

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2004-024**

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**FINAL DECISION**

 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 application was docketed on November 10, 2003, upon receipt of the applicant's completed application and military records.

This final decision, dated July 29, 2004, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST**

The applicant asked the Board "to remove the clause in my honorable discharge." The Chair interpreted the applicant's request as one for the removal of "unsuitability-personality disorder" as the reason for his 1977 discharge. Unsuitability-personality disorder is the only unfavorable clause on copies 3 and 4 of the DD Form 214.<sup>1</sup> The

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<sup>1</sup> According to Commandant Instruction 1900.4A (Report of Separation from Active Duty, DD Form 214 GG) dated May 14, 1975, the DD Form 214CG consisted of an original (copy 1) with five other copies (2-6). The original (copy 1) was given to the member and did not contain the separation code, reenlistment code, or the reason or authority for separation. For copy 2, which belonged to the service record, the separation authority and the separation and reenlistment codes were recorded in block 27. Copies 3 and 4 contained the narrative reason for separation in block 27 and were to be distributed to the Veterans Administration (VA) and Selective Service System, if necessary. Copy 5 was completed in the same manner as copies 3 and 4 if they were sent to the VA; if copies 3 and 4 were not sent to the VA, copy 5 was completed in the same manner as the original. Copy 6 was completed in the same manner as copy 2 and was sent to the District Commander.

applicant was also given a JMB separation code and a RE-4 (not eligible for reenlistment) reenlistment code "(Code JMB, RE-4)", which showed only on copy 2 of the DD Form 214.<sup>2</sup>

### **APPLICANT'S ALLEGATION**

The applicant stated that after his honorable discharge from the Coast Guard he became a firefighter and served in that profession for 23 years. He stated that he recently retired from firefighting and is seeking a new career.

The applicant further stated that he discovered the alleged error on December 14, 1977 and that it is in the interest of justice to consider his application because as a firefighter, he has risked his life serving his community and country. He stated that upon his retirement he received many favorable letters from local dignitaries.

### **SUMMARY OF THE MILITARY RECORD**

The applicant enlisted in the regular Coast Guard on June 14, 1976. In the fall of 1977, the applicant sought assistance from a chaplain.

On October 20, 1977, the chaplain who counseled the applicant wrote a report to which he attached statements that the applicant had written expressing his feelings and thoughts. In one letter dated October 14, 1977, the applicant expressed that he was having marital problems and indicated that getting out of the Coast Guard would give him a chance to save his marriage. He closed the letter with the following comment: "Please don't make me be one of the people that have to go through hell and do irrational things, so they don't have to live with a very, very bad mistake."

The Chaplain stated that he referred the applicant to a psychiatrist for additional counseling. As background, the chaplain reported the following:

On September 28, 1977, [the applicant] came to visit the Chaplain's office as a walk-in (he appeared to be confused, frightened, depressed, and very nervous). [The applicant] said that he must get out of the Coast Guard to save his own sanity. [The applicant] feels very strongly that if he should stay in he would have a nervous breakdown. He stated that he has lost all respect for the military and does not feel anything for it. He said that he must get out and hoped that the military would not force him to go AWOL or resort to something drastic . . . [The applicant] feels that the Coast Guard is also forcing he and his wife to separate, because of all of its

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<sup>2</sup> The Board normally reviews the appropriateness of the reenlistment code when it considers modifying the reason for discharge.

demands placed upon him as a military husband. [The applicant] said that if he [doesn't] get out of the service [his wife] would leave him . . .

On October 6, 1977, a psychiatrist evaluated the applicant and diagnosed him as suffering from a Schizoid personality. The clinical psychiatric examination was reported as follows:

Clinical psychiatric examination reveals a man who appears borderline in his functioning emotionally with some schizoid personality features. This man definitely appears to have the potential of breaking down completely under stress and becoming schizophrenic if he were to have to continue in the type of high pressure and stressful situation that military life is. He has also written some things, which again highlight the fact that he seems to be verging on a nervous breakdown. The man does state that before he breaks down completely he will probably go AWOL. It would be both in this man's and the Coast Guard's interest to allow him to be discharged on an administrative 12-B-16 discharge since it is evident clinically that he will probably not be able to continue to cope with the stresses of military life and if forced to stay in the service [he] will either go AWOL or have a complete breakdown of his personality disturbance and possibly become schizophrenic. . . .

RECOMMENDATION: 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 is 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.

On November 2, 1977, the applicant was advised that his commanding officer (CO) was contemplating asking the Commandant for authority to administratively discharge the applicant due to a personality disorder. On November 2, 1977, the applicant acknowledged receiving the notification of proposed discharge and counseling about the meaning and effect of an unsuitability discharge. He also acknowledged that he had five working days in which to make a statement in his own behalf.

