


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-167

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 August 11, 2004, upon receipt of the applicant's completed application and military records.

This final decision, dated May 5, 2005, 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 correct his military record by changing the reason for his honorable discharge from personality disorder to miscellaneous/general reasons, his JFX separation code to one denoting miscellaneous/general reasons for discharge, and his RE-4 (ineligible) reenlistment code to RE-1 (eligible for reenlistment).

The applicant enlisted in the Coast Guard on May 16, 2000 and was honorably discharged on April 4, 2003.

EARLIER PROCEEDING

Prior to filing his application with the Board, the applicant submitted a request to the Discharge Review Board (DRB) for the same relief requested from the BCMR. On November 13, 2003, the DRB denied the applicant's request, stating the following:

It was the [DRB's] view that the circumstances surrounding the applicant's discharge were enough to demonstrate to the Command some degree of mental instability, certainly enough to question his ability to perform his duties in a safe manner. The psychological evaluations provided by both the military and civilian clinics supported a finding that the applicant's mental state was at least questionable. The testimony and documentation showed a persistent pattern of behavioral issues throughout the entire period he was in the Coast Guard. The [DRB] felt the discharge was carried out in accordance with Coast Guard policy.

APPLICANT'S ALLEGATIONS

The applicant alleged that he obtained an independent psychiatric opinion that proved that the military physician's diagnosis (personality disorder) was wrong. He further alleged that the facts and circumstances surrounding his case prove that his referral for a command-directed mental evaluation was inconsistent with Coast Guard policy and procedure and was unfair.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 16, 2000. On September 5, 2000, he was diagnosed by a staff member of a local hospital as having an adjustment disorder with depressed mood and alcohol abuse. The applicant's military supervisor brought him to the hospital based on a referral from a men's health clinic because the applicant had allegedly expressed suicidal ideation. The hospital report noted that two of the applicant's friends had contemplated or attempted suicide and that the applicant may have witnessed one of them. It also stated that the applicant's spouse suffered from a bi-polar disorder, was violent, and might have attempted suicide. The report noted that the applicant had job adjustment issues. The applicant was discharged from the hospital the same day and directed to follow-up with the Coast Guard medical services.

On September 6, 2000, the applicant was seen at a military health clinic. In addition to noting that the applicant may have witnessed a friend's suicide in September 1999, it also noted that the applicant's spouse suffered from a bi-polar disorder and was at times violent against the applicant. The military physician diagnosed the applicant as suffering from Post Traumatic Stress Disorder (PTSD) and alcohol abuse and referred the applicant to counseling for alcohol abuse and PTSD. The physician placed the applicant on light duty for one month with no sea or small boat duty.

On September 7, 2000, an administrative remarks (page 7) entry was placed in the applicant's record, documenting the fact that he had been diagnosed with alcohol abuse and was recommended for a level II outpatient treatment program. The page 7

informed the applicant that he was to abstain from all alcohol for 90 days post-treatment and that he had agreed to attend outpatient treatment.

On September 19, 2000, a licensed professional counselor reported that he had seen the applicant as a result of a referral from a military physician. The counselor noted that the applicant was struggling to adapt to his initial Coast Guard assignment but was feeling much better after he was transferred to a new assignment. The counselor wrote that he did not feel that the applicant suffered from PTSD and diagnosed him as suffering from an adjustment disorder with mixed emotional features. The counselor stated that the applicant did not need further counseling.

On October 29, 2000, a page 7 was entered into the applicant's record showing that he had been released from the alcohol treatment program and that no aftercare was required.

On March 8, 2001, the applicant was referred for a psychiatric examination to determine if he was fit for [REDACTED] "A" school. The referral noted that he had suffered from depression and anxiety. On April 24, 2001, the psychiatrist wrote that "[t]here is no indication of a psychiatric problem at this time and there is nothing that would prevent him under the present rules to be considered for [REDACTED] training. He is fit for full duty ashore afloat or in the air."

