DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-151

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 application was docketed on September 29, 2003, upon receipt of the applicant's completed application and military records.

This final decision, dated June 10, 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 by upgrading his RE-3L (eligible for reenlistment, except for disqualifying factor: entry level performance and conduct separation due to inability to adopt to the military) reenlistment code to an RE-1 (eligible for reenlistment).

APPLICANT'S ALLEGATIONS

The applicant alleged that although in 2001 the Discharge Review Board (DRB) upgraded his 1993 RE-4 (not eligible for reenlistment) code to RE-3L, it is still not high enough to allow him to enlist in the Coast Guard Reserve. He asked this Board to upgrade the RE-3L to an RE-1 (eligible for reenlistment).

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 22, 1993 for four years and reported for recruit training the same day. Approximately two days later, on June 24, 1993, he was observed by an HS2 banging his head against a bulkhead. The applicant

was referred to the staff psychologist, who stated that the applicant refused to cooperate with the interview except to say that he was thinking of hurting himself and that he was crazy. The psychologist's diagnosis of the applicant was to rule out passive/aggressive personality disorder with histrionic traits. He admitted the applicant to the ward for 24 hours and placed him on "live watch suicide precaution". The applicant was discharged from the ward on June 25, 1993.

The psychologist treated the applicant for the second time on July 1, 1993, for verbalization of suicidal ideation. According to the medical note, the applicant was angry because he believed the recruiter provided him with misinformation. The applicant stated that the recruiter was supposed to give him information about applying to OCS (officer candidate school), but the recruiter never did. The psychologist found the applicant's mental status to be unremarkable and diagnosed the applicant with adjustment disorder with mixed emotional features and the need to rule out passive/aggressive personality disorder.

On July 2, 1993, the psychologist again evaluated the applicant. At this meeting the applicant restated his desire to be discharged and threatened to act out in a way that would result in his separation from the Coast Guard. The psychologist's note stated the following:

> [The applicant] says he left the psychologist's office yesterday and went to the barracks and "couldn't take it" and took a fan cord and wrapped [it] around his neck. This is however not seen as a suicide attempt. This is clinically interpreted as a manipulative gesture [with] the very conscious goal to avoid training and subsequent service in the Coast Guard.

The psychologist diagnosed the applicant as suffering from malingering and the need to rule out passive/aggressive personality disorder and borderline personality disorder.

The applicant signed a medical entry stating, "If placed in DHE today, [with] the expected recommendation of discharge from the USCG, I will not act out or perform any suicidal gestures."

On July 6, 1993, the psychologist and the applicant's treating physician advised the applicant that a recruit evaluation board would be held to determine whether the applicant should be discharged. The recruit evaluation board met and recommended that the applicant be discharged due to malingering and gingivitis, which existed prior to his enlistment.

On July 8, 1993, the applicant was notified that he would be discharged with a general discharge, by reason of unsuitability due to inaptitude, with an RE-4 reenlistment code. The applicant signed a statement acknowledging the discharge, and

expressing his decision not to consult an attorney or to write a statement in his own behalf.

On July 9, 1993, the applicant was discharged from the Coast Guard in accordance with Article 12.B.16. (unsuitability/inaptitude) of the Personnel Manual.

Discharge Review Board (DRB)

On March 28, 2001, the Commandant approved the DRB's recommendation to change the character of the applicant's discharge from general to uncharacterized, his RE-4 reenlistment code to an RE-3L, his separation code to JGA, and the reason for his discharge to Entry Level Performance and Separation. In recommending relief for the applicant, the DRB concluded that although the character and reason for the applicant's 1993 separation were appropriate and proper, they were not equitable. The DRB stated, "boot camp failures today are given Uncharacterized Discharge, under the authority of the 12.B.20 [of the Personnel Manual]."

Current Evidence Submitted by the Applicant

The applicant submitted a recent letter from a psychologist who evaluated the applicant on September 20 and 26, 2002. She stated that the applicant exhibited "a few traits of the cluster C (avoidant, dependent, obsessive compulsive, and passive aggressive) personality. . . . The behaviors exhibited by [the applicant] while in basic training are reminiscent of the anxious, resistive submissiveness typical of the cluster C personality." She stated that alternatively, these behaviors may have merely reflected the poor coping skills of a young man who found himself in an emotionally threatening situation. "At any rate, at this time, I do not see in [the applicant's] personality characteristics that are sufficient in number or intensity to meet the diagnostic criteria for any personality disorder." The psychologist further stated the following:

> Of greater concern to me are the events of 2000. It is my impression that the patient suffered a psychotic break in 2000 at a time when he felt overwhelmed and unable to cope . . . [T]hat year he suffered the loss of his sister, the threatened loss of his father, and the relationship with his mother was not one from which he could derive emotional support. Having experienced this psychological episode [the applicant] could appropriately be diagnosed with schizophreniform disorder, with good prognostic features. This diagnosis may be given when a person experienced at some time in his history a psychotic episode of more than

> one month but less than six months duration, from which that person has already recovered. Symptoms come on quickly and leave quickly; this appears to have been the case with [the applicant]. Currently, the depersonalization, ideal of reference, and auditory hallucinations that occurred for several months in 2000 are not present in [the applicant's] profile.
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> [The applicant] demonstrates a lot of strengths, including determination and perseverance, willingness to work, the absence of any proclivity toward violence, criminal activity, or substance abuse, and apparent good physical health. . . .
>
> I have described [the applicant's] psychiatric history and discussed what I see as his current emotional problems. In spite of some significant historical pathology and some remaining mental health issues, I believe his prognosis is good, and I do not see anything in the current picture that would prevent him from effectively serving in the Unites States Coast Guard Reserve. Based on currently available information, [the applicant] shows a promising potential to be able to function adequately in the Coast Guard or most any other career path he should select.

