

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-106

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on March 18, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 22, 2009, 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, who was honorably discharged on June 24, 1980, after less than four months of active duty, asked the Board to correct the reenlistment code, separation code, and narrative reason for separation on his discharge form, DD 214. His DD 214 shows that he was discharged for "Unsuitability – Personality Disorders," under Article 12-B-16 of the Personnel Manual, with separation code JMB and reenlistment code RE-4 (ineligible to reenlist).

The applicant stated that "[s]hortly after arriving in Petaluma [to attend "A" School following boot camp], [he] learned that he had contracted genital herpes from his longtime girlfriend," who had been unfaithful. He told his father, hoping for reassurance, but was instead rebuked and chastised. His father told him that it was unlikely he could ever marry or have children because he was "diseased."

The applicant stated that because he believed his father's claim that his future was bleak, he went AWOL (absent without leave) on June 3, 1980, and took twelve over-the-counter sleeping pills in a suicide attempt on June 5, 1980. However, after taking the pills, he sought medical help and was admitted to a hospital.

The Coast Guard quickly punished the applicant at mast, reduced him in rank to E-1, and counseled him about drug abuse, although "recreational drug use was not his problem." On June 20, 1980, the applicant was notified that he would be discharged for unsuitability because of an

alleged lack of adaptability. No one warned him that he would be discharged because of alleged personality disorders, instead. The applicant alleged that he was never diagnosed with a personality disorder. Although he was seen by a psychiatrist once, that doctor never completed his evaluation. Therefore, the applicant argued, the narrative reason for discharge shown on his DD 214 is erroneous, contrary to regulation, and unfair. In this regard, the applicant alleged that having the phrase "personality disorders" on his DD 214 has plagued him ever since and barred him from progressing in various different occupations.

The applicant further alleged that contrary to his father's prediction, he has lived a productive and fruitful life. He has been married for fifteen years and has two children. He has earned two bachelor's degrees and one master's degree. He is a registered nurse and works primarily in the mental health field.

The applicant asked the Board to upgrade his narrative reason for discharge to "Secretarial Authority," with a corresponding separation code, and to upgrade his reenlistment code from RE-4 to RE-1 (eligible to reenlist). He argued that it is in the interest of justice for the Board to excuse the untimeliness of his application because he has suffered stigmatization and lost job opportunities as a result of the false diagnosis on his DD 214 for many years.

SUMMARY OF THE RECORD

On February 1, 1980, the applicant underwent a physical examination pursuant to enlistment on active duty. He admitted on his Report of Medical History that he had contracted a venereal disease, but denied suffering from any depression or excessive worry. He was found fit for enlistment.

On February 26, 1980, the applicant enlisted in the Coast Guard for four years. He was 18 years old. Upon completing boot camp in Alameda, California, he advanced from seaman recruit (SR/E-1) to seaman apprentice (SA/E-2), and was sent to "A" School in Petaluma, California, for further training.

From June 3 through 5, 1980, the applicant was AWOL from "A" School. On the evening of June 5, 1980, he was admitted to a civilian hospital. The emergency room records show that he had attempted suicide and was given Ipecac to vomit up the pills. He complained of excessive emotional stress and said he wanted to kill himself. He was released to military authorities the next day.

On June 13, 1980, the applicant was taken to captain's mast because he "had been AWOL for a period of 3 days in connection with a misuse of drugs." The applicant was counseled about drug abuse, reduced in rate to E-1, and referred to a psychiatrist for consultation on June 16, 1980.

On June 20, 1980, the applicant received the following notification of discharge:

1. You are hereby advised that you are being discharged from the U.S. Coast Guard by reason of unsuitability in accordance with [Articles 12-B-16(b) and (e) of the Personnel Manual] because of your general lack of adaptability. You are being given an honorable discharge.

2. You are afforded the opportunity to make a statement in writing in your behalf. You shall indicate your intention by completing the endorsement below.

The applicant responded by indicating that he understood the notification and that he did not desire to submit a statement on his own behalf.

