

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-112

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 30, 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 January 14, 2010, 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 asked the Board to correct his record to show that on October 27, 1972, he received a medical retirement for post-traumatic stress disorder (PTSD),¹ instead of an administrative discharge for unsuitability as a result of a diagnosed personality disorder. He stated that he believes he was erroneously discharged for unsuitability because when he was transferred from a unit in Long Beach, California, to Cleveland, Ohio, his medical records were not forwarded to his new unit. In addition, he alleged that his medical records are all from Long Beach; that there are none from Cleveland; and that there is no report of his discharge physical in his

¹ Post-traumatic stress disorder (PTSD) is an anxiety disorder in someone who has been exposed to a traumatic event in which the person felt "intense fear, helplessness, or horror." The symptoms include recurrent recollections, dreams, or "flashbacks" of the event, intense distress upon exposure to cues that resemble an aspect of the event, avoidance of stimuli associated with the trauma, insomnia, increased startle response, feelings of detachment and estrangement, increased heart rate, outbursts of anger, and difficulty concentrating. PTSD symptoms usually occur within 3 months of the traumatic event, but the onset of PTSD may be delayed for years. American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION* (2000) (hereinafter "DSM-IV-TR"), pp. 463-68. The Coast Guard and the DVA consider PTSD a physical disability. See U.S. COAST GUARD, COMDTINST M6000.1C, *MEDICAL MANUAL*, Chap. 5.B.11.b.(4) (May 2006) (hereinafter "2006 MEDICAL MANUAL"); 38 C.F.R. § 4.130. PTSD did not appear in the diagnostic nomenclature of the DSM until 1980. Schnurr, Paula P., PhD, "PTSD and Combat-Related Psychiatric Symptoms in Older Veterans," *PTSD RESEARCH QUARTERLY* (National Center for PTSD, Winter 1991), p. 1. Before 1980, veterans with symptoms that would now likely result in a diagnosis of PTSD were diagnosed with "traumatic war neurosis," "combat exhaustion," "operational fatigue," "gross stress syndrome," or "psychoneurosis." *Id.* The diagnostic criteria for PTSD appear on pages 11 and 12, below.

file. The applicant alleged that he is still being treated for the medical conditions that caused his discharge in 1972, but he did not find out what his problem was until 1998, when he first applied for benefits for PTSD. He alleged that he “knew something was wrong but could not put [his] finger on it,” and many doctors diagnosed him with different things. The applicant stated that he has been awarded a 100% rating—70% for PTSD but 100% because of unemployability—from the Department of Veterans Affairs (DVA).

The applicant alleged that his DD 214 is also unjust because the reenlistment code prevents him from reenlisting and the “spin number” (separation code) prevents him from finding civilian work. He stated that after his discharge, he was unable to get medical attention and remained unemployed until 1977. Then, after his spin number and reenlistment code were corrected, he “began a career of failed jobs.” He stated that he was last employed in January 2008 and was recently released from a locked veterans’ psychiatric unit. The applicant asked to be compensated for the many years he “was unable to know [he] should have received treatment ... from the V.A. or Coast Guard.”

In addition, the applicant stated that the Board should waive its three-year statute of limitations in the interest of justice because his medical problems were covered up, no one helped him, he was not informed of his rights, and he was too young to ask questions.

SUMMARY OF THE RECORD

On September 11, 1970, the applicant enlisted in the Coast Guard for four years. He attended boot camp in Alameda, California. Upon graduating from boot camp on November 20, 1970, he was assigned to the CGC Glacier, which was homeported in Long Beach, California, as a seaman apprentice (SA/E-2).

On September 2, 1971, the applicant went to sick bay on the GLACIER, complaining of feeling hot and cold flashes, an increased heart beat, and insomnia. He was prescribed Benadryl.² He complained of the same symptoms the next day and was prescribed Valium.³

On October 8, 1971, the applicant was transferred to a shore unit in Long Beach on temporary orders. The orders were issued so that he would be available to testify at a court-martial. On October 10, 1971, the applicant went to an outpatient clinic at the U.S. Public Health Service Hospital in San Pedro, and complained of headaches and nervousness. He was prescribed Darvon.⁴

On October 20, 1971, a medical officer in Long Beach stated that the applicant had been prescribed Valium at the U.S. Public Health Service Hospital in San Pedro on October 18, 1971, and had gone to the Naval Hospital REPOSE Annex in Long Beach the next day and was again

² Benadryl, a brand name for the generic drug diphenhydramine, is prescribed for insomnia. Beers, Mark H., and Berkow, Robert, eds., *THE MERCK MANUAL OF DIAGNOSIS AND THERAPY* (17th ed., 1999) (hereinafter “MERCK MANUAL”), pp. 1410-13.

³ Valium, a brand name for the generic drug diazepam, is prescribed for insomnia and agitation. *Id.* at 1410-13, 1575.

⁴ Darvon, a brand name for the generic drug propoxyphene, is a weak opioid analgesic, or pain reliever. *Id.* at 1367.

prescribed Valium. The medical officer wrote that the applicant was taking an excessive amount of Valium.

On November 1, 1971, the applicant complained of anxiety and palpitations at the REPOSE Annex in Long Beach and was prescribed Valium.

