxxxxxxxxxxx Message of February 17, 1987. Applicant left her unit and was declared a deserter. Applicant was scheduled to appear at a Summary Court Martial on February 13.
14. February 15, 1987. Special agents apprehended the Applicant.
15. February 15-17, 1987. The Applicant was hospitalized at Naval Hospital xxxxxxxxxxxx for evaluation after expressing "suicidal thinking" during a brig physical. During this hospitalization she admitted to setting a fire in the unit barracks because a voice told her to. She later stated she didn't remember the incident. Applicant was diagnosed with a borderline personality disorder, unresolved suicidal ideation and unresolved cocaine abuse. The Applicant was released and transferred to the Philadelphia Naval Hospital at the Coast Guard's request on February 17, 1987, for further confinement to the brig.
16. February 18-20, 1987. Narrative Summary of evaluation conducted at xxxxxxxx Army Hospital. (Applicant was admitted to this hospital for evaluation due to the unavailability of inpatient psychiatric facilities at Naval Hospital xxxxxxxxxxxx.) Applicant was evaluated and diagnosed with a "Schizophreniform disorder (based on the uncertainty of the exact cause of her mental status whether it's a latent drug reaction that precipitates a pre-existing psychotic condition and certainly of such short duration that it does not appear to be a full blown schizophrenic disorder at this time.)" The Applicant was discharged under escort.

17. February 26 – March 11, 1987. The Applicant was re-hospitalized for continued suicidal ideation. The Applicant claimed she started having hallucinations in December 1986, when voices commanded her to assault a fellow CG member. However, her Psychiatrist at the time believed she was feigning psychosis and diagnosed her with cocaine abuse, alcohol abuse, adjustment disorder, malingering and an anti-social personality disorder. She was returned to the brig on March 6, 1987.
18. May 15, 1987. CO, Naval Hospital xxxxxxxxxxxx letter 6520. At the request of Applicant's Commanding Officer, she was psychiatrically evaluated at Naval Hospital xxxxxxxx on May 8 and 12, 1987 and diagnosed with schizophrenia, paranoid type, cocaine abuse, continuous, and borderline personality disorder. The evaluation further states that at the time of the alleged criminal conduct, and as a result of mental disease, the accused DID NOT lack substantial capacity to appreciate the criminality of her conduct of all charges except that of arson (article 126). In regard to that charge, it was the opinion of the board that the accused DID lack substantial capacity to appreciate the criminality of her conduct. The board further found that with the exception of the arson charge, the Applicant DID NOT lack substantial capacity to conform her conduct to the requirement of the law. The board stated that the Applicant did have sufficient capacity to understand the nature of the proceedings but did not have sufficient mental capacity to conduct or cooperate intelligently in her defense. The board found the Applicant incompetent to stand trial, and recommended she be transferred to an inpatient psychiatric facility for treatment. Applicant was transferred to Naval Hospital xxxxxxxxxxxx for treatment on May 19, 1987.
19. June 6, 1987. Applicant entered pre-trial confinement.
20. June 16, 1987. Report of Medical Board. Applicant underwent an Initial Medical Board at Naval Hospital xxxxxxxxxxxx between May 19 and June 16, 1987. She was diagnosed with atypical psychosis, cocaine abuse in remission, severe anti-social personality disorder and alcohol abuse, in remission. The Applicant traced her mental problems to a sexual assault she suffered while assigned to Station XXXXXX, XXXXX in 1986. She reported years (pre-existing enlistment) of cocaine and alcohol abuse. The board's evaluation states that Applicant was awaiting court martial on charges of arson, cocaine abuse and unauthorized absences at the time she deserted on February 12, 1987. The board concluded that the Applicant's insight and judgment were influenced by her character traits but sufficient to assure responsibility for her actions. The Applicant suffered from a mental illness of psychotic proportions that rendered her unfit for military service. The board found that in accordance with chapter 15, JAG manual, paragraph 1504, the Applicant was mentally capable of handling her financial affairs and competent to stand trial.

21. August 11, 1987. Applicant underwent further psychiatric treatment and evaluation at Naval Hospital, xxxxxxxxxxxx. She was diagnosed with atypical psychosis, cocaine abuse in remission, severe anti-social personality disorder and alcohol abuse, in remission, and intrauterine pregnancy. The Applicant was discharged and returned to confinement.
22. September 2, 1987. Message from Commander, CG Group xxxxxxxx to Commandant (GpPE-2). Group xxxxxxxxxxxx informed Commandant that the Applicant had been found guilty at a General Court Martial on August 29, 1987 and sentenced to 3 years, 3 months confinement. The Applicant was initially confined at Quantico, Virginia brig. The Applicant was administratively assigned to Station xxxxxxxxxxxx for personnel accounting purposes.
23. May 24, 1989. In a decision of the USCG Court of Military Review, the Applicant's conviction and sentence were set aside due to a finding that a potential conflict of interest existed between the Applicant's counsel and the government counsel, and that the Applicant was not made aware of this issue. The Court's decision also granted authority to order a rehearing.
24. August 4, 1989. After a rehearing was ordered, the Applicant requested discharge under other than honorable conditions for the good of the service in lieu of trial by court-martial. The Applicant stated that she understood the consequences of her request, including the depriving of virtually all veterans' benefits, and that she "... is completely satisfied with the counsel I have received."
25. August 8, 1989. Commander, xxxx Coast Guard District endorsement to Applicant's request. The endorsement notes that Applicant was facing re-trial by special court-martial for a variety of charges, including arson, breaking restriction, absence without authority terminated by apprehension, cocaine use, solicitation of another to commit drug offenses, and disrespect to a petty officer. The letter states that the government had proven each of the charges at her previous trial; evidence presented in the transcript of the trial and the precursor investigations establishes the accuracy of the charges. The endorsement further states that Applicants Counsel "...fully explained to Seaman Recruit xxxxxxxx the implications of her request, and witnessed her signature on her letter on 4 August 1989. LT Stewart is a member of the xxxxxx State Bar and is certified as trial and defense counsel of general courts-martial."
26. August 11, 1989. The Applicant's request was approved by Commandant (G-P).
27. August 28, 1989. DD-214. The Applicant was discharged under other than honorable conditions from the Coast Guard with separation code KFS (for the good of the service).

