

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 21-97

FINAL DECISION

Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on November 19, 1996, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated December 19, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Relief

The applicant is a former [REDACTED], pay grade E-4). He enlisted in the Coast Guard on September 8, 1981, and was discharged on July 8, 1996. He served 14 years, 10 months, and one day on active duty.

The applicant asked the BCMR to correct his Certificate of Release or Discharge from Active Duty (DD 214), and to grant him separation pay. He claimed that block 28 (narrative reason for separation) of his DD 214 should state "adjustment disorder" as the reason for his discharge instead of "personality disorder."

The applicant also asked the Board to grant him Temporary Early Retirement Authority (TERA) at grade E-5 and back pay from September 18, 1995. Alternatively, he asked for separation pay at grade E-5.

The applicant stated that he received non-judicial punishment (NJP) for sexual harassment in September 1995. The NJP reduced the applicant in rank from [REDACTED] (E-5) to [REDACTED] (E-4). He appealed the NJP on the ground that it was unfair, but his command rejected his appeal.

The applicant was scheduled for discharge in January 1996. His discharge was reviewed by an Administrative Discharge Board (ADB). The applicant stated that his commanding officer (CO) recommended his discharge on the basis of the NJP and the

The Chief Counsel asserted that the applicant's appeal of the NJP was rejected. He stated that there was no evidence from the applicant that his CO abused his discretion for imposing the NJP on the applicant for sexual harassment.

The Chief Counsel stated that the applicant "erroneously implies that his administrative discharge board was a forum for appeal of his nonjudicial punishment." He stated that "[w]hile the acts for which Applicant was punished may have been significant to the [ADB]'s recommendations, the legality or propriety of the nonjudicial punishment was not relevant to the issue before the [ADB]: whether Applicant should be discharged for unsuitability." The ADB did not make any findings regarding the applicant's non-judicial punishment. The Chief Counsel asserted that the applicant had "not shown that the nonjudicial punishment imposed upon him in 1995 was an error or injustice."

Applicant's Response

The applicant was sent a copy of the Coast Guard's recommendation and was encouraged to respond. The Board did not receive a response from the applicant.

RELEVANT REGULATIONS

Temporary Early Retirement Authority (TERA)

Under TERA, the Secretaries of the Army, Navy, Air Force, and Transportation are authorized to implement the temporary early retirement authority by substituting "at least 15" years for the existing "at least 20" years provided for in the retirement regulations of each of those military divisions.

According to Public Law 102-484 (Pub. L. No. 102-484, 106 Stat. 2315),¹ the Secretary of Transportation and the Secretaries of the other military departments are authorized to prescribe "regulations and policies regarding the criteria for eligibility for early retirement by reason of eligibility pursuant to [Pub. L. No. 102-484] and for the approval of applications for such retirement. Such criteria may include factors such as grade, years of service, and skill."

On January 16, 1996, the Coast Guard issued ALCOAST 007/96,² which implemented the TERA provisions. The Commandant stated in the ALCOAST that he was issuing a new provision because the existing programs were insufficient to meet the Coast Guard's "workforce" targets. Therefore, TERA was introduced as a "voluntary

¹ Section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (106 Stat. 2315) includes Public Law 102-484 (October 23, 1992). It was originally set out as a statutory note to title 10 United States Code, section 1293.

² An ALCOAST is a message distributed to all Coast Guard members.

program allowing military personnel the opportunity to retire with 15 to 19 years of active service."

Paragraph 2 of ALCOAST 007/96 stated that the ALCOAST "solicits applications for early retirement from officers and enlisted members who:

- a. Have completed at least 15 years of active duty prior to the requested retirement date;
- b. Have served at least 1 year in their current assignment as of the requested retirement date;
- c. Are regular commissioned officers, and have at least 10 years of active commissioned service; and
- d. Are enlisted members, and serve in the following rates: AD2, AD1, AT1, BMC, GM1, HS1, HSC, PA2, PA1, PAC, QMC, SKC, SS1, SSC, TC2, TC1, TCC, YN2, YN1, YNC."

The applicant's rate was MK at the time that ALCOAST 007/96 was released. MK was not listed as a TERA rate.

Paragraph 3 of ALCOAST 007/96 stated that "[s]ervice need will determine whether individual applications for early retirement are accepted."

Non-Judicial Punishment (NJP)

Chapter 1 of the Coast Guard Military Justice Manual (COMDTINST M5810.1C) provides the purpose and authority behind non-judicial punishment. Commanding officers are authorized to impose NJP on members of their unit at their discretion. See Article 1-A-2.a., (COMDTINST M5810.1C). NJP is intended to provide commanding officers with a means of maintaining discipline within their respective commands. See Article 1-B-1, (COMDTINST M5810.1C).