On June 23, 1980, the applicant underwent a physical examination pursuant to his pending discharge. He admitted to the doctor that he had suffered recurrent bouts of depression during the past two years.

On June 24, 1980, the applicant was honorably discharged with a DD 214 showing that he was discharged because of "Unsuitability – Personality Disorders," with separation code JMB and reenlistment code RE-4.

On or about August 6, 1980, a psychiatrist and psychologist signed the following dictated medical record regarding the applicant:

This patient was initially seen on 17 June 1980 for evaluation for retention in the Coast Guard. He presented with a history of severe suicidal ideation and recent overdose for which he was hospitalized in a civilian hospital and then returned to CG jurisdiction. This OD was on OTC sleeping pills approximately 1 week prior to presentation. We spent the initial time talking about his situation and his desire not to be in the Service. This appears to be a very bright young man who currently relates to no one and finds himself ambivalent and confused about life. I plan to follow in an attempt to evaluate and help him work some of the feelings through.

Mental Status: This is an alert, oriented, fairly cooperative and verbal young man appearing his stated age. ... He is initially distrustful of me and the situation. Maintained poor eye contact. There is no evidence of intellectual deficit, psychotic disorganization, nor homicidal ideation. There is active suicidal ideation which I do not believe warrants hospitalization at this time. Mood and affect were anxious and mildly depressed. ... Insight incomplete and judgment very poor.

Impression: 1) Deferred until completion of evaluation (319.00)^[1]

Disposition: 1) FFD [fit for duty] re: Psychiatry
2) RTC [follow-up consultation] 0830 6/23/80
3) Given my work, home and beeper numbers in case of problems. Has agreed not to do anything without notifying me first. Command advised.

Addendum of 6/23/80: Received a couple of phone calls from patient, mother and command. Mother says that her son is "caught," but he had promised to keep this appointment which he did not. Command says that he made a complaint about my method of questions and I encouraged them to have him make a formal complaint and pointed out that I felt his getting angry at me was much healthier than taking his feelings out on himself. Command says that he is to be discharged

¹ Under the DSM, which is used by the Coast Guard in assessing mental illnesses, the number 319 denotes "Mental Retardation, with severity unspecified," which is contrary to the psychiatrist's finding that the applicant was "very bright" and had no "intellectual deficit." American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-R)*, p. 865. Therefore, the number 319 may be a typographical error. In this regard, the Board notes that the number for an "Adjustment Disorder with depressed mood" is 309.0; the number for an "Unspecified Mental Disorder (non-psychotic)" is 300.9; and the number for a "Personality Disorder, not otherwise specified" is 301.9. *Id.* at 862-65.

from Service in next few days. Hence, no RTC is feasible. I did not call father who saw him over this past weekend. Patient definitely should pursue counseling after service. Because of the above, evaluation was not completed.

VIEWS OF THE COAST GUARD

On July 28, 2009, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board grant alternative relief. In so doing, he adopted the facts and analysis provided in an enclosed memorandum prepared by the Coast Guard Personnel Service Center (PSC).

The PSC noted that the applicant was told that he was being processed “for discharge due to a general lack of adaptability,” but that his DD 214 shows “Unsuitability – Personality Disorders” as the reason for his separation. The PSC stated that the applicant’s “record does not support that he was diagnosed with a personality disorder. However, there is documentation regarding the applicant’s hospital admission and absence without leave.” The PSC concluded that in “the interest of justice given the lack of supporting documentation for the assignment of a personality disorder, the Coast Guard does not object to the following changes to the applicant’s DD 214.” The listed changes include a JVF separation code, an RE-3G reenlistment code (eligible for reenlistment with waiver), and “Condition, Not a Disability” as the narrative reason for separation, pursuant to Article 12-B-12 of the Personnel Manual, which authorizes discharges for the convenience of the Government.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 29, 2009, the Chair sent the applicant a copy of the advisory opinion and invited him to respond within thirty days. No response was received.

