

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-079

FINAL DECISION

Ulmer, Chair:

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 application was docketed on May 19, 2003, upon receipt of the applicant's completed application and military records.

This final decision, dated January 22, 2004, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct his military record to show that he was discharged from the Coast Guard by reason of physical disability rather than by reason of personality disorder. He further requested that the Board upgrade his RE-4 (not eligible for reenlistment) reenlistment code to RE-1 (eligible for reenlistment).

The applicant enlisted in the Coast Guard on August 3, 199x, and was honorably discharged on October 19, xxxx, by reason of personality disorder, with a JFX (personality disorder) separation code, and with an RE-4 reenlistment code. When discharged, he had served one year, two months, and 19 days on active duty.

APPLICANT'S ALLEGATIONS

The applicant alleged that the RE-4 reenlistment code and the reason for his discharge are hindering him from obtaining gainful employment. He stated that he has matured since his discharge.

In support of his application, he submitted a letter from his parents. They stated the following:

[The applicant] got married soon after enlisting in the Coast Guard and moved his wife with him to his first duty station . . . They immediately began having serious marital difficulties, which interfered with his job performance. . . . When his superiors counseled him, it was brought up that [the applicant] had taken Ritalin as a child for Attention Deficit Disorder. However, he stopped taking Ritalin around the age of 15 when he no longer needed it. [The applicant] has not exhibited any signs of Adult ADHD, and is a functioning member of society, with no need for Ritalin. He was informed that any use of Ritalin after the age of 12 was a disqualifier for enlistment in the Coast Guard. This fact was never presented to him at the time of enlistment or during the physical examination prior to entering the Coast Guard. He never took Ritalin while serving in the Coast Guard. His military record indicates that he was diagnosed . . . at the Naval Branch Clinic Key West with Adult ADHD, but was not medically discharged. There appears to be some question as to the legality of separating a member for this reason. As a result of the reason for separation, [the applicant] has been having great difficulty obtaining gainful employment.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 3, 199x.

On January 15, xxxx the applicant was counseled on an administrative remarks (page 7) entry about his failure to complete DCPQS training in the allotted time. He was given additional time but still failed to complete the training.

On January 24, xxxx, the applicant was counseled about arriving late to work and was advised that any further tardiness could lead to disciplinary action.

On March 24, xxxx, a page 7 was entered into the applicant's record counseling him again about being late for work.

On May 5, xxxx, charges against the applicant for dereliction of duty, failure to obey an order, and absence without leave were dismissed by the CO during a non-judicial punishment proceeding.

On May 30, xxxx, a page 7 was entered into the applicant's record documenting the fact that he had been placed on performance probation. The entry stated that the applicant had been counseled and given specific direction on the level of performance necessary to be removed from probation.

On July 1, xxxx, the following comments were entered into the applicant's record on a page 7.

[T]he applicant was counseled concerning the wearing of the proper uniform of the day. 02 July xxxx, [the applicant] reported for duty in coveralls and a non-regulation dark blue t-shirt. [The applicant's] uniforms are always stained and wrinkled inport and u/w. [The applicant] still does not have sewn on name tags that he was instructed to get two months ago. [The applicant] constantly stands poor watches and fails to comply with EPO's Standing Orders . . . [The applicant] has on several occasions showed disregard through inappropriate comments and disrespect. 01 July xxxx, [the applicant] was disrespectful to a[n] MK3 . . . when deck force personnel were present . . . [The applicant] showed a disrespectful attitude towards [an] FS2 on two occasions . . . 03 July xxxx, [the applicant] projected an apathetic attitude while working on the FHI outboard towards the MKC and MK1. [The applicant] constantly complains outwardly in front of everyone around when given tasking.

The applicant's military record contains a medical report dated August 17, xxxx. The physician reported that the applicant was diagnosed with ADHD in the fourth grade and that he took Ritalin from that time through the 12th grade. The physician stated since joining the Coast Guard the applicant has failed to adjust to the military. She noted that the applicant was being administratively separated from the Coast Guard and that he agreed with the separation. The physician noted that the applicant had prescriptions filled for Ritalin in September 199x and February 199x. She also stated that the applicant had been diagnosed with ADHD and had been on Ritalin after age 12. Therefore, he should have been disqualified for enlistment. She stated that the applicant did not mention this on his enlistment medical examination form because he was not asked about it.

On August 18, xxxx, the physician clarified her diagnosis of the applicant by stating "patient has been diagnosed [with] ADHS, patient had ADHS."

Several page 7s were entered into the applicant's record documenting low performance marks for the evaluation period ending September 14, xxxx. He received three 1s and four 2s, on a scale of 1 to 7, with 7 being the highest. He was also assigned

an unsatisfactory conduct mark due to his failure to conform to military rules, regulations, and standards.

The applicant was advised by his commanding officer (CO) that the CO had initiated action to discharge him from the Coast Guard and that his marks warranted an honorable discharge. The applicant was advised that he could write a statement in his own behalf. The applicant, by his signature, waived his right to submit a statement.

On September 26, xxxx, the Commandant directed that the applicant be discharged from the Coast Guard by reason of unsuitability with a JFX separation code and an RE-4 reenlistment code.

The applicant was discharged on October 19, xxxx.

VIEWS OF THE COAST GUARD

On October 7, 2003, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief to the applicant. In this regard, he agreed with the Commander, Coast Guard Personnel Command (CGPC) that the applicant's record should be corrected to show that he was discharged by reason of convenience of the government, due to a condition not a disability and with a JFV (condition not a disability) separation code. Neither CGPC nor the Chief Counsel recommended that the applicant's RE-4 reenlistment code be changed.