On April 22, 2002, a page 7 was entered into the applicant's record noting that the Family Advocacy Program found that the applicant had been involved in "substantiated" emotional abuse against his spouse and that he was directed to attend a 52-week batterer's treatment program and to be screened by the CDAR (collateral duty alcohol representative). The entry noted that the applicant was referred to the [REDACTED] " for treatment, but had failed to make any real effort toward contacting and scheduling an initial meeting with the counselor, and that once he attended a meeting he disowned any responsibility for his actions and requested to be rejected as a participant. According to the page 7, the applicant was removed from the program because participation in the [REDACTED] " program is based on the individual's acknowledgment of personal responsibility and willingness to address his or her problems. The removal of the applicant from the program caused the Coast Guard's Family Program Administrator to spend additional time identifying another program for the applicant. The page 7 stated that the applicant was referred to the "Alternatives to Violence" program, and it advised him of the following:

If at any time during the treatment period, the command perceives you are not making a reasonable effort to overcome these deficiencies or are failing to adhere to the abuse treatment program, you will be placed in a probationary status for misconduct, and will be evaluated for continued

service in the United States Coast Guard. It's your choice; take stock in your decision.

On October 17, 2002, a page 7 was placed in the applicant's record counseling him on his duty to provide adequate financial support for his family. According to the page 7, the applicant's wife had complained to the applicant's command that he was providing inadequate support for the family.

On November 4, 2002, a [REDACTED] due to a personality disorder and placed him on permanent limited duty. A [REDACTED] medical note dated November 18, 2002, indicates that the applicant had been observed staying up all night, appearing anxious, acting irritable/aggressive to coworkers, having a labile mood, and not attending marital counseling as directed. The [REDACTED] recommended that the applicant be evaluated for a psychiatric disorder and/or personality disorder to determine if he was suitable for continued military duty.

On December 5, 2002, a page 7 was entered into the applicant's record documenting his placement on mandatory probation due to his lack of participation in the "Alternatives to Violence" program. The commanding officer (CO) warned the applicant that if he did not show significant improvement the command would initiate action to discharge him from the Coast Guard.

On December 13, 2002, a page 7 noted that the applicant had indicated that he felt he had been subjected to religious discrimination. The CO advised the applicant the command would not tolerate discrimination in the workplace. The applicant was advised that he could seek guidance from his supervisor, the civil rights officer, or the CO on the matter.

On December 20, 2002, the applicant's CO advised him that he was referring the applicant for a command directed mental health evaluation. In light of the following, the CO stated that he was extremely concerned with the applicant's ability to effectively function in a military environment:

You have been evaluated twice for the use/abuse of alcohol, one being a self-referral. Through comments and demeanor, you have led others to believe that you were suicidal on two occasions. You have been the victim of spouse abuse during two documented incidents. Each time, you were provided with avenues to resolve these issues and each time you either deny that the problem exists, that it was an issue of circumstance, or you completely deny any personal ownership of the situation. With this pattern of repeated behaviors, and your unwillingness to follow through with the counseling provided, I am extremely concerned with your ability to effectively function in a military environment, [REDACTED]

The CO advised the applicant that he had the right to obtain a second opinion from a mental healthcare provider of his own choosing at the applicant's expense. He was told to meet with a Naval psychiatrist on December 27, 2002.

On December 27, 2002, the psychiatrist diagnosed the applicant as suffering from a personality disorder not otherwise specified (NOS) with narcissistic traits. The psychiatrist provided the following plan and recommendation for the applicant:

The service member is not considered mentally ill but does manifest a longstanding disorder of character and behavior consistent with personality disorder [NOS] with narcissistic traits that may inhibit the performance of his task. If the member's performance does not improve or there are more behavioral issues in the future related to this, then the patient could be considered for an administrative separation . . . However, at this time, the patient may be considered for a trial of continued duty. It is recommended that he follow up for some therapy with the Air Force psychologist. He agrees to that at this time.

On January 21, 2003, the applicant's CO informed the applicant that the CO had initiated action to discharge the applicant from the Coast Guard due to a personality disorder based on the December 27, 2002, diagnosis. The applicant acknowledged notification of the proposed discharge, objected to it, and attached a statement in his behalf.