On November 4, 1971, the applicant's Valium prescription was refilled at the REPOSE Annex.

On November 10, 1971, a psychiatrist reported the following:

The patient is a twenty-one year old, single Black, SA, USCG, who was seen today on a routine consultation referred from the REPOSE Annex for a two-month history of anxiety. I have had previous contact with this patient seeing him in the REPOSE Emergency Room one night for his usual symptomatology of chest pain, history of palpitations, anxiety, headaches, and numbness of hands and feet. The majority of this patient's difficulty appears to be related to a trial in which he is testifying at the present time regarding two of his shipmates who planted a bomb on his ship. While the patient was on the ship, he was threatened with being thrown overboard and still fears reprisal for his testimony. The patient describes himself as "nervous" all of his life and since he seems to have an inability to tolerate more than minimal stress anyway, being in a prolonged, moderate to high threatening situation I believe is responsible for the majority of his symptomatology. ...

DIAGNOSIS: (1) SITUATIONAL ADJUSTMENT REACTION (307.3).[⁵] (2) SCHIZOID PERSONALITY (301.2)[⁶]

RECOMMENDATIONS: The patient has a fairly low tolerance for stressful situations. Superimposed on his low stress tolerance has been a situational difficulty with a high degree of perceived personal threat. The psychological and physiological symptomatology that the patient is experiencing will probably continue until he is removed from this threatening environment. Both temporally and spatially, it would be advantageous if the patient could be transferred to another part of the country after his testimony, and he would be happiest in the Great Lakes area which would be nearer to his home. I have placed him on a tranquilizing medication with less sedative properties. Haloperidol 1MG, 3 X a day.[⁷]

⁵ Adjustment disorders are psychological responses to identifiable stressors that result in the development of emotional or behavioral symptoms. Adjustment disorders normally disappear within six months after the stressors disappear. DSM-IV-TR, at 679. The Coast Guard relies on the DSM when diagnosing members with psychological conditions. MEDICAL MANUAL, Chap. 5.B.1. Adjustment disorders are not considered physical disabilities by the Coast Guard and may be cause for administrative separation. *Id.*, Chap. 5.B.3. Adjustment disorders are now considered physical disabilities by the DVA only if they are chronic. 38 C.F.R. § 4.130.

⁶ 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." DSM-IV-TR, at 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 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." *Id.* at 686. Personality disorders are not considered physical disabilities by the Coast Guard or the DVA. 2006 MEDICAL MANUAL, Chap. 5.B.2.; 38 C.F.R. §§ 4.127 and 4.130.

⁷ Haloperidol is prescribed for severe agitation with psychosis and schizophrenia. The usual adult dosage is between 1 and 15 milligrams per day. MERCK MANUAL, at 1569, 1575.

On November 15, 1971, the applicant was prescribed Valium, and the doctor noted that he would “not be able to perform effectively until he is transferred.”

On November 16, 1971, a military psychiatrist sent the applicant’s command a note stating, “If it is feasible [the applicant] should be placed on sick leave for 3 – 4 weeks until the court-martial in which he is a witness is over. His anxiety is beginning to incapacitate him but hospitalization is not necessary.”

On December 4 and 7, 1971, the applicant was again prescribed Valium when he complained of nervousness. On December 7, 1971, the applicant returned to the GLACIER.

On December 10, 1971, the captain of the GLACIER recommended that the applicant be transferred across the country because he was suffering from “extreme anxiety” as a result of a “hostile environment” he encountered because of his testimony at a general court-martial.

On January 6, 1972, the applicant was transferred to Station Cleveland Harbor, which was part of Group Detroit.

On January 17, 1972, the applicant sought help for chest pain at the U.S. Public Health Service Hospital in Cleveland. Tests were run on February 1 and 11, 1972, and the applicant was referred to the U.S. Public Health Service Hospital on Staten Island for further evaluation

From February 15 to 18, 1972, the applicant was hospitalized at the U.S. Public Health Service Hospital on Staten Island for evaluation of a heart murmur. He was found fit for duty and returned to his unit in Cleveland.

On April 17, 1972, the applicant sought help for insomnia and was prescribed Librium.⁸

On June 13, 1972, the applicant sought help for nervousness and was prescribed Serax.⁹

On June 24, 1972, the applicant went to the emergency room at a Lutheran hospital in Cleveland complaining of nervousness and insomnia. The doctor noted that the applicant reported that he had no history of drug intake. The doctor prescribed chloral hydrate.¹⁰

On July 25, 1972, the applicant sought medical help for continuing nervousness. The doctor reported that the applicant appeared to be suffering from “Depression marked by anxiety & agitation.” He was referred for a psychiatric evaluation.

On August 18, 1972, the applicant was admitted to the U.S. Public Health Service Hospital on Staten Island for a psychiatric evaluation. On September 14, 1972, the Chief of the Psychiatry Department signed the following report about the applicant:

⁸ Librium, a brand name for the generic drug chlordiazepoxide, a type of benzodiazepine, is prescribed for insomnia and anxiety. *Id.* at 1410-13, 1518-19.

⁹ Serax, a brand name for the generic drug oxazepam, is prescribed for insomnia and anxiety. *Id.* at 1410-13.