APPLICABLE REGULATIONS

Article 12-B-16(b) of the Personnel Manual in effect in 1980 (CG-207) authorized the Commandant to direct the discharge of an enlisted member for, *inter alia*,

- (1) Inaptitude. Applicable to those persons who are best described as inapt due to lack of general adaptability, want or readiness of skill, unhandiness, or inability to learn.
- (2) Personality disorders. As determined by medical authority, personality behavior disorders and disorders of intelligence listed in Chapter 5, CG Medical Manual (CG-294).
- (3) Apathy, defective attitudes, and inability to expend effort constructively. A significant observable defect, apparently beyond the control of the individual, elsewhere not readily describable.

Article 12-B-16(e) authorized the commanding officer of any training center to discharge a member with less than four months of active service for the reasons set forth in Article 12-B-16(b)(1).

Under Article 12-B-16(d), prior to recommending a member for such a discharge, the CO was required to notify the member of the proposed discharge; permit him to submit a statement on his own behalf; and, if a General discharge was contemplated, allow him to consult with an attorney.

Article 12-B-16(h) stated that when a psychiatric condition was a consideration in the discharge for unsuitability, the member should be examined by a psychiatrist who could either diagnose the member with a mental disability and refer the member to a medical board or, if there was no mental disability, complete an SF 502 form with a narrative summary describing the essential points of the mental condition and a statement averring that the member does not have a ratable disability.

Article 12-B-12 of the Personnel Manual authorized the Commandant to discharge members for the convenience of the Government in cases of, *inter alia*, demobilization, commissioning, repetitive absenteeism, conscientious objection, motion sickness, obesity, and

(12) Condition, not a physical disability, which interferes with performance of duty; e.g. enuresis [bedwetting] or somnambulism [sleepwalking].

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(17) When directed by the Secretary that any member be separated prior to the expiration of term of service, if the Secretary determines that such a separation is in the best interest of the Coast Guard.

COMDTINST M1900.4B, issued in 1979, governed the preparation of DD 214s in 1980. Chapter 2 of the manual lists the following separation codes, narrative reasons for separation, and reenlistment codes authorized for enlistment members, which could have applied to the applicant's discharge:

| SPD Code | Narrative Reason for Separation | Authorized RE Codes | Separation Authority |
|-----------------|---|--|-----------------------------|
| JMB | Unsuitability – Personality Disorders | RE-4 | 12-B-16 |
| JMD | Unsuitability – Inaptitude | RE-4 | 12-B-16 |
| JFV | Condition, Not a Disability, interfering with performance of duty | RE-3G, ^a RE-4, or RE-3X ^b | 12-B-12 |
| JND | Convenience of the Government | RE-R1, ^c RE-1, or RE-4 | 12-B-12 |
| JFF | Separation for other good and sufficient reasons when determined by the Secretary of Transportation | RE-R1, RE-1, or RE-4 | 12-B-12 |
| JHJ | Burden to command due to substandard performance or inability to adapt to military service | RE-4 | 12-B-12 |
| JHK | Substandard personal behavior which reflects discredit upon the Service or adversely affects the member's performance of duties | RE-4 | 12-B-12 |
| JPB | Personal abuse of drugs other than alcoholic beverages | RE-4 | 12-B-20 |

^a An RE-3G denotes someone who would be eligible for reenlistment except for a condition, not a disability, that interferes with his or her performance of duty.

^b An RE-3X denotes someone who would be eligible for reenlistment except for motion sickness.

^c The RE-R1 code is no longer used by the Coast Guard. It denoted someone who was not just eligible, but particularly recommended for reenlistment.

On December 3, 1979, the Commandant notified the commanding officer of the training center in Alameda, California, that recruits discharged for immaturity or academic inability could be assigned the RE-3G code, instead of the RE-4 code.

