

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-169

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was docketed on August 25, 1999. The record was not complete, however, until September 21, 1999, the date the Board received the applicant's military record.

This final decision, dated August 17, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former ██████████; pay grade E-3) in the Coast Guard, asked the Board to upgrade his RE-4 (not eligible for reenlistment) reenlistment code so that he could enlist in the Army. He was honorably discharged, by reason of unsuitability, with a JMB (unsuitability/personality disorder) separation code.

The applicant was discharged on February 21, 1992, after having served one year, one month, and 21 days on active duty.

SUMMARY OF RECORD AND SUBMISSIONS

The applicant listed 1996 or 1997, as the time when he discovered the alleged error or injustice in this case. In the block that asked why the Board should waive the three year statute of limitations, the applicant stated as follows:

I did not file my correction application within any specified time of limitations because I knew not of the injustice that had already been bestowed upon my record. I was also never informed by any officer or entity of the government that there were such time limitations until I received the letter from [the Chairman of the BCMR] stating such.

The applicant stated that on or about January 6, 1992, he discussed his discharge with his commanding officer (CO). He stated that the CO told him that either he could either stay with the cutter and try to overcome his problem adjusting to sea duty or he could receive an honorable discharge and pursue a career in a non-sea-going military branch.

The applicant stated that he decided to accept the honorable discharge because he was afraid that his inability to adjust to sea duty might endanger his

crewmembers. He further stated that "I knew that if my mind was not in the game 100% of the time it could mean injury or death of a shipmate as well as the safety of the entire vessel."

The applicant stated that the CO never told him that he would never be eligible to reenlist in any other branch of the service. He stated that a yeoman told him that an RE-4 reenlistment code was not the worst reenlistment code and he could possibly join another branch of the service. Therefore, the applicant stated, he did not question the RE-4 reenlistment code.

The applicant stated that he did not know the real impact of an RE-4 reenlistment code until he tried to enlist in the Army. He stated that the Army recruiter told him that the RE-4 reenlistment code was the worst one possible. According to the recruiter further stated that he should not have received the RE-4 reenlistment code with an honorable discharge.

The applicant stated that he has matured since 1992, and he would be an asset to the Army. He stated that he has studied for two and one-half years at the University of [REDACTED]

Excerpts from the Applicant's Military Record

On December 23, 1991, the psychiatrist who evaluated the applicant, over several visits, gave the following diagnostic impressions of his condition:

Axis I: Adjustment Disorder, mixed Emotional features 309.28 . . .

Axis II: Personality Disorder not otherwise specified 301.90 primary diagnosis

Axis III: No medical problems

Axis IV: Psychological stressors - Moderate Sea Duty - Potential Discharge from Coast Guard

Axis V: Global Assessment of Functioning - Currently: 55 Moderate Symptoms Past Year: 65 Mild-Moderate Symptoms

The psychiatrist wrote in her report that the applicant had been briefly hospitalized for assessment of apparent suicidal ideation that came to the attention of the command through a letter the applicant had written to a former master sergeant. She stated that the applicant contended, however, that he was never suicidal. The psychiatrist made the following recommendation:

Given [the applicant's] intense feeling that he cannot tolerate the stresses of sea duty, I believe it would not be productive to force him to return to the ship. If alternative shore duty were a possibility, I believe [the applicant] could function in that role with the help of psychotherapy.

Since the Coast Guard enlistment requires sea duty, I believe [the applicant] should be administratively discharged as he would not be expected to function well at sea.

On January 6, 1992, the applicant was informed in writing by the CO that he had initiated action to discharge the applicant from the Coast Guard because of a personality disorder. The CO further informed the applicant that he could submit a statement on his own behalf, and that he could object to the discharge.

On January 6, 1992, in writing, the applicant acknowledged notification of the proposed discharge, indicated he did not object to his discharge from the US Coast Guard, and submitted a statement on his own behalf. The applicant's statement essentially stated that he wished his career in Coast Guard could have ended in a different manner. He did not object to the discharge in his statement.

