

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-185

FINAL DECISION

██████████ Attorney-Advisor:

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The BCMR received the application for correction on September 24, 1999, and docketed the case on November 8, 1999, upon receipt of the applicant's military records.

This final decision, dated July 26, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a former seaman apprentice (SA) in the Coast Guard, asked the Board to correct his military record by upgrading the reenlistment code, separation code, and narrative reason for separation on his discharge form (DD 214) so that he would be eligible to reenlist. He was discharged on October 11, 1991, with an RE-4 reenlistment code (ineligible for reenlistment), a JMB separation code (unsuitable due to a personality disorder), and "unsuitability" as the narrative reason for separation shown on his DD 214.

APPLICANT'S ALLEGATIONS

The applicant alleged that he was discharged in 1991 because he was immature, "made some mistakes," and "open[ed] [his] mouth when it should have been closed." He stated that he was suffering from a hangover one morning when a petty officer told him it was society's fault that he was alive. He alleged that, because he responded, "I can solve society's problem," he was deemed suicidal and discharged for "unsuitability." He alleged that he was not actually suicidal but "went along with" the recommendation for discharge because he thought he wanted out of the Coast Guard. However, he alleged, he has regretted the decision ever since and is asking the Board for a second chance. The applicant stated that he wants his reenlistment code changed so that he can

join the Army National Guard. He indicated that he did not apply for relief sooner because he did not know about the BCMR.

The applicant submitted with his application two statements signed by supervisors at the retail store where he works. An assistant manager of the store stated that the applicant had been employed at the store since June 1997 and currently holds the position of department manager. The assistant manager stated that "[h]is character and mental state are sound" but noted that "he does realize his area of improvement and is currently working to correct those areas."

A co-director of the store wrote that the applicant is "extremely cooperative and responsible" and "has a lot of potential to be whatever he chooses." He noted that the applicant's recent performance evaluation was "average."

SUMMARY OF THE RECORD

On April 11, 1990, the applicant joined the Coast Guard Reserve under the delayed entry program. On August 21, 1990, he enlisted in the Coast Guard for a term of four years. After training, he was assigned to the [REDACTED]

On March 5, 1991, the applicant was admitted to a [REDACTED] hospital on an emergency basis because of suicidal threats and "a couple of suicidal gestures" that did not result in any injury. The applicant reported to the doctor that he had begun to experience blackouts due to drinking too much alcohol. The doctor diagnosed sporadic alcohol abuse and an unspecified personality disorder. The applicant told the doctor he would kill himself if he was not reassigned or discharged from the Coast Guard. Therefore, he was hospitalized for three days and referred, upon discharge, to the [REDACTED] Army Medical Center for an assessment of his fitness for duty.

On March 8, the applicant was admitted to the Army Medical Center for psychiatric evaluation. He told his doctor that he was drinking too much and had occasionally thought about suicide. He reported having put a knife to his throat and to threaten suicide on two occasions. On March 17, 1991, the doctor diagnosed him with alcohol abuse and borderline personality disorder. He was referred to out-patient therapy and an alcohol rehabilitation program. In addition, the doctor recommended that he be administratively discharged because his personality disorder would probably lead to continuing behavioral and performance problems.

On March 28, 1991, he was awarded non-judicial punishment (NJP) at a captain's mast for "a variety of offenses," including writing a check for a car loan on a closed account, sleeping on duty during wartime, and being absent without leave from February 5, 1991, to February 7, 1991. The NJP included a special written performance evaluation in which he received a mark of 1 for personal hygiene (on a scale of 1 to 7, with 7 being highest) and marks of 2 for conduct, teamwork, knowledge, work habits, workmanship, requiring supervision, stamina, professionalism, motivation towards advancement, motivation towards

job, and integrity. In addition, he received marks of 3 for seven other performance categories.

The written evaluation noted that at the mast, the applicant stated that he was not suited for military life and asked to be discharged. In light of this statement and his poor performance, his commanding officer (CO) wrote on the evaluation that he would initiate action to discharge him in accordance with Article 12.B.16. of the Personnel Manual.

On April 8, 1991, the CO formally notified him that he was initiating his discharge under Article 12.B.16. The CO based his decision on the matters noted at the captain's mast and on his diagnosed borderline personality disorder. The applicant signed a statement indicating that he did not want to make a statement on his own behalf, did not object to being discharged, and waived any right to a probationary period.

On April 10, 1991, the CO recommended to the Commandant that the applicant be honorably discharged under Article 12.B.16. based on five violations of the Uniform Code of Military Justice and on his psychiatric diagnosis. The CO noted that after the Coast Guard advanced the applicant the money to pay off the first discovered bad check, he used the money for other purposes. He also indicated that the applicant had "a history of making suicide threats." On April 29, 1991, the CO's recommendation was approved and forwarded to the Commandant by the Commander of the Maintenance and Logistics Command Atlantic based on the applicant's psychiatric diagnosis.

On May 7, 1991, the Commandant ordered the expedited discharge of the applicant under Article 12.B.16., with a separation code of JMB and a narrative reason for separation of "unsuitability." The orders required the applicant to be discharged within 30 days. However, before he was discharged, it was discovered that he had written more bad checks. Therefore, on June 11, 1991, he was taken to mast and sentenced to 45 days of restriction and 45 days of extra duty.

In late July 1991, the applicant complained of abdominal pain and it was determined that he may have reinjured a right inguinal hernia for which he had undergone surgery in January 1990, prior to his enlistment. He was referred for evaluation and surgery.