On January 23, 2003, the applicant obtained a second opinion from an independent civilian psychiatrist. The independent psychiatrist stated that he reviewed the correspondence between the applicant and the military, as well as the applicant's previous military psychiatric evaluations, and that he interviewed the applicant for approximately 90 minutes on January 9, 2003. According to this psychiatrist, the applicant reported feeling that his superiors had treated him unfairly. The psychiatrist reported that the applicant was alert and oriented in all spheres, his speech was normal, his affect was in full range, and he had good intelligence. The psychiatrist noted that the applicant denied suicidal ideation, homicidal ideation, and paranoid ideation and that he appeared anxious with feelings of being treated unfairly. The applicant's judgment was reported to be fair. The independent psychiatrist's assessment was as follows:

[The applicant] appears to have had problems relating to the breakup of his marriage (wife diagnosed Bipolar), and dealing with the culture and stressors of being in the Service (reporting it to be unfair). In my Professional opinion, [the applicant] does not appear to have any long standing character or logic problems or enduring patterns of behavior that deviated markedly from the expectations of this culture, or that are

pervasive, inflexible, and had an onset in adolescence or early adulthood. No cluster of symptoms that would support the diagnosis of histrionic, narcissistic or another personality disorder is noted. He may have had a history of depression or alcohol abuse in the past (not currently) when dealing with stressors.

The applicant wrote a 17-page statement objecting to his discharge. In his conclusion, he stated that he came into the Coast Guard with a lot of "issues," but since his wife left him on January 4, 2002, the only problems he had were not being able to contact a social worker, not being able to attend abuse classes, and getting into an argument with a petty officer. He stated that he had not had any more of a problem awaking or falling asleep than anyone else. He alleged that he worked in a hostile work environment, which was much improved due to a certain lieutenant's leadership. He reported low morale at his unit due to the manner in which people are spoken to.

On March 7, 2003, the Commander, Coast Guard Personnel Command, approved the CO's request to discharge the applicant effective April 4, 2003.

On March 12, 2003, the applicant underwent a discharge physical and was found fit for separation. On March 27, 2003, the applicant signed a statement agreeing with the findings of the discharge physical, and he indicated that he did not desire to submit a statement.

On April 4, 2003, the applicant was discharged, after serving 2 years, 10 months, and 19 days on active duty.

VIEWS OF THE COAST GUARD

On January 5, 2003, the Board received the advisory opinion from the Judge Advocate General (JAG) of the Coast Guard, recommending partial relief. He recommended that the applicant's reenlistment code be upgraded from RE-4 to RE-3G (eligible to reenlist, except for disqualifying factor, personality disorder).

The JAG 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). He stated that the applicant offered no evidence to support his claim that the Coast Guard committed an error or injustice by discharging him. He argued that to the contrary, the record shows that the applicant

was properly separated from the Coast Guard and assigned a reenlistment code that precludes his entering the armed services based on his medical record.

The JAG stated that although the applicant alleges that his personality disorder diagnosis is erroneous, the evidence offered by the applicant from the civilian provider, who was selected and paid for by the applicant, merely shows that the civilian provider had a different opinion than the military doctor who made the diagnosis for which the applicant was separated. In addition, the JAG argued that there is a lack of evidence regarding what materials the civilian health care provider considered. He argued that the applicant has not produced evidence sufficient to overcome the presumption of regularity in this case.

The JAG attached a memorandum from CGPC as Enclosure (1) to the advisory opinion and asked the Board to accept it as a part of the advisory opinion. CGPC stated that the applicant's discharge under Article 12.B.16 of the Personnel Manual was correct and that he had been afforded his full due process rights. CGPC further stated that the RE-4 reenlistment code was appropriate, but there were some inconsistencies in the record that create doubt as to whether the RE-4 reenlistment code "was a just application of Coast Guard policy." In this regard, CGPC noted that the applicant was placed on permanent limited duty on November 2, 2002, without any previous observations as required by Coast Guard policy; that there was very little information to document alleged observations that the applicant was staying up all night, appearing anxious, etc.; and that even with the diagnosis of personality disorder on December 27, 2002, there was only a recommendation that the applicant be considered for discharge if his behavior did not improve. CGPC also noted that a civilian psychiatrist did not find that the applicant had a personality disorder. He further noted that there was no record that the civilian psychiatric report was taken into consideration during the applicant's separation physical evaluation. CGPC concluded with the following:

It appears that over the years the applicant exhibited some behavioral traits that may have led to his separation. A diagnosis of personality disorder is a justifiable cause for separation. However, the reenlistment code assigned to the applicant, considering [the inconsistencies noted] unjustly denies him a fair opportunity to be considered for future accession in any branch of the United States Armed Services. I do not recommend relief that would fully excuse the applicant's behavior or previous diagnosis or allow him unquestioned eligibility to enter a service by the assignment of RE Code RE-1. I believe assignment of reenlistment code RE-3G (condition, not a disability, that interferes with the performance of duty) would be appropriate in this case. Assigning Code RE-3G does not automatically bar or allow his accession, but will require him to fully document and demonstrate to service recruiting authorities

that he has overcome and resolved the behaviors that led to his separation.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 12, 2005, the BCMR received the applicant's reply to the views of the Coast Guard. He stated that while he was pleased that the Coast Guard recommended upgrading his reenlistment code to RE-3G, he still believes that he should receive an RE-1 reenlistment code and that the JFX personality disorder separation code should be removed.