¹⁰ Chloral hydrate is prescribed for insomnia. *Id.* at 1412.

HISTORY: This is the 2nd USPHS Hospital admission for this 22-year-old black male, US Coast Guard enlisted active EN-3, who is referred here for neuro-psychiatric evaluation of his fitness to serve in the Coast Guard. His referral is from the USPHS Out-patient Clinic in Cleveland, Ohio, where he was seen on several occasions for evaluation of his complaints of "nervousness and headaches"; these evaluations included a psychiatric evaluation (August 12, 1972) by a consultant psychiatrist which gave an impression of psychophysiological reaction (manifested by headaches) and passive-aggressive personality, with a further recommendation that he (the patient) should be considered for administrative discharge. See enclosures.

The patient states that he has had "bad nerves" for "a long time" but that his difficulty with keeping calm and his diminished impulse control have been increasing gradually since his enlistment in the Coast Guard 23 months ago, and particularly in the past 6 to 8 months. He feels that while working he is constantly under pressure, and has to exert great self-control to prevent his impulses from overcoming him and resulting in a fight; this has happened in the past, and the patient has on occasion found it difficult to stop fighting once he started—either in reality or in his fantasy life. These tensions and anxieties engendered by the stresses and strains of life in the military also manifest themselves in tension headaches (bitemporal) and depression, problems which have also increased in the past 6-8 months. For these reasons the patient feels unmotivated to work in the Coast Guard, and desires discharge from the Coast Guard, for which the present admission to this hospital was arranged. His work record and discipline record while in the Coast Guard have been unremarkable and uninspiring: he has generally been able to perform his work adequately, and has not had any specific disciplinary actions. He does feel that the arbitrary treatment which has been afforded him in the Coast Guard and his lack of interest in anything he has done while in the Coast Guard have been contributing to his present difficulties.

The patient denies an alcohol problem at the present time, and also denies illicit drug use.

PAST HISTORY: [The applicant grew up in a cohesive and supportive family in Columbus, Ohio, and lived there until he joined the Coast Guard. The applicant said he had had numerous disciplinary problems in high school and joined the Coast Guard to avoid being drafted into the Army.]

In general his response to stress in the military has been much like that in school and in life generally, i.e., to attempt to withdraw from difficult situations rather than to attempt to deal with them.

In addition to this psychiatric history, the patient was hospitalized at this hospital in February of this year for evaluation of a systolic murmur (which had been noted on routine physical examination); this evaluation revealed the murmur to be clinically insignificant.

MENTAL STATUS SCAN: Revealed an alert, oriented (to time, person, place, and circumstance), cooperative black male in no acute distress. His speech (flow, content and language) were within normal limits; he exhibited no hallucinations, delusional material, or suicidal or homicidal thought content. His calculations and reversals were performed adequately; proverbs were interpreted rather concretely. In general, he delivered his story in a rather quick, effortless, and superficial manner. He gave no complaints of headache during the examination.

PHYSICAL EXAMINATION: Revealed a well-developed, well-nourished small black male in no acute distress. Vital signs were within normal limits. The rest of the physical examination was unremarkable with the exception of a 3/6 systolic ejection murmur at the apex radiating to the aortic area and to both carotids, as has been noted in his previous admission to this hospital.

LABORATORY DATA: Admission CBC and urinalysis were unremarkable. VDRL was non-reactive. SMA 12/60 profile, electrolytes and creatinine were within normal limits. Chest x-ray examination revealed "negative chest."

HOSPITAL COURSE: The patient was admitted to the open ward, and throughout his hospitalization never presented any difficulties in terms of management or socializations in the ward. He

made friends rather quickly, and availed himself of the occupational therapy facilities of this hospital, and generally seemed to enjoy his stay here. With regard to his performance at occupational therapy, the following quote (from an OT progress report) is relevant: "Patient works well with his hands, is doing a wood carving relief and seems to work off hostility with mallet and chisel. Works well but is easily distracted by other patients when the carving becomes tedious." During several interviews with him, the possibility of staying in the Coast Guard came up, an idea which he did not like at all. In addition to his general complaints about the arbitrary treatment from superiors in the Coast Guard, the patient stated that he objected to having to work extended hours, weekends, and nights although "if I could get a 9-5 desk job in the Coast Guard then I would stay in." As we discussed this further, it continued to become more and more apparent that if he did stay in the Coast Guard with any but the sort of job that he wanted, these continuing difficulties (described above) would recur. Again, every time this possibility was mentioned the patient stated that he did not feel that he would "make it" the remaining two years of his enlistment if he had to return to his previous unit.

The question of his headaches came up on several occasions and the consensus seemed to be that those were related to tension at his work. In addition, although he never presented any disciplinary difficulties while in the Coast Guard, the case did not seem to be of an individual who simply had no aggressive impulses, but rather of an individual who was able to control them out of fear of retaliation should he lose his temper and his ability to control his impulses.

The gist of the final interview was that the patient would prefer to have a discharge from the Coast Guard rather than to try to "stick it out." This is certainly in keeping with all of his other statements regarding his staying in the Coast Guard, and again was delivered in a superficial and lackadaisical manner.

