

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**


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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2001-104**

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**FINAL DECISION**

 **Deputy Chair:**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The BCMR docketed this case on July 5, 2001, upon receipt of the applicant's completed application and military records.

This final decision, dated September 9, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**RELIEF REQUESTED**

The applicant asked the Board to correct her military record by removing "Personality Disorder" as the narrative reason for separation on her discharge form (DD 214) and by upgrading her separation and reenlistment codes. Her current separation code, JFX, indicates that she was involuntarily discharged due to a personality disorder. Her reenlistment code, RE-4, prohibits her from reenlisting. The applicant did not specify what other narrative reason for separation or codes she wants substituted for those on her DD 214. She also asked the Board to expunge "all incorrect and unsubstantiated records and documents."

**APPLICANT'S ALLEGATIONS**

The applicant alleged that she was initially quite successful in the Coast Guard. During boot camp, she was made company yeoman and had to keep track of 80 other trainees. She also qualified as a marksman.

The applicant alleged that one Friday night, about two months after she completed boot camp and reported to her first duty station, she was visiting in a friend's room, when X, a member whom she had never met before, began threatening suicide, "burst into a rage," and assaulted her friend and another member in the room. She ran out to find help, but X ran after her and screamed "I am going to kill you, [expletive deleted], you are going to die!" She finally found help and, although "shaken by [X's] threats," thought she "would be okay." The next morning, she was asked to give a factual account of the incident to an Intelligence Officer.

The applicant alleged that a week later, four members were at her apartment off-post, when one of them, Y, began yelling and punching her and the two others. She alleged that she had done nothing to provoke the assault but was struck in the face so hard that she "suffered a black eye and a facial bone fracture."<sup>1</sup>

The applicant alleged that about two weeks after the second assault, she was called to the office and presented with information concerning her rights. She checked a box indicating that she wanted to consult a lawyer and signed it. However, the investigator asked her why she wanted to consult a lawyer, told her he already had three others' statements, and encouraged her to make a statement. She "continued to ask for a lawyer." He then stated, "between you and me was there drinking involved?" When she responded "Yes, but ..." he interrupted her and said "You just gave your statement." She told him he had tricked her and said she would not speak again without consulting a lawyer. He left for about 15 minutes but then returned and "continued to interrogate and to accuse me." He told her that if she had not drunk three beers, the assault would not have happened and that she should choose different friends. Once again, she asked for a lawyer. She was sent to wait in another office, where a chief petty officer came in and asked why she wanted a lawyer. Thereafter, she was sent home and never given the opportunity to speak with a lawyer. The applicant argued that her interrogation should have ended when she asked for an attorney, but it continued. She alleged that she never withdrew her request for or waived her right to an attorney. She alleged that the investigator tried to coerce her into resigning.

The applicant alleged that, even though she was an innocent bystander and became a victim during these incidents, she was charged with violating Articles 134 and 92 of the UCMJ. She alleged that her command ostracized her and stopped mentoring her and helping her to qualify as a crewman. She was left behind on distress calls for no reason. The applicant alleged that she asked to be transferred to another unit, but her command refused. She alleged that she was "written up" in two negative administrative entries ("page 7s") for small, exaggerated offenses, such as not saluting during "colors," having a cell phone at work, and hanging up on a petty officer. Regarding the

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<sup>1</sup> The applicant alleged that although she was x-rayed after the assault, this hairline fracture was not discovered until after her discharge, when the DVA x-rayed it because it remained sore.

first allegation, she alleged that at her unit, everyone—especially the supervisors—would run inside to avoid saluting during “colors.” One day, she was outside without a cap during flag lowering, so she went into the boathouse and was reported. Regarding the cell phone, she alleged that her supervisor prepared a page 7 for this alleged infraction on the very same day that the command announced that members were not allowed to carry cell phones at work, and she did not even have hers with her that day.

Regarding the page 7 for hanging up on a petty officer, the applicant alleged that she had been told to be ready in dress uniform at 9:15 one morning to appear at X’s mast as a witness. At 9:00, because she did not have the proper cap, she called another member and asked to borrow her cap. She alleged that the Officer of the Day (OOD) quickly contacted her and said “Did you ask me if you could get ready to go?” The applicant replied that she had not yet started changing, was still in “working blues,” but had to be in dress uniform by 9:15. When the OOD did not respond, the applicant thought that she had hung up the phone, so the applicant hung up. She alleged that she initially refused to sign the page 7s regarding these incidents because she did not agree with them, but the OOD and another third class petty officer insisted, so she did. The applicant alleged that although she tried to straighten out these misunderstandings, she still “felt hostility from [the OOD] as well as the majority of my duty station.”

The applicant alleged that in addition to requesting an attorney, she also sought counseling. She had been experiencing a lot of insomnia since the assaults. The sleeping aids she was prescribed made her feel worse, so she stopped taking them. However, after disclosing confidential information, she learned that her counselor was providing that information to the Coast Guard’s investigators. She alleged that her counselor was, *de facto*, an investigatory agent for the Coast Guard. Therefore, she was denied “her right to immunity from self-incrimination,” as well as her right to due process and her right to counsel.

The applicant alleged that in June, after continuing ostracism by her command, she gave up and asked to be discharged. No one encouraged her to stay, and her command sent her for a psychological evaluation. She alleged that the results of that evaluation were false and exaggerated. Moreover, she alleged that although the psychologist’s report stated that she should not be underway, handle weapons, drive government vehicles, or do field work, her command continued to require her to do most of these things, including driving the launch boat for eleven-hour shifts, three days a week. She alleged that she was required to perform this duty even after she sprained her ankle and was found unfit for sea duty.

