

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-005

xxxxxxxxxxxxxxxxxx.
xxxxxxxxxx, EM2 (former)

FINAL DECISION

AUTHOR: Hale, D.

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 October 3, 2005, upon receipt of the applicant's completed application and military records.

This final decision, dated June 29, 2006, 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, a former electrician's mate second class (EM2) in the Coast Guard, asked the Board to correct his military record by upgrading the character of service (general) on his discharge form (DD 214) to "honorable" so he can apply for education benefits under the Montgomery GI Bill. He was discharged on June 6, 2003, and his DD 214 indicates that he received a general discharge, an RE-4 reenlistment code (ineligible for reenlistment), a JFX separation code (unsuitable for service due to a personality disorder¹), and "Personality

¹ A "personality disorder" is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment." American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-TR)*, p. 685. Types of personality disorders include paranoid, schizoid, schizotypal, antisocial, borderline, histrionic, narcissistic, avoidant, dependent, and obsessive-compulsive. *Id.* "The diagnosis of Personality Disorders requires an

Disorder” as the narrative reason for separation, in accordance with Article 12.B.16. of the Coast Guard Personnel Manual.

The applicant alleged that he was improperly discharged for a personality disorder because he was subject to unnecessary scrutiny and “lack of compassion by naval doctors and others in command. I was not given a fair shake regarding my mental condition and was therefore not given the appropriate treatment, thus leading to the misdiagnosis, misunderstandings, and the like.” He added that “two years have elapsed since my career ended with the service, and during these months I have had plenty of time to go back and examine what went wrong, and how things could have been rectified in a more positive way, as you probably have heard the cliché hindsight is always 20/20.”

In support of his request for correction, the applicant also provided the following:

Over these last two years I have many times wished I could simply re-enter the Coast Guard and start over. I do miss the good parts of the service and remember how proud it felt to wear the uniform. I do honestly feel that I am in better mental health at this present day than I was two years ago, and feel like I could deal with those stressful situations differently and with more tact and self discipline than what was displayed in 2003. Some things in life are learned as one gets older, some would call it maturity . . . And I am being honest and sincere when I say I DO have remorse for the inappropriate acts that I committed, I DO have accountability, and I AM NOT narcissistic. If I was offered the opportunity of re-entry in the Coast Guard today, I would prove it.

SUMMARY OF THE RECORD

On August 22, 2000, the applicant enlisted in the Coast Guard for a term of four years. Between 2001 and May 2003, the applicant was involved in a number of unpleasant incidents and was disciplined on several occasions for a variety of offenses born of those incidents. The problems he experienced while in the Coast Guard were summarized by his commanding officer (CO) in a May 23, 2003, letter to the Coast Guard Personnel Command (CGPC) requesting the applicant’s discharge:

evaluation of the individual’s long-term patterns of functioning The personality traits that define these disorders must also be distinguished from characteristics that emerge in response to specific situational stressors or more transient mental states The clinician should assess the stability of personality traits over time and across different situations.” *Id.* at 686. The Coast Guard relies on the DSM when diagnosing members with psychological conditions. *See* Coast Guard Medical Manual (COMDTINST M6000.1B), Chap. 5.B.1.

In 2001, [the applicant] was involved in a civilian accident, a hit and run traffic accident & was cited for his leaving the scene of an accident. In the fall of 2002, [the applicant] lost his temper and threw a water bottle at a fellow crewmember then left the NESU [naval engineering support unit] without authorization — member received a verbal reprimand and was directed to [attend] anger management training. In February 2003, [the applicant] struck another petty officer (fellow team player) with his fist during a basketball game. [The applicant] was awarded NJP [non judicial punishment] at “CAPT’s Mast” — fined, 14 days extra duty, and a suspended reduction in rate. He was also directed back to anger management training. On 14 May the applicant verbally assaulted the ISC ESO [Integrated Support Command education service officer] (she felt her personal safety was threatened for not returning his phone call). He damaged (kicked & threw) a trash can outside the bldg., bent a road sign en route to the NESU building and put his fist through the windshield of the Cushman vehicle. He then walked outside the repair bay and threatened suicide and threatened to fight anyone that wanted to stop him. He was calmed down, ushered over to the clinic for treatment of his hand and the NESU and medical clinic command sent him over to Ports Naval Hospital for a mental health evaluation. [The applicant] was placed on report and the investigation (dated 21 May) has been returned to me (CO NESU) for disposition.

On April 7, 2003, a psychiatrist with the Naval Medical Center Portsmouth conducted an outpatient psychiatric evaluation of the applicant after his primary physician prescribed an antidepressant drug and recommended a psychiatric evaluation for “a more experienced opinion.” At the conclusion of the evaluation, the psychiatrist diagnosed the applicant with a depressive disorder, personality disorder, and moderate dissatisfaction with his job and the military.

