

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-152

████████████████████
████████████████████

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 July 25, 2013, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 4, 2014, 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, who was honorably discharged on June 14, 2011, after completing 7 months and 27 days of active service, asked the Board to correct the reentry code, separation code, and narrative reason for separation on her discharge form, DD 214. Her DD 214 shows that she was originally discharged for "Unsuitability" under Article 12.B.16. of the Personnel Manual, with separation code JFY (which denotes separation due to a diagnosed adjustment disorder¹) and reenlistment code RE-3G (eligible to reenlist with a waiver). A DD 215 shows that her reason for discharge has been corrected to "Condition, Not a Disability," and separation code JFV, under Article 12.B.12. of the Personnel Manual. The applicant asked that her reentry code be corrected to RE-1 (eligible to reenlist), her separation code be corrected to KND,² and that the narrative reason for separation be corrected to "Separation for Miscellaneous/General Reasons."

The applicant stated that the Coast Guard Discharge Review Board (DRB) agreed to change her separation code, reentry code, and narrative reason for separation as she wanted, but

¹ Adjustment disorders are psychological responses to identifiable stressors that result in the development of emotional or behavioral symptoms. Adjustment disorders normally disappear when the stressors disappear. American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000), p. 679.

² KND denotes a voluntary discharge allowed by established directive when a Service component does not have a Service reporting requirement for specific reasons and desires to identify reasons collectively "All other reasons" which qualify a member for separation.

that the Commandant did not approve the Board's recommendation and directed that her separation code be changed to JFV, her reentry code remain unchanged (RE-3G), and that the narrative reason for separation be changed to "Condition, Not a Disability."

The applicant alleged that the Commandant's decision to "override the discharge board's recommendation of an RE-1 with an RE-3G code will significantly hinder my opportunity for reenlistment." She also stated that she decided to file an application with the BCMR because her condition was caused by hazing and the inappropriate behavior of enlisted members at her unit, and that it is not a permanent condition. She added that the Coast Guard conducted a thorough investigation of the events that occurred at Station Humboldt Bay and that the investigation revealed many departures from protocol.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 19, 2010, and after completing recruit training she was assigned to Station Humboldt Bay on December 27, 2010. A narrative submitted by the Station XXXXXXXXXXXX executive petty officer (XPO) indicates that the applicant was counseled several times in March and April 2011 about falling behind on her boat crew certifications, lack of effort, poor performance, and that her section leaders had stated concerns over her ability to learn, lack of effort in studying, and continual excuses for poor performance. The XPO reported that the applicant told him on April 11, 2011, that she did not want to attend any counseling and wanted to be discharged from the Coast Guard. The applicant's record also contains two Page 7s on which she was counseled about failing to follow procedures, poor watch standing, and lapses in judgment.

On April 5, 2011, the applicant had an appointment with a psychiatrist. He prepared a three-page report and noted that the applicant had been referred to him for evaluation of her complaints of anxiety, impaired performance, and motivation. In his report, the psychiatrist noted the following:

History: The evaluatee describes that she was feeling well until shortly after arriving at her first Coast Guard assignment at Station xxxxxxxxxxxx. As she began the process of her initial qualification as a watch stander she started to feel overwhelmed. She relates that her anxiety became elevated and she then would perform poorly on oral examinations. Related to her poor performance she states she began to get negative feedback from other station members which compounded her anxiety. The evaluatee reports additional anxiety about the heavy sea conditions that are present when they go underway. When she becomes anxious she develops somatic symptoms of headache, dizziness, and nausea. While she completed her initial qualification, she describes continuing anxiety and worsening of mood that are impacting her ability to complete her course of qualifications. She began sleeping poorly after several weeks after arriving at the station and is feeling chronically fatigued at this point. She feels her concentration is lowered as a result of her lowered energy. States that she is a "hands on learner" and is having trouble with all the written study material. Due to feeling tired, she quit her practice of regular exercise. The evaluatee reports social withdrawal from fellow crew members. Appetite is normal. Mood is described as lowered and her thinking is tending to hopelessness, lowered confidence and loss of self-esteem. She describes that her motivation to continue working towards a career in the Coast Guard has become significantly diminished.

* * *

After arriving at her first duty assignment, she had some initial anxiety leading to poor performance that has become a more entrenched cycle over time and led to worsening of her mood. Her

self-confidence and motivation to take on the challenge of working through her problems are poor. Overall her response to the stress of new challenges in her assignment has been to disengage and withdraw physically, socially, and emotionally. Although she was offered help in terms of counseling, medication, and renewed assistance and accommodation by her command, she lacks motivation and refuses treatment recommendations offered. Given the state of this member's current clinical impairment and her impaired capacity for self-motivation to work through this issue, [the applicant's] prognosis to improve is quite poor.