The applicant alleged that when she received her discharge orders, she saw that she was to be discharged for a “personality disorder.” She alleged that she showed them to her counselor, who said that she “clearly did not have any type of personality disorder.”

The applicant alleged that the purported reason for her discharge, "personality disorder," is false. She alleged that before her discharge, she was never properly examined or tested by a psychologist or psychiatrist. She alleged that after her discharge, when she explained the circumstances to a Department of Veterans Affairs (DVA) counselor, he said, "I see this [discharge for personality disorder] on a lot of women's DD 214s when they've been battered in the military." Another DVA counselor told her that personality disorder tests should never be conducted during a traumatic experience and arranged for her to be tested. She alleged that the tests showed that she did not have a personality disorder.

### SUMMARY OF THE RECORD

During her pre-enlistment physical examination in November 199x, the applicant admitted that she had been treated for depression in high school after she was attacked by two boys with knives who tried to rape her. The Coast Guard sought and received a report from her counselor, dated December 2, 199x, which states that the applicant had been treated for anxiety after the attack but was now "well adjusted, stable, and competent." Therefore, she was found fit for enlistment and enlisted in the Coast Guard Reserve under the delayed entry program on December 15, 199x.

On January 19, 199x, at age 18, the applicant enlisted in the regular Coast Guard for four years. She attended boot camp and reported to her first duty station in xxxxx, xxxxxxx on March 12, 199x. On May 19, 199x, the applicant's supervisor brought her to the health clinic because she had "flipped out." The applicant reported that she had felt stressed and been unable to sleep since witnessing a fight the week before. She complained of feeling threatened, nauseous, tired, afraid, depressed, and helpless. She stated that the fight had brought back feelings from when she was almost raped, but her command had a "get over it" attitude. She was diagnosed with "adjustment disorder with mixed anxiety and depressed mood"<sup>2</sup> and referred for counseling.

On the night of May 21, 199x, the applicant had several members over at her apartment. One of the members assaulted three others, including the applicant. Shortly after midnight on May 22, 199x, she was treated at a hospital. She reported that she had been hit in the right eye with a fist. The area around her eye was swollen and tender. She was x-rayed, but no fractures were found.

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<sup>2</sup> Adjustment disorders are psychological responses to identifiable stressors that result in the development of clinically significant emotional or behavioral symptoms. Adjustment disorders must resolve within six months of the termination of the stressor but may persist if the stressor is chronic or has enduring consequences. Adjustment disorders are not personality disorders. American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-TR)*, p. 679. Adjustment disorders are not considered personality disorders or physical disabilities by the Coast Guard or the DVA.

From May 24 to June 14, 199x, the applicant regularly went to the clinic complaining of insomnia, fatigue, depression, and anxiety. The staff reported once that she said she wanted to leave the service, but another time that she wanted to stay in the Coast Guard even though she felt persecuted at her duty station. Dr. X diagnosed her with an "adjustment disorder with mixed anxiety and depressed mood."

On May 26, 199x, the applicant was informed that as a result of the incident on May 21st, she had been charged with violating Articles 134 and 92 for drunkenness and failing to obey an order by drinking alcohol while under age. She was advised of her rights and signed a paper stating that she wanted to consult a lawyer and would not make a statement.

On June 14, 199x, the applicant went to the clinic complaining of stress and insomnia. She stated that she was afraid of being attacked again. Dr. X diagnosed her with post traumatic stress disorder (PTSD) as well as the adjustment disorder.

On June 16, 199x, the applicant was examined by Dr. Y, a psychologist in the Naval Reserve. Dr. Y reported that she had been "referred for evaluation for fitness for duty secondary to difficulties adjusting to the USCG. The nature and purpose of the mental health evaluation and the limits of confidentiality were discussed and the patient consented to the evaluation." He reported that the recent assaults "made her feel extremely uncomfortable and brought back memories of a previous assault in which two of her friends attempted to rape her with a deadly weapon, when she was 14 years old." Dr. Y reported that she had insomnia and recurrent dreams and flashbacks in which she felt as if she were reliving the experience. He reported that she "has had intense psychological and physical distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event" and that, since the recent assaults, she had "had poor appetite, low energy, low self-esteem, and recurrent crying spells. She felt as if she was 'dying inside' and could no longer stay in the USCG." The applicant told the doctor that she had thought about killing herself after the attempted rape but had not had such thoughts recently. He found that she had a "history of instability in relationships, with chronic feelings of emptiness, and impulsivity" but did not state the basis for this finding or state that she complained of these things. It is not clear whether the applicant underwent psychological testing.

Dr. Y made the following diagnoses in accordance with the Diagnostic and Statistical Manual of Mental Disorders:

Axis I: 309.0 Adjustment Disorder With Depressive Mood  
305.10 Nicotine Dependence

309.81 Post Traumatic Stress Disorder, Chronic, EPTE [existed prior to enlistment]<sup>[3]</sup>  
Axis II 301.9 Personality Disorder NOS [not otherwise specified] With Borderline Features<sup>[4]</sup>  
Axis III None  
Axis IV Stresses: Problems at work and lack of support system  
Axis V Current GAF [global assessment of functioning]: 64

Dr. Y further reported that the applicant

is not considered mentally ill, but manifests a long-standing disorder of character and behavior, which is of such severity as to render her unsuitable for continued military service. ... Although not currently considered suicidal or homicidal, this member is judged to represent a risk to self or others if retained on active duty, especially in view of past suicidal ideation. She is deemed fit for return to duty for immediate processing for administrative separation, which should be handled in compliance with appropriate USCG PERSONNEL MANUAL [Article] 12-B-16. She has less than six months of active duty, and therefore an Entry Level Separation (ELS) may be initiated. It is also recommended that she not have access to any weapon, not operate government vehicles, not work with classified materials, and not be involved in fieldwork. The patient should be placed on a non-deployment status. ...