IMPRESSION: Immature personality disorder 301.9^[11]

CONDITION: Unchanged

PROGNOSIS: For continuation in the Coast Guard – poor.

SUMMARY AND CONCLUSION: This is a 22 year old black Coast Guardsman who has a rather uninspiring record while in the Coast Guard, and that whereas he has had no severe disciplinary difficulties on the one hand, on the other he has certainly done nothing to distinguish himself. As noted above, the patient has a long history of impulsive behavior and inability to respond to stress, and the feeling that one gets from the interviews with him is that he is a rather bland and passive individual who has always had difficulties standing up to stresses and strains of life and is now having particular difficulties with these problems in a military setting. In general, his response to stress in the military has been much like that in school and in his life generally. That is, to attempt to withdraw from them rather than to have to deal with them. Again, although he has done nothing specific to hasten eagerly his separation from the service, it is very doubtful at this point whether he would be able to last for another 2 years while in the Coast Guard, and it is even more doubtful whether continuation in the service would be of benefit either to him or to the service. Therefore it is the feeling of the psychiatric staff of this hospital that the patient be separated from the service.

RECOMMENDATIONS: 1. Because the patient suffers from a primary inherent personality defect which is not secondary to any disease or injury and existed prior to entrance into the Coast Guard, he is at present unsuitable for further military service.

2. There are no disqualifying physical or mental defects which are ratable as a disability under the standard schedule for rating disabilities in current use by the Veterans Administration.

¹¹ Immature personality disorder (301.9) now falls under personality disorder NOS (not otherwise specified) (301.9). DSM-IV-TR, at 729.

3. The patient was and is mentally responsible both to distinguish right from wrong and to adhere to the right and has the mental capacity to understand the action being contemplated in his case.
4. It is recommended that the patient is not fit for duty pending administrative separation from the Coast Guard.

DISPOSITION: Patient is discharged psychiatrically not fit for duty in the Coast Guard, with recommendations as noted above.

On September 28, 1972, Commander, Group Detroit notified the applicant in writing that the command intended to recommend that he be discharged by reason of unsuitability because he had been diagnosed with an "immature personality disorder." He advised the applicant that he was entitled to submit a statement in his own behalf. The applicant signed an acknowledgement of the notification and declined to submit a statement.

Also on September 28, 1972, Commander, Group Detroit recommended to the Commandant that the applicant be administratively discharged by reason of unsuitability because he had been diagnosed with an "immature personality disorder, 301.9," which existed prior to the applicant's enlistment in the military.

On October 11, 1972, the Commandant ordered that the applicant be discharged for unsuitability under Article 12-B-10 of the Personnel Manual with separation code 265.

On October 27, 1972, the applicant signed a form terminating his Coast Guard health record and noted that he agreed with the findings of the doctor who examined him on August 18, 1972. The applicant noted that he did not desire to submit a statement in rebuttal of the doctor's findings.

Also on October 27, 1972, the applicant was honorably discharged pursuant to Article 12-B-10 of the Personnel Manual. His DD 214 shows that he received separation code 265 and reenlistment code RE-4 (ineligible to reenlist). The applicant's proficiency marks were all above 3.0 (out of 4.0) and his conduct marks were all 4.0.

A DD 149 form in the applicant's record indicates that he submitted an application to the BCMR in 1977 to have his spin number changed. (The applicant indicated in his application that the spin number and reenlistment code had been corrected by a board. However, there is no evidence of a decision by either the Discharge Review Board or the BCMR in his record, and the DD 214 in his record bears the 265 spin number and RE-4.)

DVA records show that the applicant received Veterans Educational Assistance Program (VEAP) benefits from the Veterans' Administration from 1974 until January 1978, when he married. He also sought treatment at a Veterans' Administration outpatient clinic in January 1975. His educational benefits were renewed on November 19, 1980.

In September 1989, the applicant was hospitalized for an acute psychotic state with religious delusions and hallucinations. He was diagnosed with a “brief reactive psychosis,” prescribed Haldol,¹² and treated on an outpatient basis.

In November 1990, the applicant was again hospitalized in an acute psychotic state. He came to the hospital with five bibles and claimed that Jesus was speaking to him and that people were trying to hurt him. The hospital report shows that the applicant’s diagnosis was paranoid schizophrenia and he had been taking Haldol and Cogentin.¹³

On June 25, 1998, the applicant filed a claim for benefits with the DVA. In a letter, he stated that he started receiving psychiatric care after the GLACIER was firebombed and he received threats. The applicant wrote that “[a]fter being discharged from the Coast Guard, I started having dreams of the event; acting and feeling as if the event was recurring through hallucinations.” The applicant told the examiner that for several years after his discharge, he frequently went to hospital emergency rooms seeking Valium or Librium and “stayed drunk.” He “drank heavily from 1972 until 1989.”

