

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-096

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

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 BCMR docketed the case on April 15, 2004, upon receipt of the applicant's completed application and military records.

This final decision, dated January 13, 2005, 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—who received an honorable discharge for misconduct from the Coast Guard on April 14, 1989—asked the Board to correct his record to reflect that he was discharged, not for misconduct, but for being “unable to adapt to military life.” He alleged that he discovered this error in September 2003.

The applicant alleged that he has been diagnosed with bipolar disorder and major depression. He alleged that, while in the Coast Guard, he was never treated or diagnosed with any mental condition but that he has had these problems since he was a child. He alleged that in the Coast Guard, he “was treated with discontent due to the fact that the leadership didn't understand what [he] was going through.”

In support of his allegations, the applicant submitted a letter dated April 21, 2003, from a social worker at xxxxxxxxxxxx, a “psycho-social rehabilitation program” in xxxxxxxxxxxx. The social worker stated that the applicant “has a psychiatric history dating back to childhood” and that he became a member of Fellowship House in 1998.

She stated that he has been diagnosed with "Major Depression, recurrent, with psychotic features" and has been receiving counseling from her since February 6, 2002. The social worker stated that at nine years of age, the applicant witnessed his mother's attempted suicide and was put in foster care. He lived at xxxxxxxxxx, an institution for boys, in New York and, while there, was hospitalized for psychiatric reasons and prescribed Mellaril." She stated that he was regularly beaten and bullied and dropped out of high school in the 10th grade but completed his GED. She stated that at the time, he was unaware that he was suffering from "complex post-traumatic stress disorder" (PTSD). She stated that when he enlisted in the Coast Guard and began boot camp, his PTSD was exacerbated, and he "spoke to his 'chief' regarding his experiences and reactions in boot camp." However, he was provided no professional evaluation or treatment.

The applicant also submitted a letter dated March 17, 2004, from an advanced registered nurse practitioner, who wrote that the applicant had been seeking psychiatric care from a doctor since April 15, 2003, and that he had been diagnosed with "Bipolar Disorder with Mixed Features." She stated that he was taking Neurontin and Klonopin, and that he was first hospitalized for psychiatric reasons as a child in 1985.

SUMMARY OF THE RECORD

On December 7, 1987, when he was 20 years old, the applicant enlisted in the Coast Guard for four years. He admitted to having been arrested in xxxxxxxxxx in 1984 and given three years of probation for "joyriding in a stolen car." Upon completing boot camp, the applicant was advanced from seaman recruit (SR) to fireman apprentice and assigned to a cutter.

On April 19, 1988, the applicant was counseled about his lack of military bearing and "lack of respect for his fellow non-petty officers" while enrolled in the Coast Guard's "Basic Educational Enrichment Program." He was warned that continued misbehavior would lead to disenrollment. The next day, he was disenrolled for disobeying the rules and committing numerous violations since the day before.

On July 20, 1988, the applicant pleaded guilty in state court to filing a false report of a stolen vehicle and driving without a license on June 2, 1988. He was fined \$200 by the court and counseled by his Coast Guard superiors.

On September 15, 1988, the applicant was taken to mast for being absent without leave (AWOL) for two hours on August 24, 1988. He was awarded 30 days of restriction and 30 days of extra duties to run consecutively, with 23 days of each to be suspended for six months. The suspension was vacated on September 24, 1988, for disobeying a lawful order by watching television in the wardroom after taps on September 21, 1988.

On September 22, 1988, the applicant was counseled about his failure to shave.

On October 5, 1988, the applicant was taken to mast for having disobeyed a lawful order on September 21, 1988. As punishment he was reduced in rate to SR. In addition, he was counseled about his grooming, conduct, lack of respect for others, and need of supervision.

On October 6, 1988, the applicant was counseled about his "frequent involvement of a discreditable nature with civil and military authorities." He was placed on probation for six months and warned that further misconduct would lead to his discharge.

On November 2, 1988, the applicant crashed his car. The investigating police officer noted that he had been drinking but did not perform a blood alcohol content (BAC) test. The applicant was cited for driving with a restricted license and careless driving. While being treated for cuts on his face and chest at a local hospital, his BAC was determined to be 0.132. He was convicted of both misdemeanor charges on November 22, 1988.

On December 5, 1988, the applicant was counseled about failing to get a haircut, as ordered.

On January 3, 1989, the applicant was counseled about his "lack of care for his personal appearance" and lack of respect for his superiors.