Separation Pay Eligibility

Commandant Instruction 1910.1 explains the provisions for "Eligibility of Regular and Reserve Enlisted Personnel for Separation Pay." Paragraph 4.d. of the instruction lists limitations on eligibility for separation pay. It states as follows:

- d. Limitations on Eligibility for Separation Pay. Members separated under the following circumstances are not eligible for separation pay:

* * * * *

(7) The member is separated for unsatisfactory Performance, unsuitability, or misconduct as specified in [Article 12 of the Coast Guard Personnel Manual]. (Emphasis in original)

Coast Guard Personnel Manual

Article 12-B-16 of the Personnel Manual addresses discharge by reason of unsuitability. Article 12-B-16.b(2) states that a member may be discharged by reason of unsuitability due to personality disorders, which are defined as follows:

(2) Personality disorders. As determined by medical authority, personality behavior disorders and disorders of intelligence listed in Chapter 5, CG Medical Manual, COMDTINST M6000.1.

Coast Guard Medical Manual

Article 5-B of the Medical Manual addresses "Psychiatric Conditions (Personality)" which warrant discharge in certain situations.

Article 5-B-3 of the Medical Manual defines adjustment disorders as follows:

3. Adjustment Disorders. These disorders are generally treatable and not usually grounds for separation. However, when these conditions persist or treatment is likely to be prolonged or non-curative, processing per Article 12-B-6, Personnel Manual, . . . is appropriate (e.g., inability to adjust to military life/sea duty, separation from family friends).

SUMMARY OF RECORD AND SUBMISSIONS

The applicant's military record contained five administrative remarks (page 7) entries that addressed the applicant's deficiencies in the areas of respecting others and controlling his temper. He also received low performance evaluation marks for displaying a poor temperament and showing disrespect to others.

Notification of Discharge

On September 25, 1995, the applicant's CO notified him that he was processing the applicant for administrative discharge. He stated that he based his decision to discharge the applicant on the applicant's medical evaluations and diagnoses of adjustment disorder and personality disorder.

On December 13, 1995, the CO requested authority to discharge the applicant from Coast Guard Personnel Command. In his request, he cited the applicant's behavioral problems and disciplinary problems, in addition to the diagnosed

personality disorders, as a basis for his decision. In paragraphs 7, 8 and 9 of his letter, the CO stated the following:

The "Coast Guard has afforded [the applicant] several opportunities to get his anger under control and has provided training in civil rights and human relations. He has also completed a 42 day inpatient treatment at [a medical facility] for alcohol dependency. . . . Despite the Coast Guard's very reasonable efforts, [the applicant] disregarded his [alcohol dependency] aftercare program, continued to act out his anger, and blatantly violated [Coast Guard policies].

Despite [the applicant's] sporadic positive performance, . . . his career has been continually marred by disciplinary action which has imposed an extensive administrative burden on the individual commands and the Coast Guard in general.

Given that his personality disorder . . . is aggravated by stress in the Coast Guard, I feel separation from the military service is in the best interests of [the applicant]. Separation is definitely in the Coast Guard's best interests given the well-documented history of performance, not all of which can be attributed to the personality disorder.

Applicant's Medical Record

The BCMR received the applicant's medical record from the VA on January 22, 1997. The applicant's medical record shows that between January 13, 1983, and October 11, 1995, the applicant was diagnosed with several personality traits that were consistent with various personality disorders. The ADB chronicled the applicant's diagnoses as follows:

January 13, 1983: Adjustment Disorder with Mixed Emotional Features and Work Inhibition; Mixed Personality Disorder.

February 22, 1983: Adjustment Disorder with Mixed Emotional Features and Work Inhibition; Mixed Personality Disorder

March 20, 1991: Borderline Personality Disorder

January 17, 1992: No diagnosis, but applicant self-referred himself to a medical facility after having interpersonal problems at his unit. The applicant's condition was attributed to alcohol dependence. The medical expert who evaluated the applicant stated that if the applicant's behavioral problems "should continue while [he was] sober, he may indeed have a personality disorder."

April 6, 1995: Borderline Personality Disorder. Applicant self-referred himself to a medical facility for evaluation after having interpersonal problems at his unit.

October 5, 1995: Adjustment disorder with depressed mood; Personality Disorder not otherwise specified, with borderline and dependent traits.

October 11, 1995: History of Borderline Personality Traits, but not diagnosed.

The applicant's record also shows that he was diagnosed as being alcohol dependent in February, 1991, and that alcohol rehabilitation was recommended. His record shows that he underwent alcohol rehabilitation at a military hospital for six weeks, and that his alcohol dependence "remains in remission."

