

**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. 2012-153**



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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 Chair docketed the case after receiving the applicant's completed application on May 21, 2012, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated February 28, 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 ALLEGATIONS**

The applicant asked the Board to change his RE-3G (condition, not a physical disability that interferes with the performance of duty) reenlistment code to one that allows him to reenlist in the military. He also asked that his narrative reason for his separation be changed "from unsuitability to something else." The military record indicates that the applicant enlisted in the active duty Coast Guard on October 20, 1992 and was discharged on June 27, 1995. He was honorably discharged by reason of unsuitability, with a JFX (personality disorder) separation code and an RE-3G reenlistment code.

The applicant stated that he has been a model citizen since his discharge and has had no involvement with law enforcement authorities or mental health professionals. He stated that he has obtained an Associates' Degree in Occupational Therapy Assistance, a Bachelor's of Arts in Family Life Education, and he is attending classes for a Master's of Arts degree in Mental Health Counseling. He stated he made an error in accepting the discharge and the Coast Guard committed an error in discharging him.

The applicant stated that he discovered the alleged error on April 21, 2012. He asked that if his application is untimely that such untimeliness be excused because his local Department of Veterans Affairs mental health personnel have not seen any symptoms of mental illness in him. In addition, he stated that "separation anxiety" is a diagnosis for small children and that he was 23 years old when he was diagnosed with the condition.

The applicant also submitted copies of his degrees, certificates of appreciation from the community, and entries from his service record.

### **BACKGROUND**

On March 22, 1994, the applicant asked for an early release from the Coast Guard because he believed that he was not suitable for military life. He stated that he had already completed four years in the United States Navy.

On January 31, 1995, the applicant's CO sent the applicant a letter explaining that his request for an early release was submitted to Commander, Military Personnel Command (MPC) but there had been no response. The CO told the applicant that since there had been no response from MPC, his request for an early release was considered disapproved in accordance with guidance in ALCOAST 21/94. The CO told the applicant that the early release program was for the benefit of the service, and that the Coast Guard found that it was in its best interest to have enlisted members serve their complete contract before discharge.

A May 12, 1995 memorandum to the applicant's CO from the CO, Coast Guard Support Center New York, states that the applicant was examined by Dr. B, a civilian psychiatrist at the applicant's CO's request. The memorandum signed by Dr. T of the U.S. Coast Guard Support Center, New York, recommended that the applicant be discharged in accordance with Article 12-B-16 of the Coast Guard Personnel Manual.

On May 18, 1995, the CO informed the applicant that he was recommending that the applicant be discharged from the Coast Guard because of unsuitability due to a personality disorder under Article 12-B-16 of the Personnel Manual.

On May 18, 1995, the applicant signed a statement acknowledging the proposed discharge, declining his right to speak with an attorney, and waiving his right to make a statement, and not objecting to the discharge.

On May 18, 1995, the applicant's CO sent a memorandum to the Commander, Military Personnel Command, recommending that the applicant be discharged due to a personality disorder, NOS that was diagnosed by a United States Coast Guard Support Center Medical Officer. (Although not in the record, the CO indicated that an SF-502, Clinical Narrative Summary dated 11 May 1995 documenting the applicant's personality disorder diagnosis was attached to his recommendation for discharge.) The CO stated that the applicant was qualified for an honorable discharge.

On June 5, 1995, the Commander, Military Personnel Command directed that the applicant be discharged by reason of unsuitability under Article 12-B-16 of the Personnel Manual. The Commander also directed that the applicant be assigned separation code "JFX."

The applicant was discharged on June 27, 1995.

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

On November 2, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief to the applicant. The JAG stated that the applicant does not contest the policy applied to administratively separate him from the Coast Guard or allege any procedural irregularities. Instead, the applicant states that he made an error in accepting the discharge. The JAG argued that the applicant has not met his burden of proving that the RE-3G reenlistment code was an error or injustice. The JAG stated that if the applicant's condition no longer exists, the RE-3G reenlistment code does not preclude him from reenlisting, if he can prove that the disqualifying factor has been resolved.

The JAG asked that the Board accept the comments from Commander, Coast Guard Personnel Service Command (PSC) as a part of the advisory opinion. PSC noted that the application was not timely since the applicant was discharged from the Coast Guard on June 21, 1995. PSC noted that the applicant was diagnosed by a psychiatrist with a personality disorder, which is a basis for discharge under Chapter 5.B.2. of the Medical Manual and Article 12.B.16. of the Personnel Manual. PSC also stated that the Separation Program Designator Handbook list either an RE-4 (not eligible to reenlist) or an RE-3G as reenlistment codes that can be assigned with a discharge due to a personality disorder. PSC argued that the applicant was discharged in accordance with Coast Guard policy and his current RE-3G code does not prohibit reentry into military service.

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

On November 8, 2012, the Board sent the applicant a copy of the views of the Coast Guard. He did not submit a reply.

### **APPLICABLE LAW**

#### ***Personnel Manual (COMDTINST M1000.6)***

Article 12.B.16.b of the Personnel Manual authorizes unsuitability discharges for members diagnosed with one of the "personality behavior disorders ... listed in Chapter 5, CG Medical Manual ... ."

#### ***Medical Manual (COMDTINST M6000.1B)***

Chapter 5.B.2 of the Medical Manual (COMDTINST M6000.1B) lists the personality disorders that qualify a member for administrative discharge pursuant to Article 12.B.16. of the Personnel Manual. They are 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)***

Article 4.a. states that the DD 214 provides a concise record of a period of service with the Armed Forces at the time of a member's discharge. Further, Article 1.D.2. states that the DD 214 must be accurate and complete in order for it to fulfill the purposes for which it was designed.

### 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, which expired three years after his discharge from the Coast Guard on June 27, 1995. The applicant knew at the time that he was being discharged due to a personality disorder NOS and that the Coast Guard determined him to be unsuitable for military service. Unsuitability is listed as the narrative reason for discharge and the reenlistment code is listed as RE-3G on the applicant's DD 214, which he signed. Therefore, the applicant knew or should have known of the alleged error at the time of his 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's reason for asking the Board to excuse his untimeliness in the interest of justice and to consider the merits of his application is not persuasive. While the applicant stated that that DVA has not diagnosed him with any mental illnesses, he provided no explanation why he waited for approximately 17 years to submit this information to the Board. Therefore, the Board is not persuaded to waive the statute of limitations in this case.

5. Nor is the Board persuaded to waive the statute of limitations based on a cursory review of the merits because the applicant is not likely to prevail on his claim. In this regard, the Board notes that the applicant was advised of the reason for his discharge and provided the opportunity to make a statement, as required by the Personnel Manual. He acknowledged that he was being discharged because of a personality disorder and waived his right to make a statement in his own behalf. There is no evidence in the record to support his contention that he was diagnosed with "separation anxiety" as opposed to a personality disorder NOS. The

applicant's discharge and the assignment of his RE-3G reenlistment code appear to comply with regulation.

6. Therefore, due to delay in bringing his claim, the lack of a persuasive reason for not acting sooner, and the probable lack of success on the merits of his application, the Board finds that it is not in the interest of justice to waive the statute of limitations. The application should be denied because it is untimely.

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

**ORDER**

The application of former [REDACTED] for correction of his military record is denied.