On September 19, 1991, the applicant's CO made an Administrative Remarks ("page 7") entry in his record stating that, while the applicant was assigned to Group [REDACTED] pending discharge after his first mast and NJP, it was discovered that he had written more bad checks. Therefore, his discharge was cancelled and he was returned to the [REDACTED] "for punishment and to attempt to bring about restitution." However, he suffered an injury while assigned to the cutter and was reassigned to Group [REDACTED] for "treatment and final disposition." While reassigned to Group [REDACTED] he again wrote "worthless checks" and "amassed a telephone bill of upwards of \$750," which he apparently could not pay. The page 7 states that if the applicant wrote any more bad checks after that date, he would be court-martialed and subject to confinement,

forfeiture of pay and allowances, and a bad conduct or dishonorable discharge. It indicates that his discharge was being delayed pending surgery.

On October 3, 1991, surgery on the applicant's right inguinal hernia was canceled at the last minute after he told the surgeon that he had not suffered any pain for the previous two months. He was discharged on October 11, 1991, with an RE-4 reenlistment code, a JMB separation code, and a narrative reason for separation of "unsuitability."

IEWS OF THE COAST GUARD

On June 16, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny the requested relief for untimeliness and lack of merit.

The Chief Counsel argued that relief should be denied for untimeliness because the applicant knew or should have known about the alleged errors on his DD 214 when he signed it at the time of his discharge. Therefore, his application arrived almost five years after the Board's three-year statute of limitation. The Chief Counsel further argued that the applicant provided "no valid reason for his delay."

The Chief Counsel also argued that relief should be denied because the applicant admitted that he made "mistakes" and failed to allege any error or injustice on the part of the Coast Guard. The Chief Counsel stated that the record proves that the Coast Guard followed all proper procedures with respect to the applicant's medical evaluations and discharge. He alleged that a member diagnosed with a borderline personality disorder is qualified for an administrative discharge because the disorder does not constitute a physical disability under Article 5.B.2.j. of the Medical Manual. He further alleged that the reenlistment code, separation code, and narrative reason for separation shown on the applicant's DD 214 were properly assigned in accordance with regulation.

The Chief Counsel argued that the applicant submitted no evidence indicating that his diagnosed borderline personality disorder no longer exists. He alleged that the two supporting statements submitted by the applicant "suggest [he] continues to grapple with the same condition that led to his separation."

The Chief Counsel stated that the case "involves a significant issue of Coast Guard policy." Therefore, action by the Board other than denial would constitute a recommendation subject to final action by the delegate of the Secretary under 33 C.F.R. § 52.62.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 16, 2000, the Chairman sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. The applicant did not respond.

APPLICABLE LAW

Article 12.B.16. of the Coast Guard Personnel Manual authorizes enlisted personnel to be discharged by reason of unsuitability at the direction of the Commandant for inaptitude, personality disorders, apathy, defective attitudes, inability to expend effort constructively, unsanitary habits, alcohol abuse, financial irresponsibility, or sexual harassment. 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 ..."

Chapter 5.B.2 of the Medical Manual (COMDTINST M6000.1B) lists personality disorders that qualify a member for administrative discharge pursuant to Article 12 of the Personnel Manual. The list includes borderline personality disorders. Chapter 5.B.2.j. Chapter 3F.16.c provides that personality disorders "may render an individual administratively unfit [for duty] rather than unfit because of a physical impairment. Interference with performance of effective duty will be dealt with through appropriate administrative channels (see Section 5-B)."

COMDTINST M1900.4C, the instruction for completing discharge forms in effect in 1991, states that a member's DD 214 should show a separation code, reenlistment code, and narrative reason for separation as stated in the discharge orders issued by the Military Personnel Command or as shown in the instruction. Article 2.C. of the instruction states that members who are involuntarily discharged because of a personality disorder that does not amount to a disability shall be assigned a separation code of JMB, a narrative reason for separation of "unsuitability," and a reenlistment code of RE-4 or RE-3G. An RE-3G code means the discharged member is eligible for reenlistment except for a "condition (not a physical disability) interfering with performance of duty."

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. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The record indicates that the applicant signed and received his discharge documents in October 1991. Therefore, the Board finds that the applicant knew or should have known the nature of his separation and non-eligibility for reenlistment in 1991. Thus, his application was untimely by almost five years.

3. Pursuant to 10 U.S.C. § 1552, the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board

should conduct a cursory review of the merits of the case. *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

4. A cursory review of the merits of this case indicates that the applicant was diagnosed with a borderline personality disorder by two psychiatrists in March 1991 and was properly discharged for unsuitability pursuant to Article 12.B.16. of the Personnel Manual and Chapter 5 of the Medical Manual. The RE-4 reenlistment code, JMB separation code, and narrative reason for separation of "unsuitability" shown on the applicant's DD 214 were fully supported by the applicant's psychiatric diagnosis and record of very poor performance and irresponsibility. Therefore, the Board finds that it is not in the interest of justice to waive the statute of limitations in this case.

5. Moreover, even if one assumes that not knowing of the Board's existence is a valid excuse for untimeliness, the Board finds that the applicant has not proved by a preponderance of the evidence that the Coast Guard committed any error or injustice when it assigned him the codes and narrative reason for separation shown on his DD 214. The applicant alleged that his discharge was caused by mere "immaturity," but his military and medical records strongly rebut his contention. The two statements from civilian supervisors submitted by the applicant do not prove that his diagnosis was wrong or that he has become suitable for military service.

6. Accordingly, the applicant's request should be denied based both on its untimeliness and on the lack of merit in his claim.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of former .
correction of his military record is hereby denied.

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