CGPC stated that ADHD is not listed in Chapter 5 of the Medical Manual as a personality disorder, but instead is listed in that Chapter under the category titled "Disorders Usually First Evident in Infancy, Childhood, or Adolescence." Therefore, CGPC stated that the more accurate explanation for the applicant's discharge is condition not a disability for the convenience of the government under Article 12.B.12. of the Personnel Manual.

CGPC did not recommend upgrading the applicant's RE-4 reenlistment code. In this regard, CGPC stated the following:

The applicant's use of the drug Ritalin between ages 12 and 18 is in itself disqualifying for reenlistment or enlistment in another armed service, and the Applicant would not have been enlisted in the Coast Guard (or any other branch of the armed services) had we known of his condition and use of the drug Ritalin past the age of 12 . . . Furthermore, the Applicant's record indicates that his ability to control his behavior was significantly diminished when he stopped taking Ritalin at the time he enlisted, and it would not be in his best interest to allow him an opportunity to enlist in another armed service.

CGPC stated that Ritalin is an amphetamine class substance and is therefore inconsistent with Coast Guard or other Armed Services enlistment standards.

The Chief Counsel stated that the applicant had not presented any evidence supporting his claim that his discharge should be characterized as a medical discharge. Nor did he present any evidence to support his claim that the Coast Guard erred in assigning him an RE-4 reenlistment code.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 14, 2003, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond. No response was received.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 12.B.12 of the Personnel Manual lists condition not a disability as a basis for a convenience of the government discharge.

Medical Manual (COMDTINST M6000.1B)

Chapter 3.D.33 states that specific academic skills defects are causes for rejection for appointment, enlistment, and induction in the Coast Guard. This list includes a chronic history of academic skills or perceptual defect secondary to organic or functional mental disorders that interfere with work or school after age 12. "Use of medication to improve or maintain academic skill (e.g., Ritalin . . .) after age 12 is disqualifying."

Chapter 5.B.17 states that members of the Coast Guard with conditions such as ADHD shall be processed in accordance with Chapter 12 of the Personnel Manual.

Chapter 5.B.2. lists the following as personality disorders: Paranoid, Schizoid, Schizotypal, Obsessive Compulsive, Histrionic, Dependent, Antisocial, Narcissistic, Avoidant, Borderline, and Personality Disorder NOS (includes Passive-Aggressive). It also mentions these disorders found under 3.F.16.c. "Personality, sexual, factitious, psychoactive substance use disorders; personality trait(s); disorders of impulse control not elsewhere classified."

Separation Program Designator Handbook

The Separation Program Designator Handbook authorizes the assignment of an RE-3G or an RE-4 reenlistment code with the JFV separation code. The SPD Handbook states that the JFV separation code for "condition, not a disability" is appropriate when there is an "[i]nvoluntary discharge directed by established directive when a physical disability, which interferes with the performance of duty (Enuresis, motion sickness, allergy, obesity, fear of flying, et al.)."

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. The application was timely.

2. The Coast Guard committed an error by assigning personality disorder as the reason for the applicant's discharge. Chapter 5 of the Medical Manual identifies the various personality disorders, and ADHD is not listed as one of them. Instead, it is listed as a condition that begins in childhood, which may be disqualifying for enlistment or retention if the condition is chronic or if Ritalin has been used after age 12. See Chapter 3.D.33 of the Medical Manual. The medical evidence of record and the applicant's parents' statement establish by a preponderance of the evidence that the applicant used Ritalin after age 12.

3. The Board agrees with CGPC that the most accurate reason for the applicant's discharge is condition not a disability that interferes with the performance of duty, and that such discharge should be for the convenience of the government, pursuant Article 12.B.12. of the Personnel Manual.

4. The Board finds that the RE-4 reenlistment code constitutes an injustice under the circumstances of this case. The evidence establishes that at the time of his discharge the applicant was diagnosed with the illness ADHD. While the applicant presented some administrative challenges for the command, his record contains only one instance of non-judicial punishment, which was dismissed with a warning. Because he was not punished more severely or more often, the Board is persuaded that his command probably knew that the applicant's attitude was attributable to a medical condition.

5. An RE-3G (condition not a disability) is appropriate in this case because it explains more accurately the applicant's poor performance while on active duty. Moreover, the Separation Program Designator Handbook permits an RE-3G reenlistment code as well as an RE-4. The RE-4 reenlistment code should not be assigned to members, like the applicant, whose inability to perform their duties is the

result of a condition that is not a physical disability. Contrary to the Chief Counsel's concern, the applicant cannot automatically reenlist in the armed forces with an RE-3G reenlistment code. The RE-3 is a code for which a waiver can be obtained. However, the applicant would be required to submit proof that he is no longer suffering from this condition in order to reenlist in the military service.

6. The applicant has not presented any evidence and the Board is aware of none that states ADHD is a condition for which a physical disability discharge may be granted. The Medical Manual does not require processing for ADHD under the Physical Disability Evaluation System. Therefore, the applicant's claim in this regard has no merit.

7. Accordingly, the applicant is entitled to partial relief.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of former XXXXXXXXXXXXXXXXXX, USCG, for correction of his military record is granted in part. Specifically, his DD Form 214 shall be corrected to show the following:

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

Block 26 shall be corrected to JFV (condition not a physical disability) as the separation code.

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

Block 28 shall be corrected to show condition not a disability as the reason for separation.

The Coast Guard shall issue the applicant a new DD Form 214.

All other requests for relief are denied.

Stephen H. Barber

Harold C. Davis, M.D.

Dorothy J. Ulmer