Also on June 16, 199x, the applicant consulted a nurse at the clinic about her difficulty sleeping and pain in her finger. She told the nurse that she had agreed to an entry level separation.

On June 17, 199x, the applicant's command entered a page 7 in her record stating that, on May 21, 199x, she was "observed drinking alcohol and [was] involved in a confrontation with [a] shipmate." The event was considered her first "alcohol incident."

On June 18, 199x, the applicant was seen by Dr. X. He found that she was still depressed and anxious about being attacked but marked her as fit for full duty.

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<sup>3</sup> Post traumatic stress disorder (PTSD) is an anxiety disorder (not a personality 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, and difficulty concentrating. DSM-IV-TR, pp. 463-68. PTSD is considered a ratable physical disability by the Coast Guard and the DVA. Coast Guard Medical Manual, Chap. 5.B.11.b.(4); 38 C.F.R. § 4.130.

<sup>4</sup> Personality disorder NOS is a disorder in which the individual's "personality pattern meets the general criteria for Personality Disorder" but does not meet the criteria for any specific personality disorder." The general criteria include an enduring, inflexible pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture and leads to significant distress or impairment of social or occupational functioning. The pattern must be long-standing and "not better accounted for as a manifestation or consequence of another mental disorder." DSM-IV-TR, pp. 685-89. Personality disorders are not considered physical disabilities by the Coast Guard or the DVA.

On June 21, 199x, the applicant's commanding officer sent a message to the Coast Guard Personnel Command (CGPC) recommending that she be discharged because of her diagnosed personality disorder. His message to CGPC indicated that the applicant had been notified of her pending discharge and had declined to submit a statement on her own behalf.<sup>5</sup>

On June 22, 199x, the charges against the applicant were dismissed because she was being discharged.

On June 23, 199x, Dr. X completed an SF-502 form in which he quoted much of Dr. Y's findings verbatim. He noted all of the diagnoses but also reported that she had "no permanent disqualifying physical or mental defects which are ratable under the standard schedule for rating disabilities in current use by the Veterans Administration."

On June 25, 199x, the applicant was treated for a right ankle sprain and pain in one finger. She was advised to wrap her ankle and keep a splint on her finger. Her doctor found her fit for full duty "as tolerated" and prescribed Ibuprofen.

On June 29, 199x, CGPC ordered the applicant's command to discharge her no later than July 28, 199x, with an honorable discharge by reason of unsuitability under Article 12.B.16 of the Personnel Manual. The order further stated that her separation code should be JFX and that the corresponding narrative reason for separation provided in the SPD Handbook ("Personality Disorder") should be assigned.

On July 9, 199x, the applicant was screened for alcohol abuse. She was found not to be an alcohol abuser or to be alcohol dependent.

On July 28, 199x, the applicant received an honorable discharge with a separation code of JFX, a narrative reason for separation of "Personality Disorder", and an RE-4 reenlistment code.

On January 11, xxxx, a "psychology intern" and a clinical psychologist for the DVA signed a report indicating that the applicant continued to experience mild depression, anxiety, and insomnia after her discharge, which "gradually diminished." The report states that "[i]t is my professional opinion that [she] does not have a personality disorder and is fit to perform the duties required by the United States Navy."

## **VIEWS OF THE COAST GUARD**

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<sup>5</sup> The Coast Guard stated that it has searched all pertinent files and could not find the applicant's "discharge package," which would contain her command's letter notifying her of her pending discharge, her acknowledgement of having received the notification and of her right to submit a statement, and any statement she submitted.

On December 27, 2001, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief by upgrading the applicant's reenlistment code to RE-3G, which would allow her to reenlist if she can prove to a recruiter that the condition for which she was discharged no longer exists. However, he recommended that the remainder of her DD 214 remain unchanged.

The Chief Counsel alleged that the applicant "was properly diagnosed with a personality disorder" by a psychologist on June 16, 199x. Thus, he argued, under Chapter 5.B.2. of the Medical Manual, she was subject to an administrative discharge because personality disorders are not physical disabilities and are considered disqualifying for military service. Although Article 12.B.16.h. of the Personnel Manual provides that a psychiatrist "should be" consulted to make such diagnoses "if available," he argued that the Coast Guard's use of a psychologist "does not constitute a clear violation of the regulation as the language of the regulation is permissive ('should be')." He also alleged that, prior to her enlistment, she claimed never to have suffered from depression or excessive worry.

The Chief Counsel alleged that the Coast Guard followed proper procedures in discharging the applicant. Although the documentation has apparently been lost, he alleged that, in accordance with Article 12.B.16.d. of the Personnel Manual, she received notice of her command's recommendation that she be discharged and the opportunity to submit a written statement on her own behalf, which she declined.

The Chief Counsel argued that "[a]bsent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). He argued that the applicant has failed to submit evidence sufficient to rebut this presumption or even "to allege any due process error related to her administrative discharge." Furthermore, he argued, she has failed to prove that her discharge amounted to "treatment by military authorities that shocks the sense of justice." See *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)).

The Chief Counsel alleged that the applicant also failed to prove that her RE-4 reenlistment code was in error given the psychologist's finding that her personality disorder was long-standing and severe. However, "based on the information the applicant has provided concerning her current mental condition and the absence of the complete record of the circumstances leading to her discharge, reasonable doubt exists concerning the continued appropriateness of the assignment of the RE-4 code," he stated that he would "not object" if the Board upgraded her reenlistment code to RE-3G.

