

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-061

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 Chair docketed the case after receiving the applicant's completed application on December 5, 2008, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated March 26, 2010, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to change her separation and reenlistment codes to ones that allow her to reenter the military. Her military record indicates that she enlisted in the active duty Coast Guard on June 18, 1991 and was discharged on July 26, 1991. She was honorably discharged by reason of unsuitability, with a JMB (personality disorder) separation code and an RE-4 (not eligible to reenlist) reenlistment code.

The applicant alleged that the separation and reenlistment codes are unfair and unjust because at the time she was under the impression that she was being discharged because of an injury to her arm and shoulder. She also alleged that she was not informed of her rights at the time of discharge. She denied that she had a personality disorder.

The applicant stated that she did not discover the alleged error until October 1, 2008, when she tried to join the Reserve and to obtain federal employment. "I was made aware that this rating is considered really bad and could eliminate me from top clearances in the government." She stated that she plans to go to law school and the codes could prevent her from obtaining a law license. She stated that because she received an honorable discharge she believes should not have received a bad reentry code.

Pertinent Documents in the applicant's Medical Record¹

On July 8, 1991, the applicant was referred for a psychiatric evaluation due to her fear of water. On July 8, 1991, a psychologist diagnosed the applicant with hydrophobia and borderline personality disorder that should be ruled out. On July 9, 1991, she was given psychological tests to assist in making a firm diagnosis of her condition.

On July 23, 1991, the applicant was diagnosed with a severe adjustment disorder and a borderline personality disorder. The psychologist noted that the applicant's overall psychological condition had deteriorated and that she would not be a reliable active duty member of the Coast Guard, even if she were to complete boot camp. He recommended that the applicant be processed for discharge from the Coast Guard.

On July 23, 1991, a medical board convened in the applicant's case and made the following recommendation:

1. The [applicant] does not meet the minimum standard for enlistment and retention in the U.S. Coast Guard as prescribed in Section 5-B-16.c. and 5-B-18.a. of COMDTINST M6000.1B.
2. The disqualifying condition, although temporarily aggravated by basic training, has not caused a physical disability due to a period of active military service.
3. Disclosure to the [applicant] of information relative to her physical condition would not adversely affect [her] physical or mental health.
4. It is recommended that the [applicant] be separated from the U.S. Coast Guard in accordance with Article 12-B-16 of COMDTINST M1000.6A.
5. It is recommended that no waiver be granted.
6. An escort for the [applicant] to her home of record will not be required.

On July 25, 1991, the applicant signed a written statement informing her that she was being discharged because of her diagnosed severe adjustment disorder and borderline personality disorder. She acknowledged with her signature that she could make a statement regarding the proposed discharge and that any such statement would be forwarded to the commanding officer (CO) for consideration. She stated that she did not desire to submit a written statement. The applicant's signature was witnessed by another individual.

The applicant's discharge was approved and she was discharged from the Coast Guard with an honorable discharge by reason of unsuitability due to a personality disorder, with a JMB separation code and an RE-4 reenlistment code.

¹ The applicant's military record indicated that her Coast Guard medical file had been sent to the Department of Veterans Affairs. The Board obtained a copy of her Coast Guard medical record.

VIEWS OF THE COAST GUARD

On May 11, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief to the applicant. The JAG asked that the Board accept the comments from Commander, Coast Guard Personnel Service Center (PSC) as the advisory opinion.

PSC noted that the application was not timely and that the applicant had not provided any justification for not filing her application sooner. With respect to the merits, the PSC stated the following:

b. The applicant's record received from the National Personnel Records Center does not contain details relative to her discharge processing. The applicant contends that she was under the impression that she was being discharged due to injuries to her leg and shoulder. However, there is no documentation in her record to support this nor has the applicant provided any support for this assertion. The applicant was aware of the narrative reason for discharge of unsuitability at the time of discharge when she signed her DD-214.

c. Based upon a review of the record and the information contained in the applicant's BCMR application, there is no evidence to support any error or injustice with regards to her discharge or her DD-214. In the absence of supporting documentation to the contrary and based upon the limited information contained in the record, the Coast Guard was presumptively correct with regards to the applicant's discharge.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 14, 2010, the BCMR received the applicant's reply to the advisory opinion. She submitted documents showing that on July 4, 1991, she was treated for a pulled muscle in her left thigh (no evidence of any further treatment for the left thigh). On July 19, 1991, she was treated for a deltoid strain. A medical entry dated July 25, 1991, shows that the deltoid strain had resolved and that processing her for discharge should continue.² The applicant asserted that the medical documentation that she submitted verifies that she was informed that her discharged was due to the injury to her arm and shoulder.

