DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-053

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FINAL DECISION

This is a proceeding under 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 15, 2010, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 14, 2011, 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 upgrade the narrative reason for discharge shown on his March 4, 2005, discharge form DD 214 from "Personality Disorder"[1] to something that does not reflect a personality disorder; to upgrade his reenlistment code from RE-4 (ineligible to reenlist) to RE-1 (eligible to reenlist); and to upgrade his separation code from JFX, which denotes an involuntary discharge due to a personality disorder, to JHD[2] or some other code that does not reflect a personality disorder.

[1] A "personality disorder" is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment." American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-TR), p. 685. Types of personality disorders include paranoid, schizoid, schizotypal, antisocial, borderline, histrionic, narcissistic, avoidant, dependent, and obsessive-compulsive. *Id.* "The diagnosis of Personality Disorders requires an evaluation of the individual's long-term patterns of functioning … . The personality traits that define these disorders must also be distinguished from characteristics that emerge in response to specific situational stressors or more transient mental states … . The clinician should assess the stability of personality traits over time and across different situations." *Id.* at 686. The Coast Guard relies on the DSM when diagnosing members with psychological conditions. *See* Coast Guard Medical Manual (COMDTINST M6000.1B), Chap. 5.B.1.

[2] Separation code JHD denotes an involuntary discharge when an enlisted member is disenrolled from an officer training program. *See* Separation Program Designator Handbook.

The applicant alleged that after completing basic training, he was assigned to a station and performed all of his duties at a level that exceeded his command's expectations. He alleged that he has never had a personality disorder, but a doctor diagnosed him with one after speaking to him for only five minutes. The applicant did not submit any evidence to support his claims.

SUMMARY OF THE RECORD

On January 6, 2004, at age 18, the applicant enlisted in the Coast Guard. Following boot camp, he was advanced to seaman apprentice (SA/E-2) and assigned to a small boat station on one of the Great Lakes.

On July 17, 2004, the applicant incurred an "alcohol incident" by drinking alcohol while underage at a [redacted], which he admitted to a chief petty officer who questioned him. The applicant's command documented the incident in his record, charged him with a violation of the Uniform Code of Military Justice, and took him to mast, but then dismissed the charge with a warning instead of punishing him.

On the applicant's first semiannual performance evaluation, dated August 31, 2004, he received an Unsatisfactory conduct mark and was not recommended for advancement. In the various performance categories on the evaluation, he received eleven average marks of 4 (on a scale of 1 to 7), three above-average marks of 5, and one poor mark of 2 (for "Health and Well-Being").

On December 21, 2004, the head of the Mental Health Department of a naval hospital wrote a memorandum to the applicant's command in which he recommended that the applicant be discharged because of a diagnosed Adjustment Disorder[3] with Anxiety (309.24) and Personality Disorder NOS (not otherwise specified) with schizoid traits (301.9). The doctor, a U.S. Marine Corps commander, wrote the following in pertinent part:

> b. At this time, the conditions are sufficiently severe to impair significantly the member's ability to function effectively in the military environment, as demonstrated by the following problem behaviors: (i) his significant inability to consider others as independent, thinking/feeling human beings, which undermines his capacity to work as a member of any team, and (ii) his significant lack of interest in relating to others, which undermines unit morale and creates a potentially dangerous incohesiveness in an operational environment.
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> c. The following risks are associated with retention in service: his inability quickly to form trusting relationships places himself and those trying to work with him into increased danger and the likelihood of harm.
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> d. The disorder(s) are not considered amenable to effective treatment in the military setting.

On December 30, 2004, a doctor for the U.S. Public Health Service concurred in the diagnoses and recommended to the applicant's command that the applicant be discharged because the applicant's "[c]onditions are aggravated by active duty military service."

[3] An "adjustment disorder" is a psychological response to an identifiable stressor that results in the development of emotional or behavioral symptoms. Adjustment disorders are normally temporary and disappear when the stressors disappear. Adjustment disorders are not personality disorders. DSM-IV-TR, at 679.

On January 5, 2005, the Officer in Charge (OIC) of the applicant's unit notified the applicant that he was initiating the applicant's honorable discharge for unsuitability because of his "documented inability to adjust to military life, resulting from your medically diagnosed personality disorders." The OIC advised the applicant that he could submit a statement on his own behalf and rebut the OIC's recommendation. The applicant signed a form acknowledging this notification, waived his right to consult a lawyer, and submitted the following statement:

> I do not object to an honorable discharge from the U.S. Coast Guard. I have not underlined (object/do not object) on part 4 of the memorandum that is attached to this document [the acknowledgement form]. The specific [type of] discharge from the U.S. Coast Guard is not listed. So I have to respectfully decline to underline that section. I do not object to an honorable discharge[;] however I do object to anything other than an honorable discharge.