Administrative Discharge Board (ADB)

The record also contained copies of the proceedings and findings of the ADB in its review of the applicant's discharge. The ADB documents also included materials from the applicant's military record which included five notices of NJP for the applicant's poor performance or behavioral problems, and several page 7 entries for good and bad performance. In its review, the ADB also found that the applicant had been "medically diagnosed on at least five different occasions with a history of personality traits consistent with various types of personality disorders."

As a result of its review of the applicant's records, the ADB concluded that the applicant had "an adjustment disorder and [was] unable to control his anger without continued counseling or intervention/assistance." The ADB stated that although the applicant had a "fair record of performance," his "personality traits and resultant behavior cause an undue burden upon his fellow Coast Guardsmen."

The ADB recommended that the applicant be discharged by reason of unsuitability. However, it stated that because the applicant had served for over two terms of enlistment, and because his personality traits had been identified by medical authorities in his first term of service, the applicant should be considered for discharge under the TERA.

On June 3, 1996, the final reviewing authority of the ADB determined that the applicant should be "separated in accordance with Article 12-B-16, Coast Guard Personnel Manual, COMDTINST M1000.6A with an Honorable Discharge by reason of Unsuitability due to a diagnosed adjustment disorder." The Commandant approved the applicant's discharge on June 10, 1996. The Commandant ordered that the applicant be assigned a GFX separation code and stated that block 28 "shall only indicate the

appropriate narrative reason for discharge found in the separation program designator [SPD] handbook." The narrative reason for discharge in the SPD handbook that corresponds with a GFX separation code is "personality disorder."

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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The applicant asked the BCMR to change his discharge to show that he was separated under the TERA at pay grade E-5. If that relief was unavailable, he asked to receive separation pay as an E-5 and to have the narrative reason for separation (block 28) on his DD 214 changed to state that the reason was "adjustment disorder."

3. The applicant's record shows that he received five NJPs for various offenses over his Coast Guard career, in addition to several negative and positive page 7 entries addressing his performance. He was evaluated by medical authorities several times over an approximate 12-year period for interpersonal problems and difficulty controlling his anger. He was also treated for alcohol dependence.

4. The applicant stated that his DD 214 should be corrected to reflect his discharge by reason of an adjustment disorder, pursuant to the finding of the final reviewing authority in the applicant's Administrative Discharge Board (ADB) decision. Currently, block 28 of his DD 214 says "personality disorder."

The applicant was ordered discharged by reason of unsuitability due to an adjustment disorder pursuant to Article 12-B-16 of the Coast Guard Personnel Manual. However, "adjustment disorder" is only a specific diagnosis in the general category of personality disorders. See Chapter 5-B of the Coast Guard Medical Manual.

The applicant was assigned a GFX separation code. The corresponding narrative reason for separation with that separation code is "personality disorder." There is no "adjustment disorder" narrative reason for separation. The applicant's DD 214 indicates the correct reason for discharge and the correct separation code.

5. The applicant asked the Board to grant him separation pay. Under the provision of COMDTINST 1910.1, the applicant is ineligible for separation pay because he was discharged by reason of unsuitability. Even if the Board were able to change the applicant's narrative reason for separation, he still would not be eligible for separation pay.

6. The applicant alleged that he should have been released under the TERA because of his approximate 15 years of active duty service. He asserted that the Coast Guard erred by not acknowledging the ADB's recommendation that he be granted separation under TERA.

Paragraph 2 of ALCOAST 007/96 listed the rates of enlisted members who were eligible for TERA. The applicant's rate, [REDACTED] was not listed. Accordingly, the applicant could not have been separated under TERA authority. The Coast Guard was not in error denying the applicant TERA.

7. The applicant alleged that he received an unfair NJP for sexual harassment during his period of active duty service. The issue of the validity of the applicant's NJP is not germane to his request for separation pay. The NJP in his military record has no bearing on the determination of separation pay eligibility. See COMDTINST 1910.1.

8. The applicant made no allegation that he should have been discharged by reason of a disability. Therefore, the Board will not address his statements regarding his achilles tendon injury.

9. There is no evidence in the applicant's record or in his submissions to support his assertion that his discharge was in error or that he should have received separation pay. The applicant's record shows a history of behavioral problems that inhibited his ability to perform in the Coast Guard. The Coast Guard is given broad authority in determining the suitability of an individual to be member of the military. See Wronke v. Marsh, 787 F.2d 1569, 1576 (Fed. Cir 1986). Based on the applicant's military record and medical history, the Coast Guard determined that the applicant was unsuitable for continued duty, and that his retention would be detrimental to the Service. The Service's decision to discharge the applicant was one that was purely within its discretion, which it properly exercised in the instant case.

10. Accordingly, the application should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of former [REDACTED]
[REDACTED] USCG, is denied.

