

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-112

ANDREWS, Attorney-Advisor:

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. It was commenced on June 28, 1999, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated March 30, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

REQUEST FOR RELIEF

The applicant, a former seaman xxxxxxx who served as a xxxxxx in the Coast Guard, asked the Board to correct his military record to show that on May 30, 198x, he received a disability discharge based upon a diagnosis of schizophrenia or schizoid personality disorder, rather than an administrative discharge for unsuitability based upon a diagnosis of passive-aggressive personality disorder.

APPLICANT'S ALLEGATIONS

The applicant alleged that when he was discharged on May 30, 198x, he should have been granted a disability discharge because he was developing schizophrenia. Instead, he was administratively discharged due to unsuitability because he had been misdiagnosed with a personality disorder. He alleged that his administrative discharge was unjust because he was suffering from excessive stress, depression, and a schizoid personality disorder, which impaired his ability to serve. He alleged that he should have received a disability discharge because, if he had been properly diagnosed, he would have been found to be in the early stages of schizophrenia. The applicant alleged that he now receives psychiatric treatment for this condition.

The applicant also alleged that, had he been properly diagnosed by the Coast Guard in 198x, he might have received treatment earlier and not suffered increasing psychiatric problems. He stated that he was never properly diagnosed or treated until after he was incarcerated in 199x. However, he did not submit any proof of his current diagnosis.¹

Finally, the applicant alleged that his application to the Board was timely because he had just received his military records in March 1999.

SUMMARY OF THE RECORD

On December 15, 197x, the applicant enlisted in the Coast Guard Reserve for a term of six years under the delayed entry program. On April 25, 197x, after completing his studies to be a xxx, the applicant joined the Coast Guard, obligating himself to four years of active duty. After a few months of training, he was first assigned to the cutter xxxxxx. While serving on the cutter, he was advanced from seaman recruit to seaman apprentice and then to seaman.

In the fall of 197x, the applicant left the xxx to attend "A" school for the xx rating. In December 1978, he graduated, was promoted to xxxxxxx and was assigned to work in the xxxx at the Coast Guard xxxxxxx.

On August 27, 197x, the applicant appeared before a captain's mast and was awarded non-judicial punishment (NJP) for having sex with a seaman recruit who was a patient in the xxxxxx hospital. He appealed the decision, but his appeal was denied on September 26, 197x, and he was reprimanded, fined, restricted for 30 days, and demoted to pay grade E-3 (seaman). However, he was allowed to continue working in the xxxxx rating, and his rate was noted as xxxxxx.

On January 11, 198x, the applicant again appeared before a captain's mast because a small amount of marijuana was found in his xxxxxx. His appeal was denied on February 28, 198x, and he was reprimanded, fined, restricted, and demoted to E-2 (seaman apprentice). Since he continued to serve as a xxxxx, his rate was xxxxxx.

On February 4, 198x, the applicant was formally counseled concerning repeated tardiness.

On April 15, 198x, a doctor noted in the applicant's medical records that the applicant was being referred to the base psychiatrist because he had requested an administrative discharge.

¹ The BCMR wrote to the Department of Veterans' Affairs (DVA) seeking any post-discharge medical records in its possession. On August 5, 1999, the DVA informed the BCMR that no post-discharge medical records appeared in the applicant's DVA file.

On April 24, 198x, the applicant underwent a psychiatric evaluation at the xxx where he worked. In his report, the doctor made the following observations:

[T]his young man has continued to violate military rules and regulations. He relates a poor attitude, is not motivated to change, and will continue to act out in a negative manner. He dislikes and does not observe strict military discipline, regimentation, customs, rules and regulations, etc. He is frequently late to work and often leaves prematurely. He does not wear his uniform properly and needs constant supervision in his work with dental patients. He does not conform to the standards imposed upon and required of other xx's and may prove to be a decided liability not only to patients but himself. He does not care to remain in the Coast Guard and should be discharged as unsuitable for further service. Even if stripped of his xx rating and assigned to general Coast Guard duties, he will probably continue to manifest an apathetic attitude, do poorly, and get into more trouble. There is no evidence of a psychotic thought disorder present at this time nor does he appear to be suffering from any organic illness. His basic problem is that he cannot successfully deal and cope with authority figures and situations, military regimentation, and the responsibilities and demands of Coast Guard service. His resentment is expressed in passive rebellion rather than overt aggression or hostility.

The doctor diagnosed the applicant as having a passive-aggressive personality disorder. He stated that the applicant had "no disqualifying physical or mental defects which are ratable as a disability under the standard schedule for rating disabilities in current use by the Veterans Administration." The doctor recommended that he be discharged by reason of unsuitability under Article 12.B.16 of the Personnel Manual.

On May 9, 198x, the applicant's commanding officer advised him in writing that he was being recommended for discharge by reason of unsuitability because of his diagnosed passive-aggressive personality disorder. The applicant signed the letter and indicated that he did not desire to make a statement.