On October 6, 1998, the DVA denied service-connection for PTSD and bipolar disorder. The DVA stated that there was “no confirmed diagnosis” of PTSD and noted that the applicant had been diagnosed with a situational adjustment reaction and immature personality disorder on November 9, 1971, and with an immature personality disorder on September 14, 1972, which were not ratable disabilities; that he had been found mentally competent; and that he

had no desire to remain on active duty due to the requirement of working extended hours, weekends and nights. The veteran had two years remaining on his original enlistment and stated that he would not “make it” those remaining two years if he had to return to his previous work. The examiners felt that it was doubtful whether continuation in the service would be of benefit either to the veteran or the service. The veteran was discharged from the Coast Guard psychiatrically not fit for duty on 10-27-72. The personality disorders shown in service are not considered disabilities for VA compensation purposes.

The DVA also noted that there was no medical record of the applicant having been diagnosed with a psychosis during his military service or during the year after his discharge. He was first treated for a psychosis in September 1989, which was “too remote from the period of active service to establish a factual basis for the grant of service connection.”

On March 14, 2006, the applicant filed a claim for benefits with the DVA in which he wrote the following:

I, [the applicant], give you this information to aide in helping to show and state my condition. First the cover-up of my DD 214 with the spin number. The nights I wandered the street because I could not get rest. I visited emergency room after emergency room in hope to get Valiums or Librium or Haldol to get rest. After the attempted bombing of the Glacier and the threats on my life by [name deleted] something or other. I do remember [name deleted] built the bomb. No one

¹² Haldol is a brand name of the generic drug haloperidol is prescribed for severe agitation with psychosis and schizophrenia. MERCK MANUAL, at 1575.

¹³ Cogentin is a brand name of the generic drug benztropine mesylate, which is prescribed to reduce muscle spasms and tremors. MERCK MANUAL, at 1469.

inform[ed] me I would be entitled to these benefits until 1998 when I [was] still going thru problems. I can be successful at a job. I have held only to steady jobs and the first one came after the spin number was removed and the Senator stamped PE-60 on my DD 214. Dr's only know what I tell them. I stated to the doctors in the Service and they tried to make it sound like anything but PTSD and schizophrenia.

DVA reports indicate that the applicant had been under regular psychiatric care for about two years and had previously been diagnosed with various physical and mental conditions, including bipolar disorder, schizophrenia, anxiety, personality disorder not otherwise specified, which was noted to be compatible with his previously diagnosed immature personality disorder, depression, past drug and alcohol abuse, and PTSD. Of all his diagnosed mental conditions, only the PTSD was found to be a service-connected disability. According to a DVA examiner, the applicant described the trauma that allegedly caused his PTSD as having two shipmates firebomb the GLACIER by setting a bomb on top of a recently filled jet fuel tank near the helicopter pad. The applicant was assigned to fire billet duties, and when his team arrived to extinguish the fire, someone yelled "bomb." He dropped his fire hose and ran for his life off the ship, which was in port. The applicant testified at the crewmates' court-martial and identified the one who built the bomb and put it on the jet fuel tank. He received threats because of his testimony and thereafter suffered insomnia and anxiety, for which he was prescribed Valium and Librium. After he was transferred to Station Cleveland Harbor, he began to drink and to seek treatment at hospitals.

On August 3, 2007, the DVA awarded the applicant a 30% disability rating for service-connected PTSD. The DVA stated that service connection had been granted because the applicant had proved that an in-service stressor occurred; because the applicant was treated for psychiatric symptoms that appeared to be related to the stressor; and because the applicant stated that he had suffered "recurring nightmares and sweats" since the stressful incident. On April 7, 2008, the DVA increased the disability rating to 50%. On October 3, 2008, the DVA increased the applicant's disability rating for PTSD to 70% and awarded him a 100% rating for unemployment retroactive to January 19, 2008, when he was fired from his last job.

A copy of the applicant's resume in his DVA file shows that he worked as a youth leader for the Ohio Department of Youth Services from 1977 to 1985; as a youth coordinator for St. Vincent Family Centers from 1985 to 1990; as a Columbus Public Schools custodian from 1986 to 1996; as a youth leader in the Ohio Youth Advocate Program from 1996 to 1997; as a residential specialist for the disabled in Franklin County from 1997 to 1998; as a juvenile detention officer in Franklin County from 1998 to 2000; as an intervention aide for Columbus Public Schools from 2000 to 2001; and as a youth supervisor and behavior specialist for St. Vincent Family Centers from 2000 to 2008.

VIEWS OF THE COAST GUARD

On August 11, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's requests.

The JAG stated that the application should be denied for untimeliness and lack of merit because the applicant was aware of his discharge status in 1972 and "has provided no rationale for failing to avail himself of the BCMR process in a timely manner." In addition, the JAG

argued, the applicant “has not provided a compelling reason based on the merits as to why the Board should waive the statute of limitations in his particular case.”

The JAG also adopted the findings and analysis provided in a memorandum on the case provided by Commander, Coast Guard Personnel Service Center (PSC). The PSC stated that the applicant’s military medical records contain no evidence that would support his allegation that he was entitled to medical board processing for a medical discharge or retirement. The PSC stated that there is no evidence of a diagnosed psychosis and that members diagnosed with PTSD today are treated and are not necessarily processed for medical separations. The PSC stated that the applicant’s request should be denied because his “symptoms did not present themselves until approximately 2005 [and] as such there is not redress within the meaning of the law.”