Finally, the Chief Counsel argued that, even if it were true that the applicant's constitutional rights were violated in the investigation of the circumstances surround-



ing the assaults, there is no evidence that any admission she made to the investigator improperly influenced the psychologist's diagnosis. Moreover, while such an admission, if obtained in violation of her constitutional rights, might be excluded from disciplinary proceedings, he argued, the applicant "has failed to state how the exclusionary rule for illegally obtained admissions would apply in an administrative setting."

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On December 28, 2001, the Chairman sent the applicant a copy of the views of the Coast Guard and invited her to respond within 15 days. The applicant requested an extension of the time to respond. Her response was received on March 13, 2002.

The applicant argued that her discharge on the basis of Dr. Y's diagnosis was improper because the Coast Guard failed "to show, or even to allege, that a 'psychiatrist' was not available." She argued that a psychiatrist must have been available given the location of her unit. Moreover, she argued, the presumption of her fitness for duty must outweigh the presumption of regularity accorded Coast Guard officials.

The applicant alleged that the psychologist's diagnosis was "arbitrary, prejudicial and incompetent." She alleged that it was illogical for the psychologist, "based upon minimal contact" with her, to "extend his belief to a 'long standing' 'character disorder'" and that it was inconsistent for him to find her fit for duty. She alleged that the Coast Guard arbitrarily ignored the fact that she was initially diagnosed with an adjustment disorder rather than a personality disorder. She argued that the fact that her counselor did not diagnose her with a personality disorder and the fact that the circumstances surrounding her discharge did not justify negative and derogatory codes on her DD 214 "cast substantial doubt" on Dr. Y's diagnosis.

The applicant alleged that the record shows she was "denied due process and fundamental fairness." She alleged that the burden is on the Coast Guard to provide the Board with all her military records, and it failed to do so. The applicant alleged that she was denied counsel regarding her pending discharge. She argued that because the "discharge package" is missing, the Board must presume that the records, notices, and waivers never existed. She repeated her allegations about not being allowed by the investigator to consult an attorney and alleged that that denial of due process constitutes "treatment by military authorities that shocks the sense of justice."

### **APPLICANT'S FURTHER RESPONSE**

On July 3, 2002, the Board met to consider the applicant's request. The Board determined that because of her diagnosed PTSD, the applicant was erroneously denied evaluation by a medical board under the Physical Disability Evaluation System. In correcting a record, the Board normally tries to put an applicant in the position she would

have been in had the Coast Guard not erred. Therefore, the Board decided that the applicant was entitled to be discharged under the PDES. However, because she had not expressly requested medical board processing and, under certain circumstances, a physical disability separation might be considered adverse by a veteran, the applicant was asked whether she would consider such relief to be in her favor. The Board is only authorized to correct a record in an applicant's favor. *Doyle v. United States*, 220 Ct. Cl. 285 (1979), *amended on other grounds*, 220 Ct. Cl. 326, *cert. denied*, 446 U.S. 982.

On August 21, 2002, the applicant responded to the inquiry. She stated that a "finding of a post traumatic stress disorder is less offensive ... and [I] accept the fact that it is more consistent with the record than the entirely inaccurate finding of a personality disorder." She alleged, however, that her stress in May and June 199x resulted as much from the "threatening investigatory methods" of the Coast Guard as from her involvement in the two assaults. Moreover, she argued that a finding that she had a disorder when she was released "would be speculative and irreparably tainted because of the Coast Guard's error in failing to provide timely and appropriate medical examination and evaluation prior to her discharge."

The applicant indicated that she is not interested in receiving a discharge by reason of physical disability because her primary goal is to enlist in the Reserve. She argued that justice would be better served by assigning her an RE-1 reenlistment code than an RE-3 code (which she would get with a physical disability discharge) or the RE-4 code she now has.

## **APPLICABLE REGULATIONS**

### ***Provisions of the Coast Guard Personnel Manual***

Under Article 12.B.6., before being discharged, every member must be given a complete physical examination in accordance with the Medical Manual. The member must be given a copy of the examination report and sign another form to indicate whether she agrees or disagrees with the findings. Article 12.B.6.b. If the member disagrees with the findings, the report and the member's statement objecting to the findings are forwarded to CGPC for review, and the member may be retained on active duty until the review is complete. Article 12.B.6.c.

Under Article 12.B.6.d.3., if the physical examination indicates that the member has a permanent, disqualifying physical or mental impairment, an Initial Medical Board (IMB) must be convened and the member must be retained in service until processing under the Physical Disability Evaluation System (PDES) is complete.

Article 12.B.16. of the Personnel Manual (PM) authorizes the Commandant to discharge enlisted personnel for unsuitability if they have been diagnosed with one of

the “personality behavior disorders ... listed in Chapter 5, CG Medical Manual ... .” Under Article 12.B.16.d., a member being recommended for such a discharge is entitled to notification and may submit a statement on her own behalf. She must acknowledge notification by signing an administrative entry for her military record. She is only entitled to an attorney if a less than honorable discharge is being considered.

Article 12.B.16.h. provides that if a member is under consideration for an unsuitability discharge and a psychiatric condition is involved, the member “should be” examined by “a psychiatrist, if available.” The medical officer’s report, an SF-502 form, should include a narrative summary describing the essential points of the member's mental and physical condition; a statement that no disqualifying mental or physical defects exist which are ratable as a disability under the Veterans' Administration Schedule for Rating Disabilities; and a statement whether the individual was and is mentally capable both to distinguish right from wrong and adhere to the right and has the mental capacity to understand the action being contemplated in his or her case. Article 12.B.16.h.3. provides that “[i]f it appears a mental or physical disability causes the unsuitability, a medical board will be requested.”