On November 22, 1977, the CO recommended that the Commandant direct the applicant's discharge by reason of unsuitability. The CO stated that the applicant was having domestic problems that began prior to reporting to the command and that the applicant and his wife had been separated but reunited just prior to the applicant's

attendance at "A" school. He informed the Commandant about the applicant's self-referral to the chaplain and about the psychiatric evaluation. He further stated that the applicant had been to non-judicial punishment for being on unauthorized absence for approximately 7 days and that the applicant had been disenrolled from "A" school on November 3, 1977. He further stated the following:

[The applicant] is in complete emotional turmoil. He cannot, partially due to his marital situation, cope with the military environment. [The applicant] at this time is trying hard to avoid further disciplinary action. However, I am of the opinion that he is able to do so merely because he believes that he will be separated soon. I strongly agree with the medical officer that the applicant is unsuitable for military service due to a personality disorder. I recommend that [the applicant] be discharged as soon as possible because each day becomes more stressful to him and could result in either a complete nervous breakdown, injury to himself or other persons, or at the least further unauthorized absences.

On November 9, 1977, the applicant acknowledged in a statement that he fully understood the actions contemplated in the CO's letter of November 8, 1977. He stated that he was under a great deal of strain and found it difficult to adjust to military life. He stated that he hoped prompt action would be taken to discharge him from the Coast Guard.

On December 6, 1977, the Commandant approved the applicant's discharge from the Coast Guard by reason of unsuitability.

#### **VIEWS OF THE COAST GUARD**

On March 30, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

In recommending denial of relief, TJAG argued that the application was untimely. He stated that applications for correction of military records must be filed within three years of the date the alleged error or injustice was, or should have been, discovered. 33 CFR § 52.22. He said that the Board could waive the statute of limitations and consider the case, if the applicant presents sufficient evidence that it is in the interest of justice to do so. As TJAG argued, the length of the delay, the reasons for the delay, and the likelihood of the applicant's success on the merits of his claim are factors to be considered in deciding whether to waive the statute of limitations.

TJAG stated that the applicant filed his application more than 20 years beyond the statute of limitations, despite becoming aware of the alleged error as early as

December 1977. He stated that the applicant failed to offer any justification whatsoever for failing to pursue the matter earlier. Moreover, He stated that the applicant was properly discharged from the Coast Guard due to a pre-existing condition, for which he actively sought discharge from the service. TJAG noted that the applicant acknowledged in writing that he understood the ground on which he was discharged.

TJAG stated that the applicant offered no evidence to support his claim that his DD Form 214 was improperly prepared. He further stated that absent 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 (1992). Moreover, the applicant bears the burden of proving error. 33 C.F.R. § 52.24. He stated that the applicant fails to offer adequate evidence that the Coast Guard committed any error or injustice, other than his assertion that his DD Form 214 contained erroneous information.

A memorandum from the Commander, Coast Guard Personnel Command (CGPC) was attached as Enclosure (1) to the advisory opinion. He stated the following with respect to the preparation of the applicant's DD Form 214:

[I]n pursuing . . . career opportunities, the Applicant may experience embarrassment if he must present his DD-214 to prospective employers (Although I presume that this did not ultimately impact his ability to gain employment as a firefighter). However, with no evidence that the reason for the Applicant's discharge was erroneous or that he was deprived of his right to due process while being separated, I cannot support the request to change his record. It appears that at the time of the Applicant's discharge, instructions for completing the DD Form 214 required that certain remarks would only be entered on certain copies of the Form. Copy 2 of the applicant's DD-214 is different than copies 3 and 4, but all are official and valid. It appears that the Applicant has a copy of the version of the form similar to copies 3 and 4, which specifically indicates his separation for unsuitability was due to a personality disorder, whereas copy [2] only cites the article from the Personnel Manual that authorizes the separation, and his separation code. [The applicant] should be provided copies of both versions, because they are both valid. He can decide for himself which version he chooses to provide to prospective employers and other interested persons.

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

On April 1, 2004, the Chair sent a copy of the views of the Coast Guard to the applicant for his reply. The letter was returned to the Board marked "Return to Sender No Forward[ing] Order on File Unable to Forward Return to Sender". A second letter

was sent to the applicant using a slightly different address, but it was also returned to the BCMR.

## **APPLICABLE REGULATIONS**

*Coast Guard Personnel Manual (CG-207)*

Article 12-B-16 of the Personnel Manual in effect in 1977 stated that only the Commandant shall direct the discharge of enlisted personnel by reason of unsuitability and that such discharges are effected to free the service of persons considered unsuitable for further service. This article further authorized discharge by reason of unsuitability due to personality disorder "as determined by medical authority, personality behavior disorders and disorders of intelligence listed in Chapter 5, CG Medical Manual (CG-294)."