On January 24, 1992, the Commandant approved the applicant's discharge by reason of unsuitability due to a personality disorder. At the time of his discharge, the applicant had received only one set of performance marks. The applicant's command recommended that he be given an honorable discharge.

Views of the Coast Guard

The Chief Counsel recommended that the Board deny relief in this case. The Chief Counsel asserted that the applicant's claim was untimely by five years. He stated that the applicant had knowledge of the RE-4 reenlistment code on February 21, 1992, the day he signed his DD Form 214. The RE-4 reenlistment code was listed on that document. The Chief Counsel stated that an application for correction of a military record must be filed within three years of the date the alleged error or injustice was or should have been discovered.

The Chief Counsel stated that if an application is untimely, the applicant must set forth reasons why it is in the interest of justice to waive the timeliness requirement. The Chief Counsel stated that the applicant has failed to provide any justification for his delay. The Chief Counsel argued that the Board must deny relief unless the applicant provides sufficient evidence to warrant a finding that it would be in the interest of justice to excuse the failure to file timely. He stated that in making this determination, the Board should consider the reasons (or lack of reasons) for delay and do a cursory review of the potential merits of the claim. Dickson v. Secretary of Defense, 68 F. 3rd 1396 (D.C. Cir. 1995). The Chief Counsel stated that the applicant failed to make a valid allegation that the Coast Guard committed either error or injustice in this case.

The Chief Counsel stated that the applicant has not proved that the Coast Guard failed to follow regulations when it discharged him. The Chief Counsel stated that no one has a right to remain in the armed forces unless a specific statute or regulation grants that right. He said that the applicant was accorded all of the rights to which he was entitled. The Chief Counsel stated that as an individual with less than eight years of service, the applicant was entitled to "(1) notice of the reason for administrative processing and his rights in the process; (2) opportunity to consult with counsel should a general discharge be contemplated; and (3) opportunity to make a written statement.

... The record establishes Applicant was provided notice of the discharge proceedings and that he availed himself of his right to submit a written statement."

The Chief Counsel stated that the Coast Guard complied with the unsuitability discharge requirements, pursuant to Article 12.B.h. of the Personnel Manual. In this regard, the Chief Counsel stated that the applicant was evaluated by a psychiatrist who prepared a narrative report of that evaluation. As required by the Personnel Manual, the narrative report in this case included the applicant's medical history, his physical and mental status examinations, diagnostic formulations and impressions, and recommendations. The Chief Counsel noted that the narrative report did not include a statement indicating that the applicant had "no disqualifying mental or physical defects which are ratable as a disability under the Veterans' Administration Schedule for Rating Disabilities", as contemplated by the Personnel Manual. He noted this was harmless error, however, because the narrative report noted that the applicant was physically "medically healthy." He stated that the applicant was diagnosed with a personality disorder, not a mental illness.

The Chief Counsel stated that the applicant has failed to prove the assignment of the RE-4 reenlistment code was in error or unjust. He further stated as follows:

Applicant was correctly assigned the Separation Program Designator (SPD) Code 'JMB' indicating unsuitability - Personality Disorders. COMDTINST M1900.4C, Chapter 2.C.3 (page 2-6). Furthermore, the corresponding reenlistment code for the JMB SPD Code is RE-4 unless RE-3G code¹ [footnote renumbered] is specifically authorized by Commandant. . . . The Commandant's discharge order authorized an RE-4 Reenlistment Code based on the permanent nature of Applicant's condition. . . .

The Chief Counsel stated that the psychiatric report indicated that the applicant's aversion to serving onboard ship would not be amenable to treatment; which is strong evidence that the condition is permanent. He stated that the applicant has not offered any evidence to rebut the permanency determination made by Coast Guard officials with respect to his condition. The Chief Counsel argued that the Board should not consider upgrading the applicant's reenlistment code absent a showing, to a reasonable medical probability, that the condition, for which the applicant was discharged was not permanent.