On May 14, 198x, the commanding officer of the xxxxx wrote to the Commandant recommending that the applicant be honorably discharged due to unsuitability because of his record of misconduct and psychiatric diagnosis. On May 22, 198x, the Commandant approved the recommendation and ordered that the applicant be discharged with a JMB separation code, which means unsuitable due to a personality disorder.

On May 28, 198x, the applicant underwent a medical examination prior to discharge. The examining physician found that he was fit for administrative discharge and had no disqualifying disabilities. The applicant signed a statement indicating that

he agreed with the findings of his examining physician, including the finding that he was fit for duty, and that he did not wish to make a statement in rebuttal.

On May 30, 198x, the applicant was honorably discharged from the Coast Guard. His discharge form (DD 214) indicates that he was discharged due to "unsuitability" with a JMB separation code and an RE-4 reenlistment code, which means not eligible for reenlistment.

VIEWS OF THE COAST GUARD

On February 11, 2000, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant the requested relief.

The Chief Counsel argued that relief should be denied because the applicant "has failed to prove that the Coast Guard committed either an error or injustice that would merit the waiver of the Statute of Limitations." The Chief Counsel stated that the applicant knew or should have known that he had not been medically retired on the date of his discharge, May 30, 198x. Therefore, he argued, the applicant applied for relief more than xx years after the BCMR's 3-year statute of limitations had expired. Furthermore, he stated, the applicant failed to produce any evidence in support of his allegations of error.

The Chief Counsel alleged that the applicant was properly discharged by reason of unsuitability, pursuant to Article 12.B.16. of the Personnel Manual and Article 5.B. of the Medical Manual.² He stated that personality disorders "are not physical disabilities, as that term is used in the Physical Disability Evaluation System (PDES)." Physical disability benefits, he argued, are intended "to compensate members whose military service is terminated due to a service connected disability, and to prevent the arbitrary separation of individuals who incur disabling injuries." PDES Manual, Article 1.A. Therefore, he argued, because the applicant's condition was not a ratable disability, he has not proved any error on the part of the Coast Guard.

Finally, the Chief Counsel stated, "[e]ven assuming, arguendo, that the psychological diagnosis was somehow inaccurate, any error committed was harmless or to the Applicant's benefit because the Applicant could have been discharged for misconduct." Members discharged for misconduct, he stated, do not receive transition benefits.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

² The Chief Counsel cited to editions of the manuals that were not yet issued when the applicant was discharged in 198x. However, the provisions of the manuals in effect in 198x were not substantially different than those in the more modern manuals cited by the Chief Counsel.

On February 14, 2000, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond. On March 1, 2000, the applicant responded. He alleged that he would never have been taken to mast if he had been properly diagnosed and treated by the Coast Guard. He also argued that the Coast Guard's failure to diagnose and treat his schizoid and passive-aggressive personality disorders led to his schizophrenia.

APPLICABLE REGULATIONS

Applicable Provisions of the Personnel Manual

Article 12.B.16. of the Coast Guard Personnel Manual in effect in 19xx (CG-207) authorized administrative discharges for members by reason of unsuitability. The conditions listed as rendering a member unsuitable included inaptitude, apathy, defective attitude, and personality disorders listed in Chapter 5 of the Medical Manual (CG-294) "[a]s determined by medical authority."

Applicable Provisions of the Medical Manual

The Coast Guard Medical Manual (CG-294) in effect in 198x governed the disposition of members with psychiatric disorders. According to Articles 5-C and 5-D, a member with either a schizoid or passive-aggressive personality disorder was eligible for an administrative discharge rather than a disability 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 concerning this matter pursuant to section 1552 of title 10 of the United States Code.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The record indicates that the applicant signed and received his discharge documents in 198x, although he alleged that he did not receive them until March 1999. However, the Board finds that the applicant knew or should have known the non-disability nature of his separation in 198x. Thus, his application was untimely by more than xx years.

3. Pursuant to 10 U.S.C. § 1552, the Board may waive the 3-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 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 submitted no evidence indicating that he was unfit for duty by reason of a disability, schizophrenia, when he was discharged in May 198x. A cursory review of the merits of this case indicates that the applicant was diagnosed with a passive-aggressive personality disorder by competent medical authority on April 24, 198x, and properly discharged for unsuitability pursuant to Article 12.B.16. of the Personnel Manual and Article 5 of the Medical Manual. Therefore, the Board finds that it is not in the interest of justice to waive the statute of limitations in this case.

5. Moreover, even if one assumes, as the applicant alleged, that he was suffering from a schizoid personality disorder in 198x which ultimately developed into schizophrenia, that in itself would not have made him eligible for a disability separation. Under Article 5 of the Medical Manual and Article 12.B.16. of the Personnel Manual, members with schizoid personality disorders were eligible for administrative discharge.

6. Accordingly, the applicant's request should be denied based both on its untimeliness and on the lack of merit in his claim.

ORDER

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

Harold C. Davis, M.D.

Michael K. Nolan

Thomas A. Phemister