

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-128

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 application upon receipt of the applicant's completed application on April 24, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated January 18, 2013, 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 ALLEGATION

The applicant asked the Board to correct his record to show that he was discharged with 2 years of active duty instead of 1 year, 11 months, and 7 days. He stated that he needs 2 years active duty to qualify for health care through the Department of Veterans Affairs (DVA). He enlisted in the Coast Guard on April 28, 1986, and was discharged on April 7, 1988, with an honorable discharge by reason of unsuitability due to a personality disorder, a JMB (unsuitability-personality disorder), and a RE-4 (not eligible to reenlist) reenlistment code.

The applicant alleged that he suffered an injustice because he was discharged short of having two years of active duty. He alleged that the injustice occurred because the speed with which he was discharged created confusion in the process and he now questions whether he freely gave up his right to submit a statement rebutting his discharge.

The applicant stated that although his DD 214 shows unsuitability as the reason for his separation, his psychiatric evaluation from [REDACTED] states that a "pattern of events up to present suggests unsuitability for active duty service. Depression experienced by member seems related to personality and circumstances." The applicant asserted that a medical board was never convened to explain the meaning of "personality and circumstances." The [REDACTED] psychiatric evaluation, a copy of which is in the record, shows that the applicant was diagnosed with "mixed personality disorder with borderline, obsessive-compulsive, and immature features." The psychiatric report also states the following:

This individual was found free from mental disease or mental defect and has the mental capacity to understand the nature and probable consequences of all of his . . . acts. He . . . possesses sufficient mental capacity to understand the nature of any proceedings against him . . . and to intelligently cooperate in his . . . defense, if applicable.

The applicant stated that since his discharge he has suffered from severe mental health issues, such as anxiety and panic attack disorders, major depression, and agoraphobia. He stated that he recently learned that his mental issues are related to his military service. He stated that he was an [REDACTED] on active duty and witnessed many graphic and gruesome images that he continues to recall. The applicant believes that he suffers from PTSD as a result of traumatic events he observed or participated in while [REDACTED] in the service.

The applicant stated that he is asking to be granted the 21 days that he was “shorted by expedited discharge so that I can receive eligibility [for DVA] status . . . These [21] days are all I seek, and are what I believe to be the injustice in the application for correction of [my] military record.”

The applicant asserted that he did not discover the alleged error until October 15, 2011 because his “mental health disorder clouded the injustice and the service connection was just realized.”

BACKGROUND

The applicant enlisted in the Coast Guard on April 28, 1986. On February 8, 1988, the applicant’s commanding officer (CO) informed the applicant that the CO had initiated action to discharge the applicant from the Coast Guard under Article 12-B-16 of the Personnel Manual for a “mixed personality disorder with border-line obsessive-compulsive and immature features.” The CO advised the applicant that he would be provided with the opportunity to consult with legal counsel and that he had the right to make a statement.

On February 8, 1988, the applicant signed a document in which he acknowledged the proposed discharge, that he was provided the opportunity to consult with a lawyer, and that he did not desire to submit a statement in his own behalf. The notification of proposed discharge document read as follows: “I do/do not (circle one) desire to submit a statement in my own behalf.” On the document, both the do and do not were circled with an X over the do and a line through the do not. However, the words “do not” (desire to submit a statement) with the initials E.S. were handwritten under the lined-through “do not.”

On February 19, 1988, the CO asked the Commandant to discharge the applicant by reason of unsuitability due to personality disorder. The CO noted that the applicant had been diagnosed with a “mixed personality disorder with borderline obsessive compulsive and immature features.”

On March 12, 1988, the Commandant approved the applicant's discharge from the Coast Guard by reason of unsuitability due to a personality disorder. The discharge was to be effected within 30 days from March 12, 1988.

On March 23, 1988, the applicant underwent a separation physical. He noted that he had received psychiatric care, to which the doctor noted that he was diagnosed with a mixed personality disorder on December 30, 1987. The examining physical found the applicant qualified for discharge from the Coast Guard.

On April 7, 1988, the applicant signed a document stating he had been informed of the findings of his separation physical and that he agreed with them.