The Chief Counsel stated that the applicant's intention to serve in the U.S. Army rather than a sea service does not render his aversion to sea service irrelevant. As a member of the U.S. Army, the applicant would be susceptible to transport on Naval vessels and could very well be assigned to an afloat unit of the U. S. Army. The Chief Counsel stated that without more, there is no basis to change applicant's reenlistment code.

APPLICABLE REGULATIONS

¹ RE-3G indicates the member is eligible for reenlistment except for non-physical disability disqualifying factor interfering with performance of duty.

Article 12-B-16b. of the Coast Guard Personnel Manual states in part:

Discharges by reason of unsuitability are effected to free the Service of Persons considered unsuitable for further service. . . .

Article 12-B-16h. states as follows:

A member being considered for discharge by reason of unsuitability must have a physical examination. A medical officer of the Public Health Service or a medical officer of the Armed Forces may perform this examination. If not available in the local area, a contract physician may be used to perform the exam.

(1) When psychiatric considerations are not involved, the medical officer will submit a narrative summary on SF 502 in which the essential points of the mental and physical conditions of the individual are described. A statement will be included that there are no disqualifying mental or physical defects which are ratable as a disability under the Veterans' Administration Schedule for Rating Disabilities.

(2) When psychiatric considerations are involved, the medical officer should be a psychiatrist, when available. . .

(3) If it appears that existence of a mental or physical disability is the cause of unsuitability, a medical board will be requested.

Article 5-B 3. of the Coast Guard Medical Manual states as follows:

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-16, Personnel Manual, COMDTINST M1000.6 (series) is appropriate (e.g., inability to adjust to military life/sea duty, separation from family/friends).

Article 3-F-16.d. of the Coast Guard Medical Manual states as follows:

Adjustment Disorders. Transient, situational maladjustments due to acute or special stress do not render an individual unfit because of physical impairment. However, if these conditions are recurrent and interfere with military duty, are not amenable to treatment, or require prolonged treatment, administrative separation should be recommended (see Section 5-B). [Emphasis in original]

COMDTINST 1900.4C (Instructions for the Preparation and Distribution of the Certificate of release or Discharge from Active Duty) authorizes the assignment of an RE-4 reenlistment code for discharge by reason of unsuitability (personality disorder). An RE-3G may be assigned only when authorized by the Commandant.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions and military record, the submissions of the Coast Guard, and applicable law:

1. The BCMR has jurisdiction over this matter pursuant to section 1552 of title 10, United States Code.

2. The Board notes that pursuant to COMDTINST M1900.4C, either an RE-3G or an RE-4 could have been assigned in this case. However, the assignment of an RE-3G would have required the approval of the Commandant. Chapter 2 of COMDTINST M1900.4C.

3. Notwithstanding the fact that the RE-3G reenlistment code was not approved by the Commandant in this case, the Board is not persuaded, under the circumstances, that the RE-4 reenlistment code is appropriate. In this regard, the Board notes that the psychiatrist recommended that the applicant be discharged due to his inability to adjust to sea duty, not because his personality disorder prevented him from performing other military duties. Contrary to the Chief Counsel's assertion, the psychiatric report does not indicate that the applicant condition is permanent. In fact the report states that "[if alternative shore duty were a possibility, I believe [the applicant] could function in that role with the help of psychotherapy."

4. However, it would not be appropriate for the Board to upgrade the applicant's reenlistment code based on the record, since he has not provided any evidence that his condition has improved. Therefore, in the interest of justice, the Board will allow the applicant an additional four months to submit medical evidence showing that his personality disorder has improved and that he is capable of military service.

5. The application is untimely. The Board is unable to determine at this time whether it is in the interest of justice to waive the statute of limitations in this case for the reasons discussed above. The issue of timeliness will be reviewed when the Board takes up this case for further consideration based on additional evidence.

6. Accordingly, this application is dismissed without prejudice.

ORDER

The application of [REDACTED] [REDACTED] USCG, for correction of his military record is dismissed without prejudice. The applicant is given four months to submit medical evidence showing that his personality disorder has improved since 1992 and that he is capable of military service.