For the evaluation period ending April 30, 2003, the applicant’s Enlisted Performance Form indicates that he received marks of 3 (below standard)(on a scale of 1 to 7) for communicating, directing others, working with others, developing subordinates, work-life sensitivity, setting an example, military bearing, integrity, loyalty, respecting others, and human relations. He received a mark of 2 (poor) for customs and courtesies and an “unsatisfactory” mark for conduct. He was not recommended for advancement.

On May 19, 2003, following the incident involving the applicant and the ISC ESO, his CO notified him that he was being referred for a command-directed mental health evaluation. The CO noted that before making this referral, he had consulted with the applicant’s health-care providers at the medical clinic and that they agreed the referral was in the applicant’s best interest. In making the

referral, the CO cited the applicant's September 2002 incident in which he [the applicant] threw a plastic water bottle at another member, the fight at the basketball game, and the May 2003 violent outburst with the ESO. The applicant signed the mental health referral form, thereby acknowledging that he read and received a copy of the document.

The applicant was evaluated on May 19, 2003, by a staff psychologist with the U.S. Navy, who noted that the applicant had previously been diagnosed with an adjustment disorder with depressed mood and partner relationship problems. She also noted in her report that the applicant "had prepared documentation showing that he had done homework to learn about getting an administrative separation." The psychologist stated that the applicant "has decided that he is unsuitable for a career in the Coast Guard. I concur with that view based on his poor judgment, poor temper control, and mood instability."

On May 22, 2003, the same Navy psychiatrist who conducted the evaluation on April 7, 2003, conducted a command-directed mental health exam of the applicant. She diagnosed him with a depressive disorder and a personality disorder with antisocial, narcissistic and borderline traits. She stated that she was initiating a recommendation that the applicant be discharged from the Coast Guard for unsuitability "due to the presence of a severe personality disorder" and that "the member manifests a longstanding disorder of character and behavior which is so severe that the member's ability to function effectively in the naval environment is significantly impaired and interferes with the member's performance of duty."

Also on May 22, 2003, the applicant's CO formally notified him that he was initiating his discharge under Article 12.B.16.b.2. of the Coast Guard Personnel Manual because his diagnosed personality disorder "requires that I request your discharge due to unsuitability." The CO stated that he was recommending a general discharge under honorable conditions, but that the final decision would rest with CGPC. The CO cited the following as justification for the recommended discharge:

You have had repeated outbursts of anger that have affected the good order and discipline of this command. Over the past two years you have been involved in (a) a traffic accident and did not properly pass information with the other driver or report the incident to the police, and (b) you assaulted other persons on three occasions. Specifically, in September 2002 you threw an object (water bottle) at a fellow crewmember and departed this command without authorization (reprimanded), in February 2003 you initiated an altercation during a basketball game (Mast proceedings and non-judicial punishment), and in May 2003 you verbally assaulted multiple persons, damaged multiple

pieces of government property, and threatened violence upon a number of crewmembers (Mast proceedings are pending).

In addition, the CO noted that the applicant admitted to having misrepresented his medical history while being processed for initial enlistment and purposely left out pertinent information concerning his mental health history.

The CO also notified the applicant that he was entitled to submit a statement on his own behalf. The record contains an endorsement signed by the applicant dated May 22, 2003, on which the applicant acknowledged the CO's notification of proposed discharge, waived his right to submit a statement, and waived his right to consult with an attorney. He also indicated that he did not object to being discharged from the Coast Guard.

On May 23, 2003, the CO recommended to CGPC that the applicant be discharged for unsuitability, based on his "violent displays and strong psychological evaluation recommending expedited discharge." The CO noted that the applicant "has been exceptionally disruptive to this unit and the ISC Portsmouth campus resulting in property damage, lost workdays for a civilian employee, and concerns for personal safety." The CO asserted that the applicant is "potentially dangerous to members of this command and others" and that he had been diagnosed with a depressive disorder, personality disorder, and antisocial, narcissistic and borderline traits.

On May 29, 2003, CGPC authorized the CO to discharge the applicant, in accordance with Article 12.B.16., no later than June 26, 2003, with a general discharge by reason of unsuitability.

On June 6, 2003, the applicant received a discharge characterized as "general" with an RE-4 reenlistment code, a JFX separation code, and a narrative reason for separation of "personality disorder."

Prior to filing his application with the Board, the applicant submitted a request to the Coast Guard's Discharge Review Board (DRB) for the same relief requested from the BCMR. On February 11, 2004, the DRB denied the applicant's request, stating that his discharge had been carried out in accordance with Coast Guard policy. On June 16, 2004, the Commandant reviewed the DRB's decision and approved its finding that the characterization of the applicant's service was proper.