Medical Definitions

The Coast Guard relies on the American Psychiatric Association's DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-IV-R) when diagnosing members with psychological conditions.² Under the DSM-IV-R, 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."³ Types of personality disorders include paranoid, schizoid, schizotypal, antisocial, borderline, histrionic, narcissistic, avoidant, dependent, and obsessive-compulsive.⁴ "The diagnosis of Personality Disorders requires an 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."⁵

An "adjustment disorder" is "a psychological response to an identifiable stressor or stressors that results in the development of clinically significant emotional or behavioral symptoms. ... The clinical significance of the reaction is indicated either by marked distress that is in excess of what would be expected given the nature of the stressor or by significant impairment in social or occupational (academic) functioning."⁶ Adjustment disorders are normally temporary, as the symptoms last "no longer than 6 months after the stressor or its consequences have ceased."⁷ The common symptoms of adjustment disorders are anxiety, depression, and disturbance of emotions and conduct.⁸ Adjustment disorders are not personality disorders.⁹

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 over this matter under 10 U.S.C. § 1552(a). The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R.

² See Coast Guard Medical Manual, Chap. 5.B.1.

³ American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-R), p. 685.

⁴ *Id.*

⁵ *Id.* at 686.

⁶ *Id.* at 679.

⁷ *Id.* at 681.

⁸ *Id.* at 680.

⁹ *Id.* at 682.

§ 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice.¹⁰

2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. The applicant received his DD 214 showing that he was discharged due to “Unsuitability – Personality Disorders” with an RE-4 in 1980. Therefore, his application is untimely.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The court further instructed that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”¹¹

4. The applicant has long delayed seeking correction of the alleged error in his record. However, a cursory review of the record reveals significant merit in his claim, as explained below, and the JAG has recommended that the Board grant partial relief. Therefore, the Board finds that it is in the interest of justice to excuse the untimeliness of the application.

5. The Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.¹² Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”¹³

6. The applicant alleged that after he began training in Petaluma, he learned that he had contracted venereal disease from a longtime girlfriend and was so distraught about his future that he tried to commit suicide with sleeping pills. He alleged that he was never diagnosed by a psychiatrist with a personality disorder, much less more than one, but was quickly discharged for “Unsuitability – Personality Disorders” even though he had been told that he was being discharged for inability to adapt to the military. The record does not support the applicant’s claim as to why he went AWOL and attempted suicide. The Report of Medical History, which he

¹⁰ Under 10 U.S.C. § 1553(a), the Discharge Review Board has authority to upgrade veterans’ discharges only within the first 15 years from the date of discharge.

¹¹ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

¹² 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the “clear and convincing” evidence standard recommended by the Coast Guard and adopting the “preponderance of the evidence” standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

¹³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

himself prepared pursuant to his pre-enlistment physical examination, shows that he knew on February 1, 1980, before he enlisted, that he had contracted a venereal disease. In addition, the psychiatric note dated August 6, 1980, makes no mention of any problems with a girlfriend or diagnosis of venereal disease and instead indicates that the applicant attempted suicide because he was unhappy in the Coast Guard. The Board also notes that the applicant admitted in June 1980 that he had suffered from depression for two years, which he had denied upon inquiry during his pre-enlistment physical examination. However, the discharge notification dated June 20, 1980, strongly supports his claim that his command told him he was being discharged due to a general lack of adaptability, and the August 6, 1980, psychiatric note and the very rapidity of his discharge support his claim that he was not diagnosed with a personality disorder by a medical authority prior to his discharge, as was required for such a discharge under Articles 12-B0-16(b) and (h) of the Personnel Manual.

7. The applicant's discharge *per se* was not erroneous or unjust.¹⁴ Under Article 12-B-16(b)(1) of the Personnel Manual, members who did not adapt to military life could be separated for unsuitability in 1980, and this provision remains in the Personnel Manual today under Article 12.B.16.b.1. The applicant's attempted suicide and the psychiatric note dated August 6, 1980, show that he was not adapting well to military life. Moreover, he was given the opportunity to object to being discharged and chose not to.