The PSC concluded that the applicant “has not substantiated an error or injustice with respect to the cause for discharge” because his military medical records show that he was separated because of a condition, not a disability. The PSC noted that members diagnosed with personality or adjustment disorders today are administratively, rather than medically, separated when their conditions interfere with their performance of duty.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the Coast Guard’s advisory opinion, the applicant stated that the reason he did not file his application sooner was that he “was unable to obtain [his] records due to a lie that was told about records being burned up in the fire at St. Louis, Mo.” However, in 2006, he attempted to get his records by calling his congressman, who helped him.

The applicant denied having any pre-existing mental condition when he enlisted in the service and noted that the report of his pre-enlistment physical examination does not reveal any psychiatric problems. He noted that although he had some typical teenage issues, he had no police record prior to his enlistment. The applicant also repeated his allegation that he did not receive a discharge physical examination and his allegations about the symptoms he has suffered since his discharge.

APPLICABLE LAW

Chapter 5-C-1 of the Medical Manual in effect in 1972¹⁴ (CG-294) states that Coast Guard members diagnosed with a personality, character, or behavior disorder should be considered for administrative discharges under Article 12-B-10 of the Personnel Manual. The list of disorders includes insomnia, situational adjustment reaction, gross stress reaction, schizoid personality disorder, and immature personality disorder. Only members diagnosed with psychoses or psychoneuroses would be referred to a Board of Medical Survey for potential processing for a medical discharge or retirement under Article 17 of the Personnel Manual.

Under Article 12-B-10(a) of the Personnel Manual in effect in 1972,¹⁵ the Commandant could discharge a member for unsuitability if the member was diagnosed with a personality,

¹⁴ U.S. COAST GUARD, CG-294, MEDICAL MANUAL (1967).

¹⁵ U.S. COAST GUARD, CG-207, PERSONNEL MANUAL (Amend. No. 32, 1972).

character, or behavior disorder, alcoholism, chronic motion sickness, enuresis, or a defective attitude or inaptitude. Article 12-B-10(d) states that a member being discharged for unsuitability should be examined by a medical officer of the Public Health Service or the Armed Forces and by a psychiatrist if a psychiatric condition is involved. The psychiatrist should determine whether the member is mentally competent and/or has a mental disability ratable under the Veterans' Administration Schedule for Rating Disabilities (VASRD), in which case the member would be referred to a Board of Medical Survey. Under Article 12-B-10(e), a member being recommended for an unsuitability discharge who had less than eight years of military service was entitled to notice of the proposed discharge and the reasons therefore and an opportunity to submit a statement in his own behalf.¹⁶ (Members with more than eight years of service were entitled to a hearing before an Administrative Discharge Board.)

Under COMDTINST 1900.4, the instruction for preparing DD 214s, members discharged for unsuitability because of a diagnosed personality, character, or behavior disorder under Article 12-B-10 of the Personnel Manual in 1972 received separation code 265 and reenlistment code RE-4.

Article 17-A-1-(h) of the Personnel Manual in effect in 1972 states that “[e]ntitlement to disability retirement or separation arises only on a determination of physical unfitness to perform duties. It does not arise at the convenience of the member on the mere existence of a disability or a condition ratable under the Veterans Administration Schedule for Rating Disabilities.” Article 17-A-12(c) states, “The mere presence of physical disability or of a disability ratable under the Veterans Administration Schedule for Rating Disabilities, or the fact that the evaluatee is currently on the sick list or hospitalized, does not require a finding of unfitness for duty.” Article 17-A-1(b) states, “The fact that a member is determined to be unfit for duty while on active duty is not sufficient by itself to entitle him to disability retirement or severance pay. There must be a medical conclusion that this unfitness is due to a disability incurred while entitled to basic pay.” Article 17-A-10(a) states that “[t]he term ‘physical disability’ does not include such inherent defects as behavior disorders, personality disorders, primary mental deficiency, congenital or developmental defects, or developmental refractive errors of the eye.”

Under the Medical Manual in effect today, members are administratively separated (rather than medically separated) for diagnosed personality or chronic adjustment disorders that interfere with their performance of duty.¹⁷ PTSD, which was sometimes diagnosed as gross stress reaction before 1980, is now a ratable disability that may warrant processing under the Physical Disability Evaluation System.¹⁸ To be diagnosed with PTSD, the member must meet the following criteria:¹⁹

A. The person has been exposed to a traumatic event in which both of the following have been present:

¹⁶ Today, members who, like the applicant, have less than 8 years of military service and are diagnosed with personality disorders may also be administratively discharged for unsuitability under the Personnel Manual, and they receive the same right to notification and to make a statement. *See* U.S. COAST GUARD, COMDTINST M1000.6A, PERSONNEL MANUAL, Art. 12.B.16. (Change 41, 2007).

¹⁷ 2006 MEDICAL MANUAL, Chap. 5.B.

¹⁸ *Id.*, Chap. 5.B.11.b.; *see* Schnurr, note 1 above, at 1.

¹⁹ DSM-IV-TR, at 467-68.

(1) the person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others

(2) the person's response involved intense fear, helplessness, or horror. Note: In children, ...