On February 8, 1989, the applicant was taken to mast for having scratched his name on a control booth console, contrary to a direct order, and for trying to cover it up with spray paint on December 24, 1988; and for having failed to report for duty as ordered on January 17, 1989. He was awarded 45 days restriction to the cutter and 45 days of extra duty "to run consecutively."

On February 21, 1989, the applicant's commanding officer (CO) informed him that he had initiated action to separate him for misconduct with an honorable discharge. The CO noted that since being put on probation, the applicant had received two civilian convictions and a captain's mast. The applicant acknowledged in writing that he had been notified of the proposed discharge. He waived his right to submit a statement in his own behalf and stated that he did not object to being discharged. Moreover, he specifically asked to be discharged. On the same day, the CO forwarded to the Commandant his recommendation for the applicant's honorable discharge for misconduct due to frequent involvement of a discreditable nature with military and civil authorities.

On March 14, 1989, the Commandant ordered that the applicant be discharged for misconduct within 30 days in accordance with Article 12-B-18 of the Personnel Manual. On April 14, 1989, the applicant was honorably discharged by reason of misconduct with an RE-4 reenlistment code (ineligible).

VIEWS OF THE COAST GUARD

On August 17, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case. TJAG stated that the applicant's request should be denied due to untimeliness because he offered no explanation for his delay in submitting his application and because a cursory review of the record indicates that it lacks merit. TJAG argued that the applicant's discharge is amply supported by his record of misconduct.

TJAG adopted the facts and analysis provided in a memorandum on the case by the Coast Guard Personnel Command (CGPC). CGPC alleged that the applicant apparently never complained of mental problems while in the Service and received full due process in being discharged. In addition, CGPC noted that even if the applicant had a mental disorder, the disability statutes "do not preclude disciplinary separation." CGPC stated that disability evaluations are normally suspended if a member is being discharged for misconduct.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 18, 2004, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The applicant responded on August 23, 2004. He submitted a letter from a social worker from xxxxxxxxxxxxxxxx, who certified that the applicant lived in a group home from 1984 to 1987 and that on July 2, 1985, he was hospitalized as a result of having suicidal ideations. He also submitted a copy of a medical record dated April 15, 2003, which shows that he was being treated for bipolar disorder and has a long-standing mental illness.

APPLICABLE LAW

Under Article 12-B-18.b.(6) of the Personnel Manual in effect in 1989, the Commandant could direct a member's discharge for misconduct due to "frequent involvement of a discreditable nature with civil or military authorities." Under Article 12-B-18.c., prior to initiating such a discharge, the member's command was required to counsel the member and initiate a six-month probationary period. However, "commanding officers are authorized to recommend discharge at any time during the probationary period if the member is not making an effort to overcome the deficiency."

Under Article 12-B-18.e., members with less than six years of active service who were being recommended for an honorable administrative discharge due to misconduct were entitled to (a) be informed of the reason for the recommendation and (b) be afforded an opportunity to make a statement in writing.

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 after the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant alleged that he discovered the error in his record in 2003, which is apparently when he was diagnosed with bipolar disorder. Therefore, it appears that he accepted his discharge for misconduct as accurate and fair until he learned that he was suffering from a mental illness and may have been suffering from mental illness while in the Service. The preponderance of the evidence in the record indicates that the application was filed within three years of the date the applicant discovered the alleged error in his record. Therefore, although the application was filed approximately fourteen years after his discharge, it was timely in accordance with 10 U.S.C. § 1552(b).

3. The applicant alleged that he was mentally ill while in the Coast Guard and should have been discharged for being "unable to adapt to military life," instead of for misconduct. However, while the applicant was clearly a troubled youth and once threatened to commit suicide as a teenager, there is no evidence in the applicant's record that he was diagnosed as mentally ill during his enlistment or unable to tell right from wrong and adhere to the right. Instead, his record contains documentation of a series of infractions reflective of consistent disrespect for authority and irresponsible behavior. The fact that fourteen years later he has been diagnosed with depression and bipolar disorder does not persuade the Board that the Coast Guard erred in holding him accountable for his misconduct in 1989. Absent evidence to the contrary, the Board must presume that a veteran's records are correct and that Coast Guard officials "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); 33 C.F.R. § 52.24(b). The applicant's record indicates that he received due process in being placed on probation and then discharged. The record also contains ample evidence of the "frequent involvement of a discreditable nature with civil or military authorities" that justified his discharge for misconduct under Article 12-B-18.b.(6) of the Personnel Manual. The Board finds that the applicant has not proved by a preponderance of the

evidence that the Coast Guard committed any error or injustice in discharging him for misconduct.

4. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Nancy L. Friedman

William R. Kraus

Eric J. Young