Article 12.B.16.j. provides that in every case of discharge for unsuitability, the command shall assemble a discharge package including a copy of the letter notifying the member of the reason(s) for administrative processing and of her rights; the member's signed statement of awareness, statement on her own behalf, or refusal to make a statement; report of the medical board or SF-502, as applicable; and other pertinent documents.

Under Article 12.B.16.k., a commanding officer may recommend a member’s unsuitability discharge “by message,” as opposed to a more extended format, only if the member has been diagnosed with a personality disorder by a psychiatrist and if the “member being processed has fewer than eight years' total active or inactive military service, has been notified in writing of the specific action proposed with the reason(s) for it, and has indicated in a written statement he or she substantially agrees.” Article 12.B.16.k. further provides that “the message format is not appropriate in cases in which the member's record does not indicate poor performance or substandard conduct and the member's personality disorder has only recently become apparent.”

Article 17.B.5. provides that “[i]f an evaluatee has both a condition that is not a disability, and also a ratable disability, the evaluatee is entitled to benefits only if the ratable disability, considered alone, is determined to render the evaluatee not fit for duty.”

### *Provisions of the Coast Guard Medical Manual*

According to Chapter 3.B.3.a.(1) of the Medical Manual, during the medical examination a member must undergo prior to separation, “the examiner shall consult

the appropriate standards of this chapter to determine if any of the defects noted are disqualifying for the purpose of the physical examination." Chapter 3.F. lists the medical conditions that "are normally disqualifying" for military service. Persons with "listed conditions or defects (and any other not listed) considered disqualifying shall be referred to an Initial Medical Board ... ." However, Chapter 3.F.16. provides that the disposition of members with psychiatric disorders is governed by Chapter 5 of the Medical Manual, and Chapter 3.F.16.c provides that personality disorders "may render an individual administratively unfit [for duty] rather than unfit because of a physical impairment. Interference with performance of effective duty will be dealt with through appropriate administrative channels (see Section 5-B)."

Chapter 5.B. relies on the diagnostic categories of the DSM IV. Chapter 5.B.2. provides that personality disorders, including "Personality Disorder NOS," qualify a member for administrative discharge pursuant to Article 12 of the Personnel Manual instead of medical board processing.

Adjustment disorders are listed in Chapter 5.B.3, which states that they "are generally treatable and not usually grounds for separation. However, when these conditions persist or treatment is likely to be prolonged or non-curative (e.g. inability to adjust to military life ...) process in accordance with [Article 12 of the Personnel Manual] is necessary." Chapter 3.F.16.d. states that adjustment disorders are "[t]ransient, situational maladjustments due to acute or special stress ... . 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."

PTSD is listed under Chapter 5.B.11.b. as an anxiety disorder. It provides that members with PTSD "shall be processed in accordance with PDES."

According to Chapter 3.B.6., which is entitled "Separation Not Appropriate by Reason of Physical Disability,"

[w]hen a member has an impairment (in accordance with section 3-F of this manual) an Initial Medical Board shall be convened only if the conditions listed in paragraph 2-C-2.(b) [of the PDES Manual] are also met. Otherwise the member is suitable for separation.

Chapter 4.B.27.c. provides that "[m]embers not already in the physical disability evaluation system, who disagree with the assumption of fitness for duty at separation shall indicate on the reverse of form CG-4057." Chapter 3.B.5. provides that

[a]ny member undergoing separation from the service who disagrees with the assumption of fitness for duty and claims to have a physical disability as defined in section 2-A-38 of COMDTINST M1850.2 (series), Physical Disability Evaluation System, shall submit

written objections, within 10 days of signing the Chronological Record of Service (CG-4057), to Commander [CGPC]. . . .

. . . Commander [CGPC] will evaluate each case and, based upon information submitted, take one of the following actions:

- (1) find separation appropriate, in which case the individual will be so notified and the normal separation process completed;
- (2) find separation inappropriate, in which case the entire record will be returned and appropriate action recommended; or
- (3) request additional documentation before making a determination.

### *Provisions of the PDES Manual*

The PDES Manual governs the separation or retirement of members due to physical disability. Article 2.C.2. of the PDES Manual states the following general policies:

a. The sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated through military service.

• • •

b. . . . The following policies apply:

(1) Continued performance of duty until a member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty that may be overcome if it is established by a preponderance of the evidence that:

- (a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or
- (b) acute, grave illness or injury, or other deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation . . . .

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(2) A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the condition in paragraphs 2.C.2.b.(1)(a) or (b) are met.

Article 3.D.3. provides that an IMB must be initiated for a member upon detection of a physical impairment preexisting enlistment or appointment in the Coast Guard or "in any situation where fitness for continuation of active duty is in question." Whether a disability actually preexisted a member's enlistment and whether it was aggravated while the member served on active duty are determinations made by the medical boards. See PDES Manual, Articles 2.C.5. and 2.C.6.