B. The traumatic event is persistently reexperienced in one (or more) of the following ways:

(1) recurrent and intrusive distressing recollections of the event, including images, thoughts, or perceptions. Note: In young children ...

(2) recurrent distressing dreams of the event. Note: In children, ...

(3) acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, hallucinations, and dissociative flashback episodes, including those that occur upon awakening or when intoxicated). Note: In young children, ...

(4) intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event.

(5) physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event.

C. Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by three (or more) of the following:

(1) efforts to avoid thoughts, feelings, or conversations associated with the trauma

(2) efforts to avoid activities, places, or people that arouse recollections of the trauma

(3) inability to recall an important aspect of the trauma

(4) markedly diminished interest or participation in significant activities

(5) feeling of detachment or estrangement from others

(6) restricted range of affect (e.g., unable to have loving feelings)

(7) sense of a foreshortened future (e.g., does not expect to have a career, marriage, children, or a normal life span)

D. Persistent symptoms of increased arousal (not present before the trauma), as indicated by two (or more) of the following:

(1) difficulty falling or staying asleep

(2) irritability or outbursts of anger

(3) difficulty concentrating

(4) hypervigilance

(5) exaggerated startle response

E. Duration of the disturbance (symptoms in Criteria B, C, and D) is more than one month.

F. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

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 pursuant to 10 U.S.C. § 1552.

2. Under 10 U.S.C. § 1552(b), an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his military record. The appli-

cant received his unsuitability discharge in 1972 and first claimed to have PTSD in 1998. 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.”²⁰

4. Regarding the delay of his application, the applicant stated that his medical problems were covered up, no one helped him, he was not informed of his rights, and he was too young to ask questions. He also alleged that he “was unable to obtain [his] records due to a lie that was told about records being burned up in the fire at St. Louis, Mo.” There is no evidence, however, that any doctors or Coast Guard personnel “covered up” the applicant’s mental condition or that any Government official told the applicant that his records had been burned. In addition, the applicant clearly knew about the BCMR in the 1970s because he submitted an application form, and he knew he was entitled to medical care and benefits as a veteran because he visited a Veterans’ Administration clinic in 1975 and used his VEAP benefits for several years in the 1970s. The Board finds that the applicant’s explanation for his delay is not compelling because the record shows that he was competent to obtain employment and to assert his rights as a veteran for many years.

5. A cursory review of the merits of this case indicates that the applicant’s request for a 1972 medical separation and retirement benefits lacks potential merit. Coast Guard members were not in 1972, and are not today, medically separated from the Armed Forces just because they have a medical condition when they are separated.²¹ Medical discharges and retirements were and are received by members who are involuntarily separated because a diagnosed physical disability has rendered them unfit for continued military service.²² In this case, the

²⁰ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

²¹ U.S. COAST GUARD, CG-207, PERSONNEL MANUAL, Art. 17-A-1(h) (Amend. No. 32, 1972) (“Entitlement to disability retirement or separation arises only on a determination of physical unfitness to perform duties. It does not arise at the convenience of the member on the mere existence of a disability or a condition ratable under the Veterans Administration Schedule for Rating Disabilities.”); *Id.*, Art. 17-A-12(c) (“The mere presence of physical disability or of a disability ratable under the Veterans Administration Schedule for Rating Disabilities, or the fact that the evaluatee is currently on the sick list or hospitalized, does not require a finding of unfitness for duty.”); U.S. COAST GUARD, COMDTINST M1850.2D, PHYSICAL DISABILITY EVALUATION SYSTEM, Chap. 2.C.2.i. (May 2006) (hereinafter “PDES MANUAL”) (“Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render him or her unfit for military duty ... Such a member should apply to the [DVA] for disability compensation after release from active duty.”).

²² U.S. COAST GUARD, CG-207, PERSONNEL MANUAL, Art. 17-A-1(b) (Amend. No. 32, 1972) (“The fact that a member is determined to be unfit for duty while on active duty is not sufficient by itself to entitle him to disability retirement or severance pay. There must be a medical conclusion that this unfitness is due to a disability incurred while entitled to basic pay.”); *Id.*, Art.17-A-10(a) (“The term ‘physical disability’ does not include such inherent defects as behavior disorders, personality disorders, primary mental deficiency, congenital or developmental defects, or developmental refractive errors of the eye.”); PDES MANUAL, Chap. 2.C.2.b. (“The law that provides for disabil-

record shows that the applicant was discharged because of a diagnosed personality disorder, and personality disorders were not and are not considered physical disabilities by the Coast Guard or the DVA.²³

6. Although the applicant alleged that he suffered from PTSD in 1972, his records show that he first claimed to have PTSD in 1998 after many years of alcohol and drug abuse and hospitalizations for psychotic breaks in 1989 and 1990. Moreover, according to his DVA claim dated June 25, 1998, he started having dreams about the firebombing and threats—an important diagnostic criterion for PTSD²⁴—*after* being discharged from the Coast Guard. The applicant’s military medical records do not support his claim that he was discharged because of PTSD, symptoms meeting all the diagnostic criteria thereof,²⁵ or one of PTSD’s precedent diagnoses,²⁶ and these records are presumptively correct.²⁷

7. The applicant’s military medical records show that while on active duty he sometimes suffered from anxiety, insomnia, and headaches and was diagnosed with and treated for these conditions and for a situational adjustment reaction to receiving threats for testifying about a firebombing at a court-martial in the fall of 1971. He was also diagnosed in 1971 with a schizoid personality disorder and a systolic heart murmur, which was evaluated and found not unfitting in February 1972. However, the applicant was not discharged because of those conditions; he was discharged because of a diagnosed immature personality disorder based on the report of his medical evaluation at the U.S. Public Health Service Hospital on Staten Island from August 18 to September 14, 1972. The report of that evaluation shows that he received a physical examination upon his admission and was physically fit for duty but not psychiatrically fit for duty because of his immature personality disorder (301.9).