8. The preponderance of the evidence, however, shows that the applicant's discharge was documented improperly. He was not diagnosed with a personality disorder, as indicated on his DD 214, and he was told he was being discharged due to a lack of adaptability. Because employers often demand to see veterans' DD 214s prior to hiring them, it is very important for DD 214s to be fair and not to unduly tarnish members' records without substantial evidence. In light of the highly prejudicial nature of a discharge by reason of "Personality Disorder(s)," the Board has often ordered the Coast Guard to correct the narrative reason on a DD 214 to "Condition, Not a Disability" or some other less prejudicial reason when the diagnosis of personality disorder was absent, uncertain, and/or not supported by inappropriate behavior.¹⁵ On the other hand, the Board has not removed the narrative reason "Personality Disorder" from the DD 214s of some veterans whose inappropriate conduct supported their diagnoses.¹⁶ In this case,

¹⁴ For purposes of the BCMRs under 10 U.S.C. § 1552, "injustice" is "treatment by military authorities that shocks the sense of justice." *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976)).

¹⁵ See, e.g., BCMR Docket Nos. 2008-127, 2007-221, 2005-082, 2005-045, 2004-044, and 2003-015.

¹⁶ See, e.g., BCMR Docket Nos. 2005-158, 2001-020, 2000-142, 1999-185, 1999-037, and 1998-099 in which the Board upheld the unsuitability and personality disorder discharges of, respectively, a veteran with numerous disciplinary infractions who was diagnosed with "personality disorder not otherwise specified, [with] borderline [and] dependent traits" and who had attempted suicide and frequently threatened suicide; a veteran who was diagnosed with a dependent personality disorder after going AWOL and committing various other disciplinary infractions; a veteran who was diagnosed with a borderline personality disorder and went to an historic tower, told a guard at the bottom that he was going to hang himself off the top with a dog collar and leash, and waited at the top until the police arrived; a veteran with numerous disciplinary infractions and performance problems in his record who was diagnosed by two psychiatrists with a borderline personality disorder; a veteran who frequently exhibited inappropriate sexual behavior while on duty over a two-year period and was twice diagnosed with "adjustment disorder with disturbance of conduct"; and a veteran who was twice arrested for indecent exposure and diagnosed with narcissistic personality disorder.

although the attempted suicide was clearly an indication of some mental problem, the psychological assessment and diagnosis were not completed prior to the applicant's discharge, and there is no way for the Board to know now whether the suicide attempt was caused by a personality disorder, difficulty with adapting/adjusting to military life, immaturity, or some other issue.

9. The applicant requested a discharge by reason of Secretarial Authority and an RE-1 reenlistment code. However, the Board is not persuaded that a member who went AWOL and attempted suicide should receive an RE-1 reenlistment code. On the other hand, given the applicant's current age, the Board is not persuaded that the RE-4 on his DD 214 continues to serve a useful purpose because he cannot reenlist in the Coast Guard in any case due to his age. Under COMDTINST M1900.4B, the possible combinations of narrative reasons for reenlistment and authorized codes are limited. Given all of the circumstances of this case, the applicant's request, and the Coast Guard's recommendation, the Board finds that it would be in the interest of justice to correct the applicant's DD 214 to show that he was discharged because of a "Condition, Not a Disability," pursuant to Article 12-B-12 of the Personnel Manual, with a JFV separation code and an RE-3G reenlistment code.

10. Accordingly, partial relief should be granted as described in finding 9, above. Moreover, the corrections should be made on a new DD 214, rather than on a DD 215 correction form, so that any future employer who may review the applicant's DD 214 will not be able to see the comment "Unsuitability – Personality Disorders."

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SR xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

- Block 25 on his DD 214 shall be corrected to show that he was discharged under the authority of Article 12-B-12 of the Personnel Manual (COMDTINST M1000.6A).
- Block 26 shall be corrected to show that he received the separation code JFV.
- Block 27 shall be corrected to show reentry code RE-3G.
- Block 28 shall be corrected to show “CONDITION, NOT A DISABILITY” as the narrative reason for separation.
- The Coast Guard shall issue him a new DD 214 reflecting these corrections, rather than issuing him a DD 215.
- The following notation shall be made in block 18 of the new DD 214: “Action taken pursuant to order of BCMR.”

Lillian Cheng

Francis H. Esposito

Janice Williams-Jones