### *SPD Handbook*

The SPD Handbook provides that members with less than eight years of active service who are involuntarily discharged because of a personality disorder receive a JFX separation code and either an RE-4 or RE-3G reenlistment code. There are a variety of separation codes for members discharged because of a physical or mental disability. Those whose disabilities do not result in retirements receive RE-3P reenlistment codes so that they may reenlist if they can prove to a recruiter that the condition for which they were separated no longer exists. The following codes and narrative reasons in the SPD Handbook were mentioned or could apply in this case:

<b>SPD Code</b>	<b>Narrative Reason for Separation</b>	<b>RE Code</b>	<b>Separation Authority</b>	<b>Explanation</b>
JFX	Personality Disorder	RE-4 or RE-3G	12.B.16	Involuntarily discharge ... when a personality disorder exists, not amounting to a disability, which potentially interferes with assignment to or performance of duty.
JFL	Disability, Severance Pay	RE-3P	12.B.15	Involuntary discharge ... resulting from physical disability with entitlement to severance pay—retirement not authorized.
JND	Separation for Miscellaneous/ General Reasons	RE-1 or RE-4	12.B.12	Involuntary discharge ... when a Service component does not have a Service reporting requirement for specific reasons and desires to identify reasons collectively [as] “All other reasons” which qualify a member for separation.
JFV	Condition, Not a Disability	RE-4 or RE-3G	12.B.12	Involuntarily discharge ... when a condition, not a physical disability, interferes with the performance of duty (Enuresis, motion sickness, allergy, obesity, fear of flying, et al.)
JGA	Entry Level Performance and Conduct	RE-3L	12.B.20	Involuntary discharge ... when member has inability, lack of effort, failure to adapt to military or minor disciplinary infractions during the first 180 days of active military service.

## *Page 7s and Alcohol Incidents*

Commandant Instruction 1000.14A, "Preparation and Submission of Administrative Remarks (CG-3307)," authorizes COs to prepare negative page 7 entries for the military records of members who commit acts that are contrary to Coast Guard rules and policies. It is not necessary for a member to be found guilty of an offense at mast or court-martial for a CO to prepare a page 7 describing the proscribed acts.

Article 20 of the Personnel Manual contains the regulations regarding alcohol abuse by Coast Guard members. Article 20.B.2.g. states that "[t]he first time a member is involved in an alcohol incident, ... the commanding officer shall ensure this counseling is conducted; for enlisted members recorded on a [page 7] entry in the member's PDR ... ." Under Article 20.A.2.d., an "alcohol incident" is defined as

Any behavior in which the use or abuse of alcohol is determined to be a significant or causative factor and which results in the member's loss of ability to perform assigned duties, brings discredit upon the Uniformed Services, or is a violation of the Uniform Code of Military Justice (UCMJ) or federal, state, or local laws. The member need not be found guilty at court martial, in a civilian court, or be awarded non-judicial punishment (NJP) for the behavior to be considered an alcohol incident. However, the member must actually consume alcohol for an alcohol incident to have occurred.

### **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 concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.
3. The record shows that prior to her discharge, the applicant was diagnosed by both her primary doctor and a psychologist with PTSD, which was interfering with her performance of duty. PTSD is considered a ratable disability by both the DVA and the Coast Guard. 38 C.F.R. § 4.130; Medical Manual, Chap. 5.B.11.b.(4). Anomalously, however, her doctor ignored the diagnosis and reported that she had no ratable disability.
4. Under Article 12.B.6.d.3. of the Personnel Manual, Chapter 5.B.11.b. of the Medical Manual, and Article 3.D.3. of the PDES Manual, the applicant was entitled to

evaluation by a medical board and PDES processing because of her PTSD. This is true even though her condition may have existed prior to her enlistment. PDES Manual, Article 3.D.3. Whether she incurred PTSD before she enlisted and whether it was aggravated while she served on active duty were determinations to be made by medical boards, not by her individual doctors. PDES Manual, Articles 2.C.5. and 2.C.6. The Board finds that the Coast Guard erred in not processing the applicant under the PDES.

5. The record shows that the applicant admitted to the Coast Guard during her pre-enlistment physical examination that she had previously been attacked and received counseling. The Coast Guard chose to enlist her anyway after receiving a report from her counselor. The Board finds that the applicant committed no fraud in this respect.

6. The Board finds that, in accordance with Article 12.B.16.h.3. of the Personnel Manual and Chapter 5.B.11.b. of the Medical Manual, the applicant was entitled to PDES processing even though she was diagnosed with an unspecified personality disorder soon after she was first diagnosed with PTSD. Despite her doctor's finding that she was fit for duty, and despite the fact that she continued to perform her duty, the Board finds that the preponderance of the evidence in the medical record indicates that, in the spring of 199x, the applicant's chronic PTSD called into question her fitness for continuation on active duty. PDES Manual, Article 3.D.3. The existence of a disqualifying condition that is not a disability (such as a personality disorder) does not preclude processing for a ratable disability (PTSD). *See* Personnel Manual, Article 17.B.5.

7. Because civilian employers often demand to see former servicemembers' DD 214s prior to hiring them, it is extremely important for the information on them to be fair and accurate and not unduly prejudicial. The evidence in the record that the applicant suffered from a personality disorder is slim. She was never diagnosed by a psychiatrist, and psychiatrists are not hard to find where she was stationed. The psychologist's report was based on a single evaluation session and there is no indication that she underwent any specific testing. While his report contains many details regarding her PTSD symptoms, he wrote only one conclusory sentence with no details to support his diagnosis of an unspecified personality disorder. The DSM-IV-TR expressly precludes a personality disorder diagnosis unless the behavior is known to be longstanding and "not better accounted for as a manifestation or consequence of another mental disorder." DSM-IV-TR, p. 689.

8. Furthermore, in the Board's experience, members assigned the separation code JFX usually have been diagnosed with a personality disorder or a chronic adjustment disorder that repeatedly leads to inappropriate behavior or misconduct that fully



supports their diagnoses.<sup>6</sup> Moreover, members correctly assigned the JFX code sometimes receive “Unsuitability” as a narrative reason for separation even though the SPD Handbook permits only the use of the phrase “Personality Disorder” with the JFX code.<sup>7</sup> In the instant case, the only evidence of inappropriate behavior or misconduct is a single instance of drinking beer while underage. Therefore, the Board finds that the narrative reason for separation and JFX separation code on her DD 214 are unjust.