The psychiatrist further stated,

In my opinion, the evaluatee is not suitable for service in a military environment and it would be in the best interest of both the member and the Coast Guard to proceed towards an administrative discharge.

Assessment:

Axis I: Adjustment disorder with anxiety and depressed mood (DMS-IV-TR 309.28).
Axis II: No diagnosis
Axis III: Headaches related to stress
Axis IV: Current level of stress is high
Axis V: GAF = 58/100

Plan/Recommendations:

1) Based on her diagnosis of an Adjustment Disorder (DSM-IV-TR 309.28) and given her poor prognosis to successfully adjust to her duties and expectations as Coast Guard member, [the applicant] is determined to be unsuitable and it is recommended that she be administratively separated IAW PERSMAN Chapter 12B. ...

On April 18, 2011, the officer in charge (OIC) at Station xxxxxxxxxxxxxx notified the applicant that he was initiating her discharge for "unsuitability due to an adjustment disorder" based upon the recommendation of the psychiatrist who evaluated her. The applicant indicated that she did not object to an honorable discharge; did not desire to make a statement on her own behalf; and did not desire to seek counsel from a military lawyer or civilian counsel.

On April 20, 2011, the OIC submitted the discharge package to the Coast Guard Personnel Command (CGPC) and recommended that the applicant be honorably discharged because of her unsuitability due to the diagnosed adjustment disorder. The District Commander endorsed the package and recommended approval. On May 16, 2011, the Military Personnel Command issued orders to discharge the applicant within thirty days for "Unsuitability" with a JFY separation code.

On June 14, 2011, the applicant was discharged for "Unsuitability," pursuant to Article 12-B-16 of the Personnel Manual, with a JFY separation code and RE-3 reentry code.

On September 12, 2011, the Coast Guard issued a report on an investigation into allegations that the applicant had been mistreated at Station xxxxxxxxxxxxxx. The report found that although she was sometimes called "stupid" or "idiot" by members of her first duty section, the insults did not amount to hazing, as defined in the Coast Guard Personnel Manual. The report noted that the applicant was quickly switched to a new duty section when she complained about her treatment to the XPO on March 10, 2011, but that weeks later, she still wanted to leave the

Coast Guard. The report revealed that the working environment at the Station was unprofessional and immature and that the command appeared to be far removed from what was occurring at the duty sections during the day and after hours.

Following her discharge, the applicant petitioned the DRB to upgrade her reentry code from RE-3 to RE-1. The majority opinion of the DRB found that the applicant's unsuitability discharge with an RE-3 was improper because an investigation conducted at Station xxxxxxxxxxxx had revealed inappropriate actions and hazing, which might have contributed to her discharge, and because a more supportive environment or transfer to another unit might have allowed her to complete her service obligation. However, the minority of the Board recommended no relief, finding that the applicant's records support the adjustment disorder, and that she refused to receive mental health treatment and sought an immediate discharge instead of allowing the Coast Guard the opportunity to assist with mental health counseling and complete an investigation into the situation at her unit. On December 21, 2012, the Commandant reviewed the DRB's recommendation and approved a portion of it, correcting the applicant's separation code to JFY and her narrative reason for separation to "Condition, Not a Disability." The Commandant decided that the applicant's RE-3 reentry code should stand as issued. The DD 215 showing these corrections was issued on January 27, 2014.

VIEWS OF THE COAST GUARD

On November 5, 2013, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief. In so doing, he adopted the facts and analysis provided in an enclosed memorandum prepared by the Coast Guard Personnel Service Center (PSC).

PSC stated that the separation authority, separation code, and narrative reason upgraded by the Commandant "fit perfect for this case and are consistent with the underlying grounds for her discharge." He noted that the RE-3 reentry code represents that the applicant is not recommended for reenlistment due to a disqualifying factor and that the RE-3 code may be waived by the gaining service if the applicant substantiates that the conditions leading to her discharge have been removed.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 5, 2013, the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within 30 days. She responded on December 20, 2013, and stated that "there are many issues contained in my file that have not been addressed."

The applicant explained that the problems she experienced while she was in the Coast Guard were of a temporary nature, were the result of a hostile work environment, and that she was made to feel like an outsider. She stated that her requests to be transferred were denied and that she was assigned to the mess in retaliation for "speaking up about the unfair practices" at her unit.