The OIC submitted the applicant's statement, his own notification memorandum, and the psychiatric report to the Coast Guard Personnel Command (CGPC) with another memorandum recommending that the applicant be discharged for unsuitability because of the diagnoses. The OIC noted the following:

> 2. On 8 December 2004, I referred [the applicant] to [an Army National Guard sickbay] for counseling by [a chief health specialist], stemming from his admittances to me during a counseling session of his inability to conform to military life, his disgust of or inability to understand the final findings of a medical review board dated 07 December 2004,[4] and his desire to be released from active duty at all costs. On 13 December, [the applicant] met with [the chief health specialist], and was then referred to [redacted] Hospital for a psychiatric evaluation based on his counseling session with [the chief health specialist].
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> 3. [The applicant's] recent performance shows he is unable to conform to or meet a satisfactory level of performance in the following Professional Qualities of the Enlisted Employee Review System: Integrity, Loyalty and Adaptability. Due to the medical diagnosis previously mentioned, it is my belief this separation request does not meet the requirements for a "probationary period" as described in [Article 12.B.16. of the Personnel Manual]. I submit this request asking for no consideration for a second chance waiver in accordance with the Commandant's retention initiatives based on [the psychiatrist's] diagnosis. In the interest of the member, and good order and discipline, I strongly believe rapid administrative actions are required.

On January 18, 2005, the applicant's commanding officer (CO) forwarded the OIC's recommendation with its attached documents to CGPC and concurred with the recommendation for an unsuitability discharge because of the diagnosed personality disorder. He noted that a second chance waiver "would not be a viable option in this case."

On January 28, 2005, the District Commander advised CGPC that he had reviewed the discharge package and concurred with the recommendation that the applicant be discharged for unsuitability due to the diagnosed personality disorder.

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[4] Medical notes in the applicant's record indicate that he complained of chronic fatigue in the fall of 2004 and tried unsuccessfully to attain a medical discharge, but a medical board found him to be fit for duty. Aside from the psychiatric report and complaints of fatigue and headaches, the only medical entry of note in his Personal Data Record is an entry indicating that the applicant's mother had committed suicide in her early 30's.

On February 4, 2005, CGPC issued orders for the applicant to be discharged as of March 4, 2005. The orders state that the applicant was to be honorably discharged for unsuitability under Article 12.B.16. of the Personnel Manual with an RE-4 reenlistment code, a JFX separation code, and "Personality Disorder" as the narrative reason for separation on his DD 214. The applicant's DD 214 dated March 4, 2005, reflects these orders.

Following his discharge, the applicant applied to the Discharge Review Board (DRB). On November 16, 2009, the DRB found that the applicant's discharge was proper and equitable and recommended that no change be made to his DD 214. This recommendation was approved by the Commandant. In its report, the DRB wrote the following:

> The Board chose to contact … the applicant's former Officer-in-Charge at [the small boat station] for further insight regarding the applicant's performance and character while under his command. When the applicant first reported to [the station], things were going well; however they "started to crash" about the time the applicant was taken to mast for underage drinking. [The OIC] stated he believed the applicant was shirking his responsibilities, and blaming his deteriorating performance on sleeping issues. [The OIC] indicated the applicant did not respond to counseling or mentoring, hoping the sleeping issues would be satisfactory justification for simply standing a comms watch rather than getting underway. In summation, [the OIC] believes the applicant wanted out of the Coast Guard and he got his wish.
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> The Board members did not uncover any administrative oversights or failures in this discharge. The assignment of this SPD code is appropriate and the narrative reason matches the circumstances that led to this member's discharge.

VIEWS OF THE COAST GUARD

On March 3, 2011, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board grant partial relief. In so doing, he adopted the facts and analysis provided in an enclosed memorandum prepared by the Coast Guard Personnel Service Center (PSC).

The PSC stated that since the DRB's decision was issued, the Commandant has issued ALCOAST 252/09, which promulgates a new separation code and narrative reason for separation for members who are discharged due to their inability to adapt to military life. The PSC stated that pursuant to this new policy, the applicant's DD 214 should be corrected to show separation code JFY, instead of JFX, and "Adjustment Disorder," instead of "Personality Disorder," as his narrative reason for separation. The PSC stated that although the new policy allows such members to receive either an RE-3G or an RE-4 reenlistment code, the applicant's RE-4 should "stand as issued as per the prior determination made by CGPC-epm exercising administrative authority over the discharge of an enlisted member of the Coast Guard."

