

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-035

**XXXXXXXXXXXXXX
XXXXXXXXXXXXXX**

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 completed application on December 1, 2008, and subsequently drafted the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 24, 2009, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his record by upgrading his RE-4 (not eligible to reenlist) reenlistment code to at least an RE-3 (eligible for reenlistment with waiver).

The applicant's military record indicates that he enlisted in the Coast Guard on September 3, 2002. He was honorably discharged on April 16, 2004, by reason of unsuitability, with a JFX (personality disorder) separation code and an RE-4 reenlistment code.

The applicant alleged that he does not have a personality disorder and believes that he is suited for military service. In a communication to his congressman, the applicant stated that he needed to get his reentry code changed from RE-4 to RE-3 or better so that he can reenlist in the service.

Discharge Review Board (DRB)

The applicant exhausted his administrative remedies by filing an application with the DRB seeking the same relief as requested before this Board. Four of the five members of the DRB voted to change the applicant's reenlistment code to RE-3G (eligible for reenlistment with waiver) and the reason for his separation from unsuitability to personality disorder. The Vice Commandant disapproved the DRB's recommendations, but changed the separation code from JFX (personality disorder) to JNC (unacceptable conduct). The Vice Commandant did not

provide a reason for disapproving the recommendations of the DRB or for her decision to change the separation code to JNC.

Although disapproved by the Vice Commandant, the DRB stated the following with respect to its recommendation to change the reason for the applicant's separation to personality disorder and the reenlistment code to RE-3G:

The applicant clearly had episodes of non-performance and integrity issues during his short Coast Guard career which should have been handled by performance probation . . . For reasons unclear to the [DRB], the applicant was referred to [REDACTED] Naval Medical Center in January 2004 for a psychiatric evaluation . . . At [REDACTED] he was diagnosed with Adult Antisocial/Narcissistic traits but there was 'insufficient info to [diagnose] personality [disorder]' . . . In March 2004, the applicant was referred . . . for a second psychiatric evaluation. This evaluation diagnosed the applicant with "narcissistic, passive aggressive and anti-social character traits" and supported an administrative discharge if the command determined his behavior significantly impacted his job performance in a negative way.

Since departing the Coast Guard, the applicant has held two jobs and each employer provided positive endorsements. Additionally, at his own expense the applicant underwent a third psychiatric evaluation. This evaluation concluded the applicant "shows clinically insignificant signs of Antisocial or Narcissistic Personality Patterns as reportedly purported to be present by the aforementioned psychologist."

Because the applicant received a diagnosis of a personality disorder, the [DRB] felt that the discharge was carried out in accordance with Coast Guard policy. However, the [DRB] believes that the discharge was inequitable because the unit pursued a discharge for personality disorder when similar cases are handled as discharges for unsatisfactory performance.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 3, 2002. On February 9, 2004, the applicant's officer in charge (OIC) informed the applicant that the OIC had initiated action to honorably discharge the applicant from the Coast Guard under Article 12.B.9. (unsatisfactory performers) and Chapter 5 of the Medical Manual. The OIC told the applicant that he had lost trust in his integrity, which resulted in the applicant losing his qualifications to perform the most basic jobs at the unit. The OIC also stated that the applicant had been diagnosed by a Navy psychiatrist as having anti-social and narcissistic traits. The OIC advised the applicant that he could submit a statement in his own behalf and that if he disagreed with the discharge, his rebuttal would be forwarded with the OIC's recommendation.

On February 13, 2004, the OIC, through the commanding officer (CO), requested permission from the Commander, Coast Guard Personnel Command (CGPC) to discharge the

applicant due to his personality disorder. The CO recommended that the applicant be given an honorable discharge. However, the OIC informed CGPC of the following:

Within the past ten months [the applicant] has demonstrated apathy toward command policies, procedures, and personnel attached to this unit. Members from E2 through my E7 (XPO) all came forward and stated that [the applicant] has openly repeatedly lied to them, for reasons I originally attributed to youthful insecurity and a need to fit in. Subsequently, due to a complete breakdown of trust in his integrity his qualification as a communication watchstander was revoked. He was referred to [REDACTED] Naval Mental Health, for an evaluation for continued military service, where narcissistic and anti-social traits were noted. He has become a burden on his shipmates and command and discharge is in the best interest of the member and the Coast Guard.

The letter from the OIC noted that the applicant had been counseled several times.