The applicant took exception to the JAG's comment that "I merely hired a civilian doctor who had a different opinion [than the military doctor]." The applicant argued that the statement implies that he paid the civilian for a favorable opinion. He stated that there was not a lack of information provided to the civilian doctor as suggested by the JAG. The applicant stated that he provided the civilian with all the same documentation given to the military doctor, which was verified by the civilian doctor's report.

With respect to having to obtain a waiver for the recommended RE-3G reenlistment code, the applicant stated that he did not feel there were any just reasons for refusing to change his code. He further stated that he would not know how to document and demonstrate to service recruiting authorities that he had overcome and resolved his behavioral problems that led to his separation any more than he has already.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 12.B.12 of the Personnel Manual lists condition not a disability as a basis for a convenience of the government discharge. Examples of such conditions are enuresis and somnambulism.

Article 12.B.16 provides for discharge by reason of unsuitability due to personality disorders as listed in the Medical Manual.

Medical Manual (COMDTINST M6000.1B)

Article 5.B.2. lists the following as personality disorders: Paranoid, Schizoid, Schizotypal, Obsessive Compulsive, Histrionic, Dependent, Antisocial, Narcissistic, Avoidant, Borderline, and Personality disorder NOS (includes Passive-aggressive).

Separation Program Designator Handbook

The Separation Program Designator (SPD) Handbook authorizes either JFV or KfV as the separation code for a discharge by reason of condition not a physical disability that interferes with the performances of duties. The JFV separation code means that the separation was involuntary as directed by established directive and the KfV separation code means the discharge was voluntary as allowed by established directive. It also authorizes the assignment of an RE-3G or an RE-4 reenlistment code with the JFV or KfV separation code.

The SPD Handbook authorizes either an RE-1 or RE-4 reenlistment code for a discharge due to miscellaneous/general reasons. It defines such a discharge as either the voluntary or involuntary "discharge directed by established directive when a service component does not have a service reporting requirement for specific reason and desires to identify reasons collectively 'all other reasons' which qualify a member for separation."

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 section 1552 of title 10 of the United States Code. The application was timely.

2. The Coast Guard did not commit an error by discharging the applicant by reason of personality disorder based on the psychiatric report dated December 27, 2002, in which the military psychiatrist determined that the applicant suffered from a personality disorder NOS with narcissistic traits and that he could be discharged if his performance and behavior did not improve. Under Article 12.B.16.b.2. of the Personnel Manual, the only requirement for a discharge by reason of personality disorder appears to be that a psychiatrist, if available, diagnose a member with one of the personality disorders listed in Article 5 of the Medical Manual.

3. Notwithstanding the fact that the Coast Guard may not have committed an error, the Board finds that it committed an injustice that shocks its sense of justice by discharging the applicant by reason of personality disorder at that time. In this regard, the Coast Guard discharged the applicant without resolving the two conflicting medical opinions of whether the applicant suffered from a personality disorder. The Coast

Guard provided him with the opportunity to obtain a second opinion when it directed that he undergo a mental evaluation. On January 23, 2003, an independent civilian psychiatrist evaluated the applicant. Contrary to the military psychiatrist's findings, the civilian psychiatrist found that the applicant did not have a personality disorder. There is no indication in the record that the Coast Guard ever attempted to reconcile the differences between these two conflicting diagnoses, but appeared to simply accept the military psychiatrist's evaluation. In the Board's view, since Article 5.C. of the Medical Manual provided the applicant with the opportunity to obtain a second psychiatric opinion that differed significantly from that of the military psychiatrist, it was incumbent upon the Coast Guard to resolve the inconsistent diagnoses, or at least to explain why one diagnosis was acceptable over the other before discharging the applicant. The Coast Guard's failure to do so was unfair and an injustice under the circumstances of this case. CGPC pointed out that it did not appear that the independent civilian mental examination was reviewed during the applicant's separation physical of March 12, 2003.