The applicant also submitted numerous statements from his family, friends, and employers, attesting to his character and excellent work and school habits.

VIEWS OF THE COAST GUARD

On February 25, 2004, the Judge Advocate (TJAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. He stated that the applicant failed to carry his burden proving that the Coast Guard committed an error or injustice in this case.

TJAG stated that 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). He stated that in this case the applicant offered no proof that the Coast Guard committed an error or injustice, and that the applicant's own submissions shows that the applicant still has significant mental health issues that should be carefully considered before any armed force enlists him.

TJAG stated that the Coast Guard acted appropriately in assigning the applicant an RE-3L reenlistment code, which does not prohibit the applicant's service in another branch of the armed forces. The RE-3L places any potential recruiter on notice to inquire in to the circumstances of the applicant's entry-level separation. TJAG stated

that to change the applicant's entry-level separation to an RE-1 would not only be contrary to Coast Guard regulations and procedures, but could actually create a situation dangerous to both the applicant and those serving along side him. TJAG stated that the applicant's package raises serious questions concerning his ability to function adequately in stressful environments. "Enlisting him without appropriate inquiry into this area would be unfair to both applicant and the service involved and runs the risk of creating, rather than correcting, injustice."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 1, 2004, 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.20.a. of the Personnel Manual defines an uncharacterized discharge as a separation for members who have fewer than 180 days of active service on the date of discharge and who demonstrate poor proficiency, conduct, aptitude or unsuitability for further service during the period from enlistment through recruit training. It also authorizes entry-level separations for members who "exhibit minor pre-existing medical issues not of a disabling nature which do not meet the medical/physical procurement standards in place for entry into the Service."

Article 12.B.20.c. states, "No discharge certificate will be issued to a member awarded an uncharacterized discharge. Only a DD-214 will be issued."

Separation Program Designator (SPD) Handbook

The SPD Handbook states that an entry level performance and conduct separation code is assigned when a member shows an inability, lack of effort, or failure to adopt to the military, or when there are minor disciplinary infractions during the first 180 days of active military service. The SPD Handbook does not authorize an RE-1 reenlistment code for a discharge by reason of entry-level performance and conduct. It only authorizes an RE-3L.

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 of this case pursuant to section 1552 of title 10 United States Code. The application was timely. An applicant has fifteen years from the date of discharge to apply to the Discharge Review Board (DRB) for an upgrade of his discharge. The applicant applied to the DRB approximately seven years after his discharge, and the DRB issued a final decision on March 28, 2001. According to Ortiz v. Secretary of Defense, 41 F. 3rd. 738 (D.C. Cir. 1994), the BCMR's three year statute of limitations begins to run at the conclusion of DRB proceedings. Under 33 CFR § 52.13, the applicant was required to exhaust his administrative remedies by applying to the DRB. Therefore, the applicant's BCMR application, received by the Board on August 18, 2003, was timely.

2. The applicant was discharged on July 9, 1993, with a general discharge, by reason of unsuitability (inaptitude), with a JMD separation code, and an RE-4 reenlistment code. On March 23, 2001, the Commandant, on recommendation of the DRB, changed the character of the applicant's discharge to uncharacterized, the reason for his discharge to entry level performance and conduct with the corresponding JGA separation code, and his reenlistment code to RE-3L (eligible for reenlistment, except for disqualifying factor: entry level performance and conduct). The applicant asked the BCMR to upgrade the RE-3L to an RE-1 so that he will be eligible to reenlist in the reserve without a waiver.

3. After reviewing the Personnel Manual and the SPD Handbook, the Board finds that an "uncharacterized discharge" by reason of entry-level performance and conduct is the most accurate description of the applicant's service at the time of his discharge. In arriving at this conclusion, the Board considered the applicant's refusal to participate in recruit training, his demand to be separated from the Coast Guard, and the fact that he served on active duty for only 18 days. His discharge pursuant to Article 12.B.20 of the Personnel Manual was appropriate.

4. The SPD Handbook authorizes only an RE-3L reenlistment code for a separation due to entry-level performance and conduct under Article 12.B.20. of the Personnel Manual. The RE-3L reenlistment code does not prevent the applicant's reenlistment, but requires him to obtain a waiver to do so. The applicant's recent psychological evaluation, which he submitted, supports the Commandant's decision that the applicant should only be able to enlist in the military after he has demonstrated to the satisfaction of appropriate authorities that he is mentally and physically suitable for military service. Moreover, the 18 days the applicant spent on active duty was an insufficient amount of time on which to judge whether he should be recommended for reenlistment without any restrictions.

5. The Board finds no error or injustice in the assignment of the applicant's RE-3L reenlistment code. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

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

William R. Kraus

Audrey Roh

Dorothy J. Ulmer