On April 18, 2003, the applicant was counseled on an administrative remarks page (page 7) for failure to follow standing orders that personal phone calls be limited to no more than 10 minutes.

On October 7, 2003, the applicant was counseled about his failure to follow standing orders to plot the boat's position while underway. When asked why he did not plot the boat's position, he replied "I just feel lazy today."

On October 8, 2003, a negative counseling entry was placed in the applicant's record about his behavior and attitude and their impact on the good order and discipline of the unit. The page 7 noted that the applicant had accused members of stealing two of his items when those items were in his possession. The page 7 also noted that the applicant had instigated and exaggerated personal differences between section personnel to purposely cause dissent within the unit. The applicant was counseled that his actions were in direct contradiction to the Coast Guard's core values and that his actions had brought the ethics and standards of the entire unit into question. The page 7 further noted that the applicant had been counseled by the XPO on several occasions.

The OIC submitted a copy of a three and one-half page email from the applicant's XPO to his senior chief and OIC, documenting the written and verbal counseling provided to the applicant. The OIC also submitted a copy of the February 4, 2004 medical consultation and a copy of the applicant's enlisted employee review for marking period ending January 31, 2004. The review showed some average marks, but it also contained several poor and below average marks and an unsatisfactory mark in conduct. The following comment was written with regard to the applicant's marks:

The applicant is capable of producing good work. His apparent effort to cause conflict among my crew has outweighed his efforts to stand a proper and reliable watch. He shows continuous examples of unreliability to uphold the high standards of ethical behavior we want in our sailors. There is now such a high

level of lack of trust and honesty that this watchstanding qual[ifications] have been rescinded. He must learn to respect and honor his fellow sailors as much as he respects and values himself. Without these values, he is alone and is his only captain and crew on his own ship without a team of trustworthy fellow sailors to work with him.

On February 9, 2004, the applicant acknowledged notification of the proposed discharge, indicated that he would attach a statement in his behalf, and objected to the discharge.

On February 13, 2004, the applicant submitted his written statement denying that he had narcissistic and anti-social personality traits. He claimed that his problems began with a rumor that he was going to place a chief petty officer on report. He also stated that on two occasions when he was upset, he accused someone in the unit of stealing some of his personal property. He also stated that a Navy psychiatrist advised him that he had made some mistakes in his career for which he should be punished but not discharged. He requested a second chance under the Coast Guard's second chance policy, noting some of the good work he had done since entering the Coast Guard.

On March 11, 2004, the applicant's CO agreed with the OIC that the applicant should be discharged by reason of unsuitability due to a personality disorder. The CO stated that the applicant's request for a second chance is not in the best interest of the Coast Guard. "[T]he second chance program was never intended to be applied in the context of allowing people with disqualifying personality disorders to be retained on active duty."

On March 16, 2004, the Commander, Ninth Coast Guard District agreed that the applicant should be discharged due to a personality disorder.

On March 19, 2004, CGPC approved the applicant's discharge by reason of unsuitability due to a personality disorder with a JFX separation code and an RE-4 reenlistment code.

VIEWS OF THE COAST GUARD

On March 10, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief to the applicant. In this regard, the JAG agreed with comments submitted by CGPC, who wrote the following in pertinent part:

A review of the applicant's record indicates that he was properly discharged due to an assigned diagnosis of a personality disorder. The applicant has a pattern of difficulty conforming to military standards and two separate mental health evaluations, the second of which was performed by military psychiatrist and confirmed a diagnosis of personality disorder. The Coast Guard complied with policy . . . for processing the applicant's discharge.

The applicant petitioned the DRB to have his reenlistment code upgraded to allow him to reenlist. The DRB recommended a change to the reenlistment code and narrative reason. The Vice Commandant did not approve the findings of the

DRB. However, she did approve a change to the [separation code) from JFX to JNC (unacceptable conduct). The only authorized reenlistment code for JFX and JNC is RE-4 . . . therefore in accordance with policy there is no basis to change the applicant's reenlistment code.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 3, 2009, the BCMR received the applicant's response to the views of the Coast Guard. The applicant stated that getting his reenlistment code upgraded is his highest priority. He stated that the media are reporting that the military is now recruiting individuals convicted of felonies. He argued that if the military is recruiting individuals who have broken the law then why not him because his record has been spotless since his 18th birthday.