The applicant stated that she received an honorable discharge but the issue is the reentry code, which she alleges hinders her career path. She stated, "The reason I am appealing this decision years later is because it was just shown to me that this code was a serious charge against my character." She also stated that she was not aware of the actual meaning of the reentry code at the time of her discharge. She stated that she is not trying to reenter the Coast Guard but to remove any blemish to her character that might interfere with her obtaining employment.

² The applicant was recommended for discharge due to personality disorder on July 23, 1991.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6)

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)

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

Commandant Instruction (COMDTINST) M1900.4B: Instruction for the Preparation and Distribution of the Certificate of Release or Discharge from Active Duty, DD Form 214

Chapter 2 (Separation Program Designators) of COMDTINST M1900.4B authorized and RE-4 reenlistment code with the JMB separation code. This provisions states that a RE-3G may be assigned only when authorized by the Commandant.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's 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.
2. 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 approximately fourteen years beyond the statute of limitations. The applicant claimed that she did not discover the alleged error until October 1, 2008, when she was told the meaning of the JMB separation code and the RE-4 reenlistment code. However, the applicant knew in 1991 that he was being discharged by reason of unsuitability due because it is listed on her DD 214. In addition, her DD 214, which he signed, contains the RE-4 reenlistment code. Therefore, the applicant knew or should have known of the alleged error at the time of her discharge from the Coast Guard.
3. The Board may still consider the application on the merits, if it finds it is in the interest of justice to do so. In Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further stated that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review." Id. at 164, 165.

4. The applicant stated that the Board should consider her application in the interest of justice because she just recently learned the meaning of the separation and reenlistment codes and that the codes are a blemish on her character. While the applicant may not have known the meaning of the codes in 1991, she knew that she was discharged due to a personality disorder and an adjustment disorder because she signed the document acknowledging this fact. In addition, the DD 214 referenced the section of the Personnel Manual under which she was discharged. With the information in her medical record and on her DD 214, she could have discovered the meaning of the JMB separation code and the RE-4 reenlistment code, if she had been more diligent in seeking an explanation as to their meaning. Accordingly, the Board is not persuaded to waive the statute of limitations because the applicant alleges that she only recently discovered the meaning of the JMB separation code and the RE-4 reenlistment code.

5. Nor is the Board persuaded to waive the statute based on a cursory review of the merits because the applicant is not likely to prevail on her claim. In this regard, the Board notes that the applicant was advised of the reason for her discharge and provided the opportunity to make a statement as required by the Personnel Manual. She acknowledged that she was being discharged by reason of a personality disorder and waived her right to make a statement in her own behalf. She has presented no evidence that her personality disorder diagnosis was erroneous. The applicant's allegation that she was told that she was discharged due to her arm and shoulder injury is without merit. She has presented no evidence that she was ever told that she was being discharged due to an arm and shoulder injury, and there is no medical evidence in the record that her deltoid strain was ever considered unfitting for military service. As a matter of fact, a July 25, 1991 medical entry reported the applicant's deltoid strain/overuse syndrome as resolved. Moreover, when provided with the opportunity to write a statement wherein she could have asserted her alleged belief that she thought she was being discharged due to an injury, she opted to waive her right to make a written statement. Accordingly, the Board finds that the JMB (personality disorder) separation code is correct.

6. COMDTINST M1900.4B. authorized an RE-4 reenlistment code or an RE-3G if approved by the Commandant. The CO, who had authority to discharge the applicant under Article 12.B.16.e. of the Personnel Manual, approved the RE-4 separation code perhaps because the medical board did not recommend a waiver for the applicant. The RE-4 would bar any attempt by the applicant to enlist in the future. The assignment of the RE-4 reenlistment code for the applicant's unsuitability personality disorder discharge was appropriate and in accordance with COMDTINST M1900.4B.

7. Therefore the Board finds that due to the length of the delay, the lack of a persuasive reason for not filing her application sooner, and the lack of probable success on the merits of her claim, it is not in the interest of justice to waive the statute of limitations in this case. The application should be denied because it is untimely and because it lacks merit.

8. Accordingly, the applicant's request should be denied.

ORDER

The application of former XXXXXXXXXXXXXXX, USCG, for correction of her military record is denied.