8. The applicant pointed out that he has received a 70% disability rating for service-connected PTSD from the DVA, as well as a 100% rating for unemployability. However, DVA ratings are “not determinative of the same issues involved in military disability cases.”²⁸ In addition, even assuming that the DVA is correct in determining that the applicant’s PTSD is service connected, a finding of service connection for PTSD does not necessarily mean that the member suffered from PTSD prior to his discharge because the onset of PTSD may occur years after the

ity retirement or separation (10 U.S.C., chapter 61) is designed to compensate members whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty.”).

²³ U.S. COAST GUARD, CG-207, PERSONNEL MANUAL, Art. 17-A-10(a) (Amend. No. 32, 1972); 2006 MEDICAL MANUAL, Chap. 5.B.2.; 38 C.F.R. §§ 4.127 and 4.130.

²⁴ DSM-IV-TR, at 468.

²⁵ *Id.*, at 467-68.

²⁶ Schnurr, note 1 above, at 1.

²⁷ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

²⁸ *Lord v. United States*, 2 Cl. Ct. 749, 754 (1983); *see Kirwin v. United States*, 23 Cl. Ct. 497, 507 (1991) (“The VA rating [in 1986] is irrelevant to the question of plaintiff’s fitness for duty at the time of his discharge in 1978. Indeed, the fact that the VA retroactively applied plaintiff’s 100% temporary disability rating only to 1982, and not 1978, gives some indication that plaintiff was not suffering from PTSD at the time of his discharge.”); *Dzialo v. United States*, 5 Cl. Ct. 554, 565 (1984) (holding that a VA disability rating “is in no way determinative on the issue of plaintiff’s eligibility for disability retirement pay. A long line of decisions have so held in similar circumstances, because the ratings of the VA and armed forces are made for different purposes.”).

traumatic event.²⁹ Therefore, the fact that the DVA has recently assigned the applicant a 70% disability rating for PTSD does not prove that the Coast Guard erred in diagnosing him in 1972.

9. The applicant alleged that some of his medical records were lost and that he never received a pre-discharge physical examination. However, the records received from the DVA include medical records from the applicant's time in recruit training, from his service aboard the GLACIER and in Long Beach and Cleveland, and from his hospitalizations on Staten Island. In addition, the Staten Island hospital report dated September 14, 1972, shows that the applicant received a physical examination upon his admission to that hospital on August 18, 1972, and was also examined by a psychiatrist, as required by Article 12-B-10(d) of the Personnel Manual then in effect. Moreover, the applicant signed a form on October 27, 1972, agreeing with the findings of that physical examination.

10. The record indicates that the applicant received all due process with respect to his discharge proceedings in 1972. As required under Article 12-B-10 of the Personnel Manual then in effect, he was notified of the reason for his pending discharge on September 28, 1972, and afforded an opportunity to submit a statement, which he declined. These are the same rights that a member diagnosed with a personality disorder has today.³⁰ The Board finds that the applicant's claim that his failure to be medically retired and his receipt of an unsuitability discharge were erroneous and unjust lacks potential merit.

11. The applicant complained about his RE-4 reenlistment code, which made him ineligible to reenlist in the Armed Forces, and his "spin number" (separation code) 265, which denotes a discharge for unsuitability because of a diagnosed personality, character, or behavior disorder under Article 12-B-10 of the Personnel Manual. Although the applicant indicated that he believes his separation and reenlistment codes have been removed from his DD 214, they have not. The DD 214 in his official military record still bears these codes, and there is no DD 215 or other evidence of correction in his record. The RE-4 and separation code 265 are the codes that were assigned for members who, like the applicant, were being discharged because of a diagnosed personality disorder.³¹ The applicant has not shown that the codes are erroneous or unjust.³²

12. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

²⁹ DSM-IV-TR, at 466.

³⁰ U.S. COAST GUARD, COMDTINST M1000.6A, PERSONNEL MANUAL, Art. 12.B.16. (Change 41, 2007).

³¹ U.S. COAST GUARD, COMDTINST M1900.4, INSTRUCTIONS FOR THE PREPARATION AND DISTRIBUTION OF THE CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY, DD FORM 214, Encl. (2) (1973).

³² For the purposes of the BCMRs, "[i]njustice", when not also "error", is treatment by the military authorities, that shocks the sense of justice, but is not technically illegal." *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976). The Board has authority to determine whether an injustice exists on a "case-by-case basis." Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

ORDER

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

Donna M. Bivona

Evan R. Franke

James E. McLeod