4. The JAG indicated that the Board should ignore the results from the independent mental examination because of a lack of evidence establishing what materials the independent civilian psychiatrist used in his evaluation. However, the civilian psychiatrist wrote in his report that he reviewed the correspondence between the applicant and the military and the applicant's previous military psychiatric evaluations, and that he interviewed the applicant for approximately 90 minutes on January 9, 2003. Apparently, this is the same information reviewed and used by the military psychiatrist.

5. The Board is further persuaded that an injustice occurred because the military psychiatrist did not recommend the applicant's immediate discharge. In the December 27, 2002 report, she stated that if the applicant's performance did not improve or if there were future behavioral problems that the applicant should be considered for an administrative discharge. However, approximately three weeks later, the CO advised the applicant that he was recommending his discharge due to personality disorder based on the December 27, 2002, psychiatric evaluation. The CO's notification letter did not cite any additional problems with the applicant's performance or behavior.

6. In light of the above findings, the Board finds that the Coast Guard's discharge of the applicant due to a personality disorder constituted an injustice that shocks our sense of justice. In reaching this conclusion, the Board does not find that the applicant did not have a personality disorder but only that the Coast Guard failed to resolve inconsistencies in the medical opinions or explain why the military psychiatrist's diagnosis was more acceptable. Nor does the Board dismiss or take lightly the fact that the applicant was an administrative burden on his command, as evidenced by the numerous page 7s in his record. However, a personality disorder discharge carries a

stigma and should be awarded only if it accurately depicts the applicant's circumstances.

7. Having found that the discharge by reason of personality disorder constituted an injustice, the Board must fashion relief that is appropriate under the circumstances of this case. Since the Coast Guard has recommended changing the applicant's reenlistment code to RE-3G (condition not a physical disability that interferes with the performance of duty) the Board finds that changing the reason for his discharge from personality disorder to condition not a physical disability would be a fair and equitable solution under the circumstances. While the Board finds the discharge by reason of personality disorder constituted an injustice, the evidence shows that the applicant had several diagnoses of adjustment and personality disorders at various times while in the Coast Guard. Although there is disagreement between the last military psychiatrist to see the applicant and the independent civilian psychiatrist about whether the applicant had a personality disorder, the Board is satisfied that he at least suffered from some condition that led to his inability to adjust to military life, as evidenced by reports of suicidal ideation, alcohol abuse, spousal abuse and marital difficulties, failure to attend marital counseling as directed, [REDACTED], inability to sleep, and an altercation with a fellow crewmember. Therefore, a discharge by reason of condition not a physical disability interfering with the performance of duty is an appropriate basis for discharge in this case, and it is certainly more favorable than a discharge by reason of personality disorder.

8. The Board notes that a discharge for miscellaneous/general reasons, as requested by the applicant, could be a suitable basis for discharge. However, the only options for reenlistment codes available under the SPD Handbook for such a discharge are RE-1 and RE-4. The applicant's military behavior does not support an RE-1. While the applicant may not have had any non-judicial punishments, as stated above, he was an administrative burden on the command. Therefore, the Board finds that a discharge by reason of condition, not a disability, that interferes with the performance of duty and the RE-3G reenlistment code, as recommended by the Coast Guard, are an appropriate remedy under the circumstances presented here. The RE-3G will allow the applicant the chance of reenlisting in another branch of the service with a waiver.

9. The applicant's argument that his command directed referral for a mental evaluation was in violation of the regulation is without merit. The command complied with the regulation, and the applicant was given the opportunity to obtain a second opinion.

10. Accordingly, relief should be granted as discussed above.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of _____ USCG, for correction of his military record is granted. His DD Form 214 shall be corrected to show the following:

Block 25 shall be corrected to show Article 12-B-12 (convenience of the Government) of the Personnel Manual as separation authority.

Block 26 shall be corrected to JFV (condition not a physical disability) as the separation code.

Block 27 shall be corrected to RE-3G as the reenlistment code.

Block 28 shall be corrected to show "condition not a physical disability" as the reason for separation.

The Coast Guard shall issue the applicant a new DD Form 214.

All other requests for relief are denied.