The package the applicant submitted in response to the advisory opinion was the one he submitted to the DRB. In it, he denied that he had a personality disorder and submitted the psychological evaluation performed on March 31, 2006 after his discharge. The psychological report stated the following in pertinent part:

[The applicant] shows clinically insignificant signs of antisocial or narcissistic personality patterns as reportedly purported to be present by [military psychologists]. No indication of severe personality pathology is present. . . [T]here was no indication of the presence of three severe clinical syndromes (thought disorder, major depression, and/or delusional disorder).

The applicant also submitted copies of awards he received in high school, reference letters from his employers, and some documents from his service record. The applicant also submitted a copy of his statement that responded to the three and one-half page email that his XPO had written prior to his discharge. He admitted that some of the entries were true, some were false, and explained others.

SUPPLEMENTAL VIEWS OF THE COAST GUARD

The Board provided the Coast Guard with a copy of the applicant's reply to their views for a supplemental advisory opinion. The Coast Guard did not submit a supplemental advisory opinion.

APPLICABLE LAW

Separation Program Designator (SPD) Handbook

According to the SPD Handbook, the JNC separation code means that an involuntary discharge is directed "when a member performs acts of unacceptable conduct (i.e. moral and/or professional dereliction) not otherwise listed." It also authorizes the assignment of only an RE-4 reenlistment code with the JNC separation code.

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 timely. The applicant was required to exhaust his administrative remedies by applying to the DRB before filing an application with the Board. See 33 CFR § 52.13. The Discharge Review Board DRB has a fifteen year statute of limitations. According to *Ortiz v. Secretary of Defense*, 41 F.3d 738 (D.C. Cir. 1994), the BCMR's three-year statute of limitations begins to run at the conclusion of DRB proceedings for an applicant who is required to exhaust administrative remedies. The applicant applied to the DRB on January 18, 2006 and the DRB issued a final decision on September 25, 2006. Therefore, the applicant's BCMR application, received by the Board on November 18, 2008 was timely.

3. In 2004, the applicant was honorably discharged from the Coast Guard by reason of unsuitability, with a JFX (personality disorder) separation code, and an RE-4 reenlistment code. On his application before this Board, the applicant asked the BCMR to correct his record by upgrading his RE-4 reenlistment code to RE-3 or higher so that he can enlist in another branch of the military. He alleged that he does not have a personality disorder and is suited to serve in the military.

4. Although, the DRB recommended changing the narrative reason for the applicant's discharge from unsuitability to personality disorder and upgrading the reenlistment code to RE-3G, the Vice Commandant, without comment, disapproved the DRB's recommendation, but changed the separation code to JNC (unacceptable conduct). Unacceptable conduct like personality disorder is one of a number of bases for an unsuitability discharge under Article 12.B.16 of the Personnel Manual according to the SPD Handbook.

5. The applicant's challenge to his discharge by reason of personality disorder has been rendered moot because the Vice Commandant's final action on his DRB application changed the separation code, and therefore, the reason for his separation from JFX (personality disorder) to JNC (unacceptable conduct). In accordance, with the Vice Commandant's decision, the applicant's DD 214 was corrected through the issuance of a DD 215 showing JNC as the separation code. According to the SPD Handbook, the authority for assigning a JNC separation code is Article 12.B.16. (unsuitability) of the Personnel Manual and the code is given for "acts of unacceptable conduct (i.e. moral and/or professional dereliction) not otherwise listed."

6. The applicant does not argue that the newly assigned JNC separation code is erroneous under the circumstances of his case. Moreover, there is evidence in the record that the applicant falsely accused members of his unit of stealing his personal property when the property was always in his possession. There is also evidence that the applicant engaged in professional dereliction by refusing to plot the boat's course while underway, that he caused divisiveness

among the crew by instigating conflict, and that his watchstanding qualifications were removed due to the crew's lack of trust in him. Additionally, the OIC stated that he had become a burden to his crew members and the unit.

7. The JNC separation code is supported by the record and the Board finds no basis on which to change it. Pursuant to the SPD Handbook, only an RE-4 (not eligible to reenlist) reenlistment code is authorized with the JNC separation code. According to Article 1.D.28. of COMDTINST M1900.4.D., the general unsuitability category is to be entered as the narrative reason for separation on the DD 214, rather than the specific reason. Neither personality disorder nor unacceptable conduct is written on the applicant's DD 214 or DD 215.

8. Accordingly, the applicant's request should be denied because he has failed to prove an error or injustice with respect to his separation and reenlistment code.

ORDER

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