VIEWS OF THE COAST GUARD

On February 13, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief.

The JAG relied on a memorandum from CGPC concerning the applicant's request. CGPC noted that the applicant's record reveals numerous instances of inappropriate conduct and that the violent nature of his offenses and his poor behavior substantiate the "general" character of service. CGPC also stated that the applicant did not provide any evidence that "his medical diagnosis or performance during his period of service were inaccurate or supersede his diagnosis." Moreover, CGPC noted that although the applicant alleged that he was improperly treated for his mental health condition, the record is replete with records indicating that the applicant received counseling and/or medical assistance from the Coast Guard. Finally, CGPC stated that the applicant did not object to his discharge nor did he elect to make a statement or seek the advice of counsel.

Although CGPC recommended denying the relief sought by the applicant, it did recommend that the Board correct a technical discrepancy on the applicant's DD 214. CGPC stated that item 24 of the applicant's DD 214 should indicate the character of service and not the type of discharge. Accordingly, it recommended that the Board correct the character of service on the applicant's DD 214 from "general" to "under honorable conditions."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 15, 2006, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The BCMR did not receive a response.

APPLICABLE LAW

Article 12.B.16. of the Coast Guard Personnel Manual provides that the Commander may authorize or direct the separation of enlisted members for a number of reasons, including diagnosed personality disorders.

Article 12.B.16.e. of the Personnel Manual provides that when discharging a member for a personality disorder, a general discharge is warranted if there is evidence of misbehavior, bad faith, or failure to make a proportionate effort having due regard for his or her rate and capabilities.

Chapter 5.B.2 of the Medical Manual lists personality disorders that qualify a member for administrative discharge pursuant to Article 12.B. of the Personnel Manual. Chapter 3.F.16.c provides that personality disorders “may render an individual administratively unfit [for duty] rather than unfit because of a physical impairment. Interference with performance of effective duty will be dealt with through appropriate administrative channels (see Section 5-B).”

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 in this case pursuant to section 1552 of title 10 of the United States Code. The application was timely.

2. The Board notes that the applicant is not contesting his discharge from the Coast Guard; he is only seeking a change in the character of service listed on his DD 214 so he can apply for education benefits under the Montgomery GI Bill. The record in this case indicates that the applicant was involved in several unpleasant incidents in which he failed to exercise emotional restraint and good judgment. The applicant's mental health was evaluated on several occasions by his physician and a psychologist, both of whom determined that he suffered from a personality disorder. After experiencing two years of the applicant's volatile temper during which the applicant verbally and physically assaulted several crewmembers and a civilian, his CO initiated a command-directed mental health referral to determine the applicant's mental fitness for continued service in the Coast Guard.

3. In response to the command-directed mental health evaluation, the applicant was evaluated by a Navy psychiatrist who had previously diagnosed him with a personality disorder. Following the command-directed evaluation, she determined that he continued to have significant behavioral problems and that his personality disorder was severe enough to warrant discharge from the Coast Guard. She noted that the applicant “manifests a longstanding disorder of character and behavior which is so severe that the member's ability to function effectively in the naval environment is significantly impaired and interferes with the member's performance of duty.”

4. The applicant's CO notified him that he was recommending his discharge from the Coast Guard, and the applicant waived his right to consult with an attorney and to submit a statement in his own behalf. He was subsequently discharged for unsuitability pursuant to Article 12.B.16. of the Per-

sonnel Manual and Chapter 5 of the Medical Manual. The RE-4 reenlistment code, JFX separation code, and narrative reason for separation of "personality disorder" shown on the applicant's DD 214 are fully supported by the applicant's diagnosis and history of misconduct. His general discharge was also correct in light of his numerous acts of violence. The Board finds that the applicant received all due process. He has not proved that the Coast Guard committed any error or injustice in awarding him a general discharge due to unsuitability.

5. The JAG and CGPC recommended that the Board correct a technical discrepancy in the applicant's record. CGPC noted that the applicant's character of service as shown on his DD 214 should be corrected to "under honorable conditions" instead of "general." The Board agrees.

6. In light of the applicant's record and the JAG's recommendation, the applicant's request should be denied. However, the Board should order the Coast Guard to make the technical correction described in Finding 5.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former EM2 XXXXXXXXXXXX, xxxxxxxxxxxx, USCG, for correction of his military record is denied, except that the Coast Guard shall make the following correction to his DD 214:

Block 24 of his DD 214 shall be corrected to show "under honorable conditions" as the character of service.

David Morgan Frost

James E. McLeod

Darren S. Wall