Article 12-B-16 (d)(1)(2)(3) stated that the person concerned shall be informed of the contemplated action, and the reasons therefore, and shall be given the opportunity to make any statement in his own behalf. If a member does not desire to make a statement, he shall set forth such fact in writing over his signature and it shall constitute his statement.

This Article further provided in Article 12-B-16 (h)(2) that when psychiatric considerations are involved, the medical officer should be a psychiatrist when available.

*COMMANDANT INSTRUCTION 1900.4A (Report of Separation from Active Duty, DD Form 214 GG) dated May 14, 1975<sup>3</sup>*

Section D. of Enclosure (2) authorized a JMB separation code for a discharge by reason of unsuitability due to a personality disorder and a RE-4 reenlistment code.

*Separation Program Designator (SPD) Handbook*

Under the SPD Handbook in effect today, a person discharged by reason of personality disorder could receive either an RE-4 or an RE-3G (condition (not physical disability) interfering with the performance of duty).

## **FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions on the basis of the

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<sup>3</sup> The Board believes that this was the Commandant Instruction in effect at the time of the applicant's discharge for the preparation of the DD Form 214 because the Board has no knowledge of a superseding instruction between May 14, 1975 and December 14, 1977.

submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law:

1. The Board has jurisdiction to determine the issues in this proceeding under section 1552 of title 10, United States Code.

2. The applicant asked the Board "to remove the clause in my honorable discharge." The Board interprets this as a request for the removal of "unsuitability-personality disorder" as the reason for the applicant's discharge as this is the only clause on copies 3 and 4 of the DD Form 214 that could be considered unfavorable. The Board normally considers the appropriateness of the reenlistment code when deciding whether to upgrade the reason for separation and will do so in this case.

3. The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered or should have discovered the alleged error or injustice. See 33 CFR 52.22. This application was submitted more than 20 years beyond the statute of limitations.

4. The Board may still consider the application on the merits, however, if it finds it is in the interest of justice to do so. The interest of justice is determined by taking into consideration the reasons for and the length of the delay and the likelihood of success on the merits of the claim. See, Dickson v. Secretary of Defense, 68 F.3d 1396 (D.D.C. 1995). It is clear from the record that the applicant was aware of this error in December 1977. He stated that it would be in the interest of justice for the Board to waive the statute limitations because of his post-service employment as a firefighter, from which he recently retired. While the applicant's reasons for waiving the statute are not persuasive, it appears that he may be entitled to have his reenlistment code upgraded. Accordingly, it is in the interest of justice to consider this case on the merits.

5. The applicant has not presented any evidence that the Coast Guard committed any error or injustice by discharging him from the Coast Guard by reason of unsuitability due to a personality disorder. He was diagnosed as having a personality disorder by a psychiatrist, as required by regulation. In addition, the applicant does not deny that he suffered from a personality disorder at the time; nor does he deny that he insisted on being discharged from the Coast Guard because military life placed him, as well as his marriage, under severe stress.

6. The applicant's RE-4 reenlistment code should be upgraded. The RE-4, which is a recommendation against enlistment, is inconsistent with the applicant's performance record and the lack of any disciplinary problems, except for one minor infraction. The Board notes that in 1977 COMDTINST M1900.4A authorized only an RE-4 reenlistment code for separation by reason of personality disorder. However, under today's standards either an RE-3G or an RE-4 is authorized for discharge by reason of

personality disorder. In Docket No. 2004-015, the Board upgraded that applicant's reenlistment code from RE-4 to RE-3C noting the more favorable reenlistment code under today's regulation, noting that applicant's lack of any serious disciplinary problems, and noting his favorable performance. Applying the reasoning in BCMR No. 2004-015 to this case, the Board finds that RE-3G is the more appropriate reenlistment code for this applicant's situation.

8. TJAG recommended, and the Board agrees, that copies of each copy of the DD Form 214 currently in the applicant's record should be sent to him, as copy 2 is slightly different from copies 3 and 4. The regulation in effect at the time required that six copies (the original and five other copies) of the DD Form 214 be prepared. Some copies were prepared in slightly differently depending on the intended purpose. However, as best as the Board can determine, each was prepared according to the regulation in effect at that time and the applicant has not maintained otherwise.

9. Accordingly, the applicant should be granted the limited relief discussed above.

**[SIGNATURES AND ORDER ON NEXT PAGE]**



## ORDER

The application of former XXXXXXXXXXXXXXXX, USCG, for correction of his military record is granted in limited part. His record, including the DD Form 214 (copy 2), shall be corrected to show RE-3G as his reenlistment code. After this correction is made, a copy of each copy of the DD Form 214 in the applicant's military record shall be sent to the applicant.