28. June 28, 2002. The Applicant's request for relief in this matter regarding the character and reason of her separation was denied by Coast Guard Discharge Review Board (DRB), convened under Title 10 United States Code, Section 1553 and Title 33 Code of Federal Regulations, Part 51 "to review the propriety and equity of the applicant's discharge." In a unanimous vote, "after a thorough review of the records, supporting documents, facts and circumstances unique to this case" the DRB found no "basis upon which to grant relief" of the applicant's request to be medically discharged rather than receive an other than honorable discharge. They referred the Applicant to the BCMR for consideration of the equity and propriety of her separation in view of her alleged mental condition at the time of her court martial.
29. Per Art 12-B-1e of PERSMAN "Disability statutes do not preclude disciplinary separation. The separations described here supersede disability separation or retirement. If Commander, Coast Guard Personnel Command (CGPC) (CGPC-adm) is processing a member for disability while simultaneously Commander (CGPC-epm-1) is evaluating him or her for an involuntary administrative separation for misconduct or disciplinary proceedings which could result in a punitive discharge or an unsuspended punitive discharge is pending, Commander, (CGPC-adm) suspends the disability evaluation and Commander, (CGPC-epm-1) considers the disciplinary action. If the action taken does not include punitive or administrative discharge for misconduct, Commander, (CGPC-epm-1) sends or returns the case to Commander, (CGPC-adm) for processing. If the action includes either a punitive or administrative discharge for misconduct, the medical board report shall be filed in the terminated member's medical personnel data record (MED PDR)."
30. Per paragraph 3.C.11 of the Physical Disability Evaluation System Manual, COMDTINST M1850.2C, the identical process described in the PERSMAN is adhered to when a member is being reviewed for a disability while at the same time the subject of a disciplinary proceeding that could result in a punitive discharge.

CONCLUSIONS:

1. The applicant's basis for relief is that her medical condition, schizophrenia, was the reason for her misconduct for which she received a court martial, confinement and eventual discharge under other than honorable conditions. The record indicates that the Applicant suffered from mental illness and the affects of substance abuse. On June 16, 1987, a sanity board of medical officers, convened in relation to the court martial proceedings against applicant, found that the Applicant was able to appreciate the nature and quality of wrongness of her conduct. Although the Applicant may have been suffering from a mental illness at the time she committed

the offenses, her illness did not prevent her from knowing that her behavior was wrong. Additionally, the board found that the applicant had sufficient mental capacity to understand the nature of the proceedings (Special Court Martial) and to conduct or cooperate intelligently in her defense. The Applicant offers no evidence to refute these findings, other than the finding of an earlier sanity board in May of 1987 that she was incompetent to stand trial and her current mental condition. However, both the May and June sanity board found that the Applicant was able to understand the wrongness of her conduct at the time she committed the criminal acts for which she was facing court martial.

2. The record indicates that in May 1989, the original sentence was set aside and a retrial ordered due to a finding of a potential conflict of interest existing between the Applicant's counsel and the government counsel. The reasons for setting aside the findings of guilty and sentence were unrelated to the determination that she had been found competent to stand trial. When retrial was contemplated, the Applicant was provided new legal counsel, for which the Applicant expressed complete satisfaction. The Applicant voluntarily requested and accepted a discharge under other than honorable conditions, in lieu of facing retrial.
3. Separation proceedings for physical disability were not appropriate in the Applicant's case. As set forth in the PERSMAN, "disability statutes do not preclude disciplinary separations". Once it was medically determined that the Applicant's misconduct was not the result of her mental condition and that she was competent to stand trial, proceeding with disciplinary action was the correct course of action in this matter.
4. Applicant was afforded all the substantive and procedural rights to which she was entitled in her court martial proceedings. In addition, the Coast Guard made noteworthy efforts to ensure that the Applicant's mental condition was completely evaluated before court martial proceedings went forward.
5. No error or injustice committed. While it is regrettable that the Applicant's mental condition appears to have deteriorated since her separation from the Coast Guard, this is not a reasonable basis to question the findings made concerning her condition over 10 years ago, during the period 1987-1989.

RECOMMENDATION:

1. I recommend that no relief be granted.
2. Applicant should be encouraged to seek continued assistance for her condition

through other agencies, such as the Social Security Administration.