The JAG noted in his memorandum, however, that "based on the facts and circumstances of this particular case, the Coast Guard does not object to assigning the applicant re-entry code RE-3G" in accordance with ALCOAST 252/09.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 7, 2011, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond in writing within 30 days. No response was received.

APPLICABLE REGULATIONS

Article 12.B.16.b. of the Personnel Manual in effect in 2005 authorizes the Commandant to direct the discharge of an enlisted member for "unsuitability," due to, *inter alia*, apathy, inaptitude, or personality disorders as "determined by medical authority." Article 12.B.16.h. states that when a psychiatric condition is a consideration in the discharge for unsuitability, the member should be examined by a psychiatrist. Under Article 12.B.16.d., prior to recommending a member for an unsuitability discharge, the CO is required to notify the member of the proposed discharge; afford him the opportunity to submit a statement on his own behalf; and, if a General discharge is contemplated, allow him to consult with an attorney.

Under the Separation Program Designator Handbook, members involuntarily discharged by directive because of a diagnosed personality disorder are assigned separation code JFX and either an RE-4 or RE-3G reenlistment code on their DD 214s.

ALCOAST 252/09, issued on April 29, 2009, states that the Department of Defense has created new separation codes to address the situation in which a member is unsuitable for military service because of a diagnosed adjustment disorder that does not constitute a physical disability but that prevents the member from adapting to military life. The ALCOAST specifies that the new separation code JFY should be used when a member's involuntary discharge is "directed by an established directive when an adjustment disorder exists, not amounting to a disability, which significantly impairs the member's ability to function effectively in the military environment. … For enlisted personnel, the re-entry code assigned can be either RE-3G or RE-4. CG PSC (epm-1) will review the separation packages and make the determination for which re-entry code should be applied."

ALCOAST 125/10, issued on March 18, 2010, states that, to align Coast Guard policy more closely to that of the Department of Defense, "[i]n cases where individuals are separated for cause and there is an option of assigning an RE-1 (eligible for reenlistment), RE-3 (eligible for reenlistment except for disqualifying factor), or RE-4, the RE-3 is the normal standard unless a different code is authorized by the discharge authority." For example, the ALCOAST notes that for members discharged because of alcohol incidents, an RE-3 code is prescribed unless the member engages in misconduct by, for example, incurring a DUI or refusing rehabilitative treatment, in which case an RE-4 code is prescribed. In addition, the ALCOAST eliminated the subcategories denoted by RE-3 code letters (RE-3F, RE-3G, RE-3P, etc.) so that only the code "RE-3" appears on the DD 214.

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 over this matter under 10 U.S.C. § 1552(a).

2. Under 10 U.S.C. § 1552(b), an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. Although the applicant in this case filed his application more than three years after he was discharged and received his DD 214, he filed it within three years of the decision of the Discharge Review Board. Therefore, the application is considered timely.[5]

3. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.[6]

4. The applicant asked the Board to correct his separation code and narrative reason for separation on his DD 214 so that they will not reflect a diagnosis of personality disorder, which he alleged he never had, and to upgrade his reenlistment code to RE-1 so that he will be eligible to reenlist. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.[7] Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."[8]

5. Because employers sometimes demand to see veterans' DD 214s before hiring them, it is very important for DD 214s to be fair and not to unduly tarnish members' records without substantial evidence. In light of the highly prejudicial nature of a discharge by reason of "personality disorder," the Board has often ordered the Coast Guard to correct the narrative reason on a DD 214 to some other, less prejudicial reason when the diagnosis of personality disorder was uncertain or not supported by significant inappropriate behavior.[9] On the other hand, the Board has not removed the narrative reason "personality disorder" from the DD 214s of some veterans whose inappropriate conduct supported their diagnoses.[10]

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[5] *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

[6] *See Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that "whether to grant such a hearing is a decision entirely within the discretion of the Board"); *Flute v. United States*, 210 Ct. Cl. 34, 40 (1976) ("The denial of a hearing before the BCMR does not *per se* deprive plaintiff of due process."); *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

[7] 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R.§ 52.24(b)).

[8] *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

[9] *See, e.g.*, BCMR Docket Nos. 2009-106, 2008-127, 2007-221, 2007-028, 2005-082, 2005-045, 2004-044, and 2003-015.

