

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-043



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 27, 2012, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated September 12, 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 her JMB (personality disorder) separation code and her RE-4 (not eligible to reenlist) reenlistment code. The military record indicates that the applicant enlisted in the active duty Coast Guard on April 16, 1990. She was honorably discharged on July 31, 1991, under Article 12.B.16. (unsuitability) of the Personnel Manual, with a JMB separation code and an RE-4 reenlistment code.

The applicant alleged that she has a social pragmatic disorder¹ and not a character behavior disorder. The applicant stated that the record is in error "because I tried so very hard to fit in & every time I didn't, I became sad, mad, and confused." She stated that she understands now that she has a disability and the RE-4 reenlistment code is compounding that disability and interfering with her ability to work.

The applicant stated that she discovered the alleged error on June 5, 2012. She did not state why it would be in the interest of justice to excuse her untimeliness if it has been more than three years since she discovered or should have discovered the alleged error.

¹ According to "American Psychiatric Publishing" of the American Psychiatric Association (2013), social pragmatic communication disorder is a new diagnosis in the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). The diagnosis describes "individuals who have significant problems using verbal and nonverbal communication for social purposes, leading to impairments in their ability to effectively communicate, participate socially, maintain social relationships, or otherwise perform academically or occupationally."

In support of her application, the applicant submitted a June 5, 2012 Neuropsychological Assessment in which the neuropsychologist stated that the applicant suffered from social pragmatic disorder. In making this assessment, this neuropsychologist stated that the applicant had a history of difficulties in the work place and in relationships. The applicant also submitted a November 25, 2012 letter from a licensed mental health counselor to a university dean where the applicant was enrolled. In the letter, the counselor stated that she was treating the applicant for anxiety disorder, panic disorder, depression, and social pragmatic difficulties. She recommended that the applicant be allowed to take a leave of absence from the academic program while working on her medical problems.

BACKGROUND

On October 16, 1990, the applicant's commanding officer (CO) informed the applicant that he was recommending that the applicant be discharged from the Coast Guard because of the applicant's "defective attitude . . . specifically, your unexcused tardiness in reporting to your assigned duties, your failure to tell the complete truth on several occasions, and your bringing discredit to this command with a local vendor and a country agency." The CO told that applicant that she would be placed on a six-month probationary period, and that, if she did not improve, he would take action to discharge her.

Toward the end of her probationary period, the applicant's command requested a mental status examination for her. On April 23, 1991, the physician wrote that his clinical evaluation of the applicant "reveals no evidence of any significant psychiatric illness or condition sufficient to warrant disposition medical channels. The [member] is psychiatrically cleared for any administrative action deemed appropriate by command."

On June 18, 1991, the applicant was again referred for a psychiatric evaluation because of service-related problems. The referral stated that the applicant had been in the Coast Guard for about a year and that she had received 13 letters of reprimand. The referral stated that she was unable to conform to Coast Guard standards and that her personal life interfered with her job performance.

A military psychiatrist diagnosed the applicant with occupational problems and life circumstance problems. He also diagnosed her with a personality disorder NOS (not otherwise specified) with histrionic and obsessive features. The military psychiatrist stated that the applicant was fit for full duty but recommended that the command consider routine administrative separation on ground of failure to adapt.

On June 20, 1991, the applicant's CO informed the applicant that he had initiated action to discharge her from the Coast Guard by reason of unsuitability due to recent medical findings. The CO canceled his October 16, 1990 letter to the applicant. The CO stated that the reason for his action was the mental status evaluation by a military psychiatrist.

On June 20, 1991, the applicant signed a statement in which she acknowledged the proposed discharge, attached a written statement, and objected to the discharge.

On June 26, 1991, the applicant wrote a 6 page statement in which she objected to her proposed discharge for unsuitability. She asserted that she was a single parent and was required to be away from work because of her special needs son. She described his emotional problems and the difficulties he encountered in school. She requested a humanitarian discharge.

On July 16, 1991, the CO recommended to the Commander, Coast Guard Personnel Command (CGPC) that the applicant be honorably discharged by reason of unsuitability with a RE-4 reenlistment code. The CO noted that the applicant had been diagnosed with a personality disorder, with histrionic and obsessive features. The psychiatrist stated that her personality disorder was not a strong one, but the psychiatrist recommended the applicant's separation from the Coast Guard due to "failure to adapt." The CO recommended against a humanitarian discharge for the applicant. The CO stated that the applicant's claim that she was a single parent was in question because at the time of her enlistment she indicated that she was married and had never been divorced or legally separated. Further, the CO stated that her husband signed a statement not objecting to her enlistment. He stated that the applicant did not have a copy of a divorce or legal separation although she asserted she had been legally separated since June 1985.