VIEWS OF THE COAST GUARD

On October 3, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief because the application was untimely. In this regard, the JAG stated the following:

Applicant states that he delayed filing his application because his "mental health disorders clouded the injustice and the service connection was just realized." Applicant, however, was aware in 1988 that he was being discharged for unsuitability due to a personality disorder, and his DD Form 214, which he signed, shows that at the time of discharge, he had less than two years of active duty. Therefore, the applicant knew or should have known of the alleged error at the time of his discharge from the Coast Guard.

In determining whether it is in the interest of justice to waive the time limitations on applications, the Board has been directed to consider the reasons for the delay and the plaintiff's potential for success on the merits, based on a cursory review" *Allen v. Card*, 799 F. Supp. 158, 166 (D.D.C. 1992). A cursory review in this case reveals that the applicant is not likely to prevail on his claim. Applicant's request is for a correction to his record to show that he served on active duty for twenty-four months so that he is eligible for VA benefits. Applicant has not proven, however, that he served on active duty in the [Coast Guard] for twenty-four months. His DD Form 214 shows that he served one year, eleven months, and ten days on active duty. Applicant has submitted nothing to show that this calculation is incorrect. Moreover, applicant has failed to prove that his discharge processing was in error or unjust. Applicant acknowledged the proposed discharge and offered no objection to it. Therefore, because applicant has submitted no evidence to show that the calculation is incorrect or that the discharge was unjust, the [Coast Guard] recommends that the Board deny applicant relief in this case.

The JAG attached a memorandum from the Commander, Personnel Service Center (PSC) as a part of the advisory opinion. PSC noted that the application was not timely and should be denied for that reason. PSC stated that the Coast Guard followed its policies and procedures in

its decision to discharge the applicant for unsuitability. There are no requirements to retain a member with less than two years of service on active duty for any duration of time to meet DVA benefit qualifications. PSC argued that the Coast Guard is presumptively correct and the applicant's request should be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The Board was unable to send the applicant a copy of the views of the Coast Guard because the applicant moved his residence and did not provide the Board with a new address. Applicants are advised by letter to keep the BCMR informed of their current address.

APPLICABLE REGULATIONS

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.

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 submission 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 the alleged error or injustice. See 33 CFR 52.22. The applicant asserted that he discovered the alleged error on November 15, 2011. However, he knew or should have known at the time of his discharge in 1984 that he had served less than 24 months on active duty because his DD 214, which he signed, shows that he had served for 1 year, 11 months, and 7 days. The application was submitted approximately 24 years beyond the statute of limitations and was untimely.

3. The applicant asserted that the Board should excuse the untimeliness because of his alleged mental disorder, which "clouded the injustice and the service connection was just realized." However, there is no evidence that the applicant's personality disorder or his more recent mental diagnoses prevented him from having the judgment and acumen necessary to file a timely BCMR application. The applicant's reason for not filing his application sooner is not proven. Nor is it persuasive to the Board.

4. Although the application is untimely, the Board must still perform at least a cursory review of the merits to determine whether it is the interest of justice to waive the statute of limitations. 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.

5. A cursory review of the merits indicates that the applicant is not likely to prevail on his application because he simply did not serve on active duty for 24 months. His DD 214 shows that he served for 1 year, 11 months, and 7 days. He has offered nothing to show that he served for a longer period of time. In addition, Article 12-B-16 of the Personnel Manual authorizes an administrative discharge due to a diagnosed personality disorder. The applicant was diagnosed with a "mixed personality disorder with border-line obsessive-compulsive and immature features" prior to his discharge. A personality disorder is not considered a physical disability and therefore the applicant was not entitled to a medical board. There is no evidence that the applicant was mentally incompetent when he initialed the words "do not" when asked whether he wanted to make a statement. Moreover, the applicant has not shown that his recently diagnosed mental conditions were incurred while on active duty. The applicant was discharged in 1988 and submitted evidence stating that he was diagnosed with depression and panic disorder in 2004, some 16 years after he left the Coast Guard. Nothing except the applicant's statement connects these recently diagnosed conditions to the applicant's active duty.

6. Accordingly, the application should be denied because it is untimely and it is not in the interest of justice to excuse the untimeliness.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXX, USCG for correction of his military record is denied.