[10] *See, e.g.*, BCMR Docket Nos. 2010-002, 2001-020, 2000-142, 1999-185, 1999-037, and 1998-099 in which the Board upheld the unsuitability and personality disorder discharges of, respectively, a veteran who was diagnosed with an antisocial personality disorder after committing various offenses, including unauthorized absences, theft,

6. Although the applicant submitted no evidence to support his claim that he does not have a personality disorder, the Board notes that the diagnosis was apparently made based on only one or two interviews. According to the DSM-IV-TR, which the Coast Guard relies on for psychiatric diagnoses, "[t]he diagnosis of Personality Disorders requires an evaluation of the individual's long-term patterns of functioning … . The personality traits that define these disorders must also be distinguished from characteristics that emerge in response to specific situational stressors or more transient mental states … . The clinician should assess the stability of personality traits over time and across different situations."[11] Presumably, the applicant's mother's suicide might have made diagnosing his condition accurately even more difficult. While it may be possible to identify long-term patterns of functioning in one or two interviews under such circumstances, the Board notes that the only misconduct documented in the applicant's record is one instance of underage drinking, which does not support the validity of the diagnosis. Therefore, the Board is persuaded that the validity of the applicant's diagnosed "Personality Disorder NOS" is uncertain.

7. The OIC's memorandum shows that the applicant was recommended for discharge primarily because he was unable to adapt to military life and had been trying hard to get out of the Service. The psychiatrist's December 21, 2004, report indicates that the applicant was diagnosed with an adjustment disorder because he could not adjust to the military environment, and the Coast Guard has recommended correcting his record to reflect a discharge by reason of "adjustment disorder" with a JFY separation code pursuant to ALCOAST 252/09. Because adjustment disorders are normally temporary and disappear when the stressor disappears,[12] the Board believes that a discharge by reason of "adjustment disorder" is less prejudicial than a discharge by reason of "personality disorder." Therefore, although this narrative reason for separation had not yet been authorized in 2005, the Board will direct the Coast Guard to correct his DD 214 to show that he was discharged because of an adjustment disorder with the corresponding JFY separation code.

8. The applicant asked the Board to upgrade his reenlistment code from RE-4 to RE-1. The PSC recommended against making this change because the RE-4 was directed by the Personnel Command in 2005, but the JAG stated that the Coast Guard would not object to upgrading the applicant's reenlistment code to an RE-3G code. The Board does not believe that the applicant is entitled to an RE-1 because he clearly could not adapt to military life in 2005, and nothing in the record indicates that he would adapt to military life any better today than he did then. However, since the applicant was discharged, the Coast Guard has issued ALCOAST

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disobedience, and drug use; a veteran who was diagnosed with a dependent personality disorder after going AWOL and committing various other disciplinary infractions; a veteran who was diagnosed with a borderline personality disorder and went to an historic tower, told a guard at the bottom that he was going to hang himself off the top with a dog collar and leash, and waited at the top until the police arrived; a veteran with numerous disciplinary infractions and performance problems in his record who was diagnosed by two psychiatrists with a borderline personality disorder; a veteran who frequently exhibited inappropriate sexual behavior over a two-year period and was twice diagnosed with "adjustment disorder with disturbance of conduct"; and a veteran who was twice arrested for indecent exposure and diagnosed with narcissistic personality disorder.

[11] DSM-IV-TR, at 686.

[12] *Id.* at 679.

125/10, which makes the RE-3 code—without any letter specifying a subcategory—the default reenlistment code to be used except in cases where an RE-4 is appropriate because the member committed significant misconduct. An RE-3 code is not an absolute bar to reenlistment; it allows a member to reenlist if he can prove to the satisfaction of the Recruiting Command that the condition or circumstance that caused him to be discharged before his enlistment expired no longer exists.[13] Given that the only documented misconduct in the applicant's record is one incident of alcohol consumption while underage, to which he confessed, the Board finds that his reenlistment code should be upgraded to RE-3.

9. Accordingly, relief should be granted by ordering the Coast Guard to issue the applicant a new DD 214 with separation code JFY in block 26, reenlistment code RE-3 in block 27, and "Adjustment Disorder" as the narrative reason for separation in block 28. In addition, the following sentence shall be added to the remarks in block 18 because a duplicate DD 214 is being issued: "Action taken pursuant to order of BCMR."

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

[13] Coast Guard Recruiting Manual, Chapter 2.E.1.b.5.a.

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

The Coast Guard shall issue him a new DD 214 with the following corrections made (not by hand and not by issuing a DD 215):

- Block 26 shall be corrected to show that he received the separation code JFY.

- Block 27 shall be corrected to show reentry code RE-3.

- Block 28 shall be corrected to show "ADJUSTMENT DISORDER" as the narrative reason for separation.

- The following sentence shall be added to block 18: "Action taken pursuant to order of BCMR."