9. The Board’s finding that the narrative reason for separation on the applicant’s DD 214 is unjust does not mean that she has proved that the diagnosis of “personality disorder” in the psychologist’s report in her medical record is erroneous. Although the Coast Guard’s psychologist did not cite examples of her past behavior to support this diagnosis, the DVA counselor’s report is no more detailed or convincing than his. The Board finds that she has not proved by a preponderance of the evidence that the psychologist erred or acted in bad faith in diagnosing her with a personality disorder, and without such evidence it will not alter or remove a medical record.

10. The Chief Counsel alleged that proper procedures were followed in discharging the applicant despite the fact that no discharge package with documentation of her notification and statement exists. However, the record indicates that in addition to denying the applicant PDES processing, the Coast Guard may have violated other regulations and denied her important rights with respect to her discharge. Although the command’s June 21, 199x, message to CGPC initiating her discharge indicates that she was notified and declined to submit a statement, the applicant indicated in her application that she did not discover she was to be discharged for a personality disorder until she received her orders, and her doctor’s official SF-502 report recording the diagnoses for her record was signed on June 23, 199x, two days after her command sent the message. In fact, the record indicates that the applicant was told that she would receive an uncharacterized “entry level” discharge, rather than one for “personality disorder.” Moreover, there is no evidence in the record that the applicant was given an opportunity to object to her doctors’ findings, as required under Article 12.B.6. of the Personnel Manual and Chapter 4.B.27.c. of the Medical Manual. Furthermore, the applicant’s

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<sup>6</sup> See, e.g., CGBCMR Docket No. 199x-037 (member frequently exhibiting inappropriate sexual behavior over two-year period was twice diagnosed with “adjustment disorder with disturbance of conduct” and discharged with JFX code and narrative reason for separation of “Unsuitability”); CGBCMR Docket No. 199x-099 (member twice arrested for indecent exposure was diagnosed with narcissistic personality disorder and discharged with a GFX code (“involuntary discharge approved by recommendation of a board when a personality disorder exists, not amounting to a disability, which potentially interferes with assignment to or performance of duty”) and a narrative reason for separation of “Unsuitability”); CGBCMR Docket No. 1997-097 (member suffering severe chronic depression was diagnosed with passive-aggressive personality disorder and discharged with JFX code and narrative reason for separation of “Unsuitability”).

<sup>7</sup> *Id.* Although the SPD Handbook was revised in 1994 to remove “Unsuitability” as a proper narrative reason for separation, it apparently continues to be used sometimes in lieu of “Personality Disorder.”

command clearly erred by using the message format to recommend her discharge since she was never diagnosed by a psychiatrist, her alleged personality disorder had only recently been discovered, and there is no evidence that she ever signed a statement agreeing to be discharged for a personality disorder. Personnel Manual, Article 12.B.16.k. In light of the apparent procedural irregularities in the applicant's discharge and the lack of evidence supporting the diagnosis of personality disorder, the Board finds that the applicant has overcome the presumption of regularity and proved by a preponderance of the evidence that the narrative reason for separation and separation code on her DD 214 are erroneous and so unjust as to "shock the sense of justice."<sup>8</sup>

11. The applicant asked the Board to upgrade the narrative reason for discharge, separation code, and reenlistment code on her DD 214, but she did not specify what codes or narrative reason she believes would be correct. In fashioning relief, the Board's policy is to try to put an applicant in the position she would have been in had the Coast Guard not committed any errors or injustices.<sup>9</sup> As the Court of Claims held in *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959), "the Secretary and his boards have an abiding moral sanction to determine insofar as possible, the true nature of an alleged injustice and to take steps to grant thorough and fitting relief." However, the Board normally does not grant relief that has not been requested, either expressly or implicitly, by the applicant. In this case, the applicant is uninterested in receiving the PDES processing to which she was entitled, and it is possible that the outcome of such processing would not be in her favor. If PDES processing determined that her PTSD pre-existed and was not aggravated by her military service, she would receive no benefit and would be saddled with a "disability" that could preclude her employment in certain professions. BCMRs may only correct applicants' records in their "favor."<sup>10</sup> Therefore, and because the applicant neither expressly nor implicitly requested a disability rating or PDES processing, the Board finds that, despite her diagnosed PTSD, it is not appropriate in this case to order PDES processing as the outcome might not be in her favor.

12. Apart from her PTSD, the only other certain diagnosis the applicant received was an adjustment disorder. Adjustment disorders are not personality disorders.<sup>11</sup> Therefore, and as stated in finding 8, above, it would be inaccurate and unfair for her DD 214 to show that she has a personality disorder on the basis of a diagnosed adjustment disorder.<sup>12</sup> Furthermore, "adjustment disorder" is not a narrative reason for

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<sup>8</sup> See *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)).

<sup>9</sup> See *Kimmel v. United States*, 196 Ct. Cl. 579, 589 (1971).

<sup>10</sup> *Doyle v. United States*, 220 Ct. Cl. 285, *amended on other grounds*, 220 Ct. Cl. 326, *cert. denied*, 446 U.S. 982 (1979).

<sup>11</sup> DSM-IV-TR, p. 679; Coast Guard Medical Manual, Chap. 5.B.3.

<sup>12</sup> See footnote 7; see also CGBCMR Docket Nos. 2001-072, 199x-050; AFBCMR Docket Nos. 99-00678, 98-03027, 98-01305; BCNR Docket Nos. 1904-99, 9177-97.

separation permitted under the SPD Handbook, and the only “entry level” reasons for separation listed in the SPD Handbook are derogatory or obviously inapplicable.