The CO also stated that when the applicant was initially notified that she was being recommended for discharge she did not mention that her home situation was interfering with her ability to be a productive member of the Coast Guard. The CO stated that it was only after she was diagnosed with a personality disorder and given that as a basis for her separation that she objected to being discharged for unsuitability.

On July 19, 1991, CGPC directed the applicant's discharge by reason of unsuitability under Article 12.B.16. of the Personnel Manual. The Commander also directed that the applicant be assigned separation code JMB (indicating personality disorder as the reason for separation). The applicant was discharged on July 26, 1991.

VIEWS OF THE COAST GUARD

On June 4, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief to the applicant. The JAG noted that the application was not timely. The JAG stated that an application must be filed with the Board within three years of the date the applicant discovered or reasonably should have discovered the alleged error or injustice. In this case, the JAG stated that the applicant likely discovered or should have discovered the alleged error when she submitted a rebuttal statement to the discharge on June 26, 1991. The JAG stated that the applicant was also put on notice when she signed her DD 214, which showed the separation code, narrative reason for separation, and the reenlistment code. The JAG stated that the evaluation from the neuropsychologist and letter from the counselor pertaining to the applicant's recent diagnoses provide an insufficient basis for the Board to excuse the applicant's delay in filing her claim.

The JAG states that even if the Board finds the application to be timely, the applicant has failed to substantiate an error or injustice that "shocks the sense of justice." The JAG stated that the applicant has had these discharge codes for 22 years and provides no evidence to support her

claim that these particular SPD and reenlistment codes are compounding her current condition. The JAG noted that her current condition was not diagnosed until June 5, 2012. The JAG stated that even though the applicant was diagnosed with social pragmatic disorder in 2012, the neuropsychologist found the applicant to be “a very intelligent woman who has a no-nonsense and sometimes concrete approach when it comes to human discourse . . . enthusiastic, hard-working and energetic.” The JAG also noted that the neuropsychologist diagnosed the applicant with social pragmatic disorder because the applicant has some difficulty “recognizing and fully understanding more complex feelings in and of others . . . she can have more trouble understanding and tolerating the more political and petty alliances and normative behaviors that can be inherent in work situations.” The JAG argued that these findings by the neuropsychologist do not support the notion that the SPD and reenlistment code compounds the applicant’s condition or her ability to work.

As stated above, the JAG recommended that the application be denied because it is untimely and because the applicant has failed to prove that the Coast Guard committed an error. The JAG also stated that he would not object to the partial relief recommended by the Commander, Personnel Service Center (PSC) in a memorandum attached to the advisory opinion, if the Board determines that such relief should be granted.

PSC recommended changing the applicant’s separation code to JFY (adjustment disorder), her corresponding reenlistment code to RE-3, and the issuance of a new DD 214. PSC noted that the military psychiatrist recommended that the applicant be discharged due to a failure to adapt. According to Article 12.B.16.b.1. of the Personnel the basis for her failure to adapt would be inaptitude. The Personnel Manual states that this provision applies “to members best described as unfit due to lack of general adaptability, want or readiness of skill, clumsiness, or inability to learn.” PSC stated that inaptitude is not a personality disorder. In recommending relief, PSC stated:

JMB was the separation code for involuntary separation from the service due to character or behavior disorders. However, it is no longer used by the armed forces as a separation code on discharge documents. A similar discharge would now be assigned JFY separation code, meaning “Involuntary discharge 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.”

JFY may be combined with a RE-3 or RE-4 reenlistment code. As there was no misconduct involved with the applicant’s discharge, she qualifies for an RE-3.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 7, 2013, the Board sent the applicant a copy of the views of the Coast Guard. The applicant did not submit a response to the views of the Coast Guard.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6)

Article 12.B.16.b.1. of the Personnel Manual then in effect authorizes unsuitability discharges for inaptitude, which applies to members who are unfit due to lack of general adaptability. Subsection 2. Authorizes unsuitability discharges for members diagnosed with one of the “personality behavior disorders ... listed in Chapter 5, CG Medical Manual.”

Article 12.B.16.d. of the Personnel Manual states that in each case processed under this Article, the CO shall advise the member in writing to inform the member of the reason(s) he or she is being considered for discharge. It further provides that the CO should state one or more of the reasons listed in Article 12.B.16.b.

Subsection 2 states that the CO shall afford the member the opportunity to make a written statement on his or her own behalf.

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

Paragraph 4.a. of the introduction to this instruction 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. Article 1.A.1.B. states that the DD 214 must be accurate and complete in order for it to fulfill the purposes for which it was designed. Article 2 authorizes the JMB separation code for a discharge due to unsuitability by reason of personality disorder and a RE-3G (eligible to reenlist except for disqualifying factor) or RE-4 reenlistment code.