13. To provide relief, the Board must determine what narrative reason for separation other than “personality disorder” is most accurate, just, and reasonably in the applicant’s “favor.” The possible alternatives listed in the SPD Handbook are limited. In the past, the Board has sometimes upgraded the reason for separation of a member with a diagnosed adjustment disorder to “condition, not a disability.”<sup>13</sup> Members discharged for this reason may receive either an RE-3G code, which permits them to reenlist if they can prove to a recruiter that they no longer have the condition (such as obesity or allergy) for which they were discharged, or an RE-4 code, which prohibits them from reenlisting in any military service. The only disciplinary infraction committed by the applicant during her service was a single instance of underage drinking. Therefore, the Board finds that the assignment of the RE-4 code is and would be unfair. However, assigning the applicant an RE-3G would also be unfair because the “condition” that caused her discharge is quite unclear in her medical record and so it would be virtually impossible for her to prove that the “condition” had resolved.

14. In light of the confusion of diagnoses that resulted in the applicant’s discharge, the Board finds that the most accurate and just narrative reason for discharge in the SPD Handbook would be “separation for miscellaneous/general reasons.” Under the handbook, members discharged for “miscellaneous/general reasons” receive either an RE-1 or an RE-4 reenlistment code. As stated in finding 13, the assignment of the RE-4 code would be unfair to the applicant. Given that, by definition, adjustment disorders are not permanent,<sup>14</sup> PTSD is not necessarily permanent,<sup>15</sup> the applicant has been evaluated and deemed mentally fit for military service by a clinical psychologist, and the applicant will be required to reveal her medical history prior to reenlisting in any military service, the Board finds that she should receive the RE-1 reenlistment code.

15. The applicant alleged that her rights were violated in the course of the investigation of the assault on May 21, 2001. Such a violation, if proven, would be relevant to the removal of any documentation of non-judicial punishment or court-martial in her record. However, because the charges were dismissed, there is no record of them in her record. Moreover, the Board finds that the applicant has not proved any causal relationship between the alleged violation of her right to counsel and to remain silent by the official investigator and her command’s decision to discharge her. The record indicates that the applicant’s command referred her for psychological evaluation not because she was found to have drunk alcohol on May 21, 2001, but because of the applicant’s ongoing psychiatric symptoms and complaints. The applicant alleged that her

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<sup>13</sup> CGBCMR Docket Nos. 2001-072, 199x-050.

<sup>14</sup> DSM-IV-TR, p. 679; Coast Guard Medical Manual, Chap. 3.F.16.d.

<sup>15</sup> DSM-IV-TR, p. 466.

command violated her rights by using her counselor as an "investigatory agent." However, members of the military do not enjoy the same privileges with respect to their medical records as private citizens, and the Coast Guard is entitled to discharge members on the basis of information in their medical records. Moreover, the psychologist's report indicates that the applicant was expressly warned about "the limits of confidentiality" before he evaluated and diagnosed her.

16. The applicant's record does contain an administrative entry documenting her first "alcohol incident," prepared in accordance with Article 20.B.2.g. of the Personnel Manual. Such entries are made by a member's CO upon his or her judgment that an "alcohol incident," as defined in Article 20.A.2.d. of the Personnel Manual, occurred. No admission by the member or conviction at mast or court-martial is necessary for a CO to find that an "alcohol incident" has occurred. Moreover, the applicant indicated in her application to this Board that she drank beer on the night of May 21, 2001, while underage. Therefore, the Board finds that she has not proved by a preponderance of the evidence that her CO committed any error or injustice in determining that an "alcohol incident" occurred and in documenting it in a page 7 in her record.

17. The applicant's official military record, as submitted to the Board by the Coast Guard, does not contain the other page 7s that she allegedly received for not saluting during flag lowering, having a cell phone at work, and hanging up on a petty officer. Even assuming they still exist but are misplaced, she has not presented any evidence apart from her own allegations to prove that the information on the page 7s is erroneous or unfair. Therefore, the Board finds that it need take no action with respect to these alleged records.

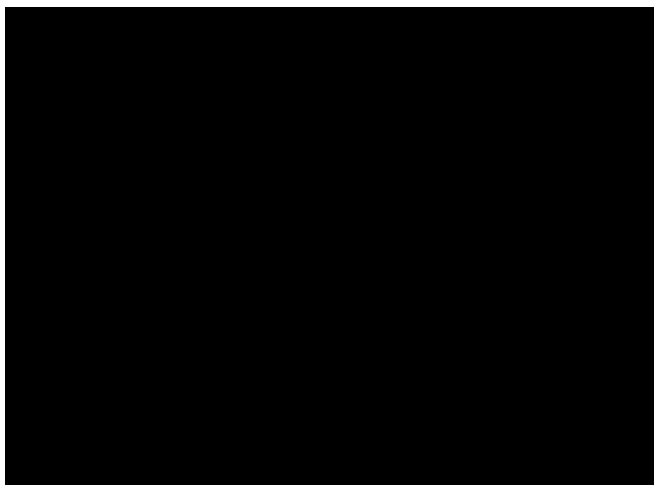
18. Accordingly, partial relief should be granted by correcting the applicant's DD 214 to show that she was discharged for "miscellaneous/general reasons" with a JND separation code and an RE-1 reenlistment code.

### **ORDER**

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is granted as follows:

Her DD 214 and other records shall be corrected to show that she was discharged for "miscellaneous/general reasons" with a JND separation code and an RE-1 reenlistment code. The separation authority shall be Article 12-B-12 instead of Article 12-B-16.

The Coast Guard shall issue her a new DD 214 showing these corrections, rather than issuing the corrections on a DD 215. No copy of this final decision shall be kept in the applicant's military record.



(see \* below)



\* This member was unavailable to sign this order page when the final corrections were made. However, he fully participated in the deliberations of the Board and concurred in this Final Decision and order.