ALCOAST 252/09

ALCOAST 252/09 (Addition of the Adjustment Disorder Narrative Reason and Separation Program Designator (SPD) Codes to the Separation Program Designator Handbook), which was issued on April 29, 2009. It stated the following in pertinent part:

3. The Department of Defense recognized the need for the additional narrative reason and SPD codes that better fit the cause for discharge when a member is unable to adapt to military life. The FY series was created with the narrative reason adjustment disorder, specifically for members diagnosed with an adjustment disorder not amounting to a disability.

4. Effective immediately, one of the following narrative reasons and SPD codes will be used when a member is diagnosed with an adjustment disorder in accordance with Chapter 5 [of the Medical Manual].

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D. SPD code JFY, narrative reason adjustment disorder. Involuntary discharge 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.

5. The discharge separation authorities and member entitlements will remain in accordance with . . . 12.B.16 . . . For enlisted personnel, the re-entry code assigned can be either an 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.

6. Members separated with the FY series SPD codes will be authorized transition assistance benefits . . .

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. The applicant stated that she discovered the alleged error on June 5, 2012, when she was diagnosed with social pragmatic disorder. However, as the advisory opinion stated the applicant knew in June 1991 when she submitted her rebuttal to her proposed discharge that her CO was recommending her discharge based upon the findings of the military psychiatrist, which included a personality disorder diagnosis and a recommendation for discharge due to a “failure to adapt.” At the latest, she should also have discovered the alleged error on July 26, 1991, when she signed her DD 214, which showed unsuitability as the narrative reason for separation, JMB as the separation code, and RE-4 as the reenlistment code. Accordingly, the application is untimely.

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 did not state a reason for her delay or why it is in the interest of justice to excuse her untimely application. However, a cursory review of the merits and PSC's comments indicate that the applicant's probable success on some merits of her claim. Therefore the Board will excuse the untimeliness and consider the application on the merits.

5. A full review of the merits shows that the Coast Guard committed an error and/or injustice by assigning the applicant a JMB (personality disorder) separation code. In recommending the applicant's discharge, the CO noted that she was diagnosed with a weak personality disorder, but stated that a military psychiatrist recommended her discharge due to "failure to adapt." The CO appears to have been under the impression that a "failure to adapt" is the same as a personality disorder, but it is not. As PSC stated, the Medical Manual does not list failure to adapt as a personality disorder. The Board agrees with PSC that a failure to adapt meets the requirements for an unsuitability discharge due to inaptitude. Article 12.B.16.b.1. of the Personnel Manual then in effect authorizes unsuitability discharges for inaptitude, which applies to members who are unfit due to lack of general adaptability. Since the military psychiatrist recommended the applicant's discharge due a "failure to adapt," the Board has no objection to PSC's recommendation to correct the applicant's DD 214 to show discharge by reason of inaptitude.

6. However, the Board disagrees with PSC that JFY is the appropriate separation code for this applicant. The JFY separation code did not exist when the applicant was discharged in 1991. It became effective in 2009. According to Chapter 2 of COMDTINST M1900.4C (Instruction for the Preparation and Distribution of the Certificate of Release or Discharge from Active Duty, DD Form 214) in effect at the time, the proper separation code for a discharge due to inaptitude in 1991 was JMD. Moreover, ALCOAST 252/09 issued on April 29, 2009, states that JFY is to be used for members diagnosed with an adjustment disorder. The military psychiatrist recommended her discharge due to "failure to adapt," but he did not include this as a diagnosis. The instruction in effect when the applicant was discharged is applicable to her case, and it called for a JMD separation code for discharge due to inaptitude.

7. With regard to the RE-4 reenlistment code, the Board agrees with PSC that it should be changed to RE-3 (eligible for reenlistment except for disqualifying factor). ALCOAST 125/10 issued on March 18, 2010, stated that RE-3 is the default code unless there is specific service misconduct, e.g., DUI or civil disturbance. In light of the applicant's failure to adapt to the military and her lack of any service misconduct while on active duty, her reenlistment code should be changed from RE-4 to RE-3.

8. The applicant argued that her uncorrected discharge codes were unjust because they contributed to her current disability, but she did not present sufficient evidence to prove this claim.

9. Accordingly, the applicant's DD 214 should be corrected to show her separation code as JMD and her reenlistment code as RE-3.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former [REDACTED] for correction of her military record is granted in part. The Coast Guard shall issue her a new DD 214 with the following corrections included:

Block 26 shall be corrected to show JMD as the separation code.

Block 27 shall be corrected to show RE-3 as the reenlistment code.

Block 18 shall contain the remark: "Action taken pursuant to order of the BCMR."

No other relief is granted.