With regards to the Coast Guard's recommendation, the applicant argued that the RE-3 reentry code is insufficient because the condition that she had at the unit was "resolved as soon as I left the dysfunctional unit." She also alleged that Chapter 12.B.16.c. of the Personnel Manual provides a 6-month probation option for members recommended for discharge and that this option was never offered to her. Instead, she stated that she was offered only medication and counseling. She added that she was dealing with emotions that any person would feel in such a hostile environment while "trying to qualify for such an important job in the Coast Guard."

APPLICABLE REGULATIONS

Medical Regulations

Chapter 5.B.3. of the Medical Manual states the following about members diagnosed with adjustment disorders:

Adjustment Disorders. These disorders are generally treatable and not usually grounds for separation. However, when these conditions persist or treatment is likely to be prolonged or non-curative, (e.g., inability to adjust to military life/sea duty, separation from family/friends) process in accordance with Chapter 12, Personnel Manual, COMDTINST M1000.6 (series) is necessary.

Discharge Regulations

Article 12.B.16.b. of the Personnel Manual in effect in 2011 authorized discharges for unsuitability for military service for the following reasons:

1. Inaptitude. Applies to members best described as unfit due to lack of general adaptability, want or readiness of skill, clumsiness, or inability to learn.
2. Personality Disorders. As determined by medical authority, personality behavior disorders and disorders of intelligence listed in the Medical Manual, COMDTINST M6000.1 (series), Chapter 5.
3. Apathy, defective attitudes, adjustment disorders as listed in the Medical Manual, COMDTINST M6000.1 (series), Chapter 5, inability to expend effort constructively, or other observable defect for which a separation designator code (SPD code) exists that renders a member unsuitable for further military service.
4. Unsanitary Habits. ...

Article 12.B.16.c. of the Manual states the following:

Commanding officers will not initiate administrative discharge action for inaptitude, apathy, defective attitudes, unsanitary habits, or financial irresponsibility until they have afforded a member a reasonable probationary period to overcome these deficiencies. ...

Under Article 12.B.16.d. of the Personnel Manual, a member being discharged for unsuitability for military service is entitled to (a) notification of the specific reason for discharge under Article 12.B.16.b.; (b) an opportunity to submit a written statement; and (c) an opportunity to consult an attorney "if the member's character of service warrants a general discharge."

Hazing Regulations

Article 8.J.2.a. of the Personnel Manual defines “hazing” as “any conduct in which a military member without proper authority causes another military member(s) to suffer or be exposed to any cruel, abusive, humiliating, oppressive, demeaning, or harmful activity, regardless of the perpetrator’s and recipient’s Service or rank.”

ALCOAST 252/09, issued on April 29, 2009, states that the Department of Defense had created new separation codes, which were adopted by the Coast Guard, 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.”

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). The Board finds that the applicant has exhausted her administrative remedies as required by 33 C.F.R. § 52.13(b).

2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. The applicant was discharged from the Coast Guard on June 14, 2011, and her application is timely.

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.³

4. The applicant alleged that her RE-3G reentry code on her DD 214 is erroneous and unjust and that the Commandant’s decision to override the DRB’s recommendation that she receive an RE-1 reentry code will significantly hinder her opportunity for reenlistment. She also asked the Board to change her SPD code and the narrative reason for separation on her DD 214. 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

³ 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”).

unjust.⁴ 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.”⁵

5. The preponderance of the evidence shows that the applicant was counseled in March 2011 about falling behind on her boat crew certifications, her lack of effort, and poor performance. When she complained about being called “stupid” and “idiot” by members of her duty section on March 10, 2011, the XPO switched her to another duty section, but her performance apparently did not improve much because she was counseled about poor performance again in April 2011. The psychiatrist’s report reveals that by April 2011, a few weeks after she had switched duty sections, the applicant was complaining only about the difficulty of her job and not about any ongoing bullying. She was diagnosed with an adjustment disorder, but she refused to accept counseling regarding her difficulties and told her XPO that she wanted to be discharged from the Coast Guard instead.

6. The investigation conducted by the Coast Guard after the applicant’s discharge confirmed she was subjected to unprofessional behavior on numerous occasions, including being called “stupid,” “slut,” and “idiot.” The investigating officer concluded that although the mistreatment of the applicant did not meet the elements of Article 93 of the Uniform Code of Military Justice (Cruelty and Maltreatment), it did constitute “hazing” as defined in Article 8.J.2.a of the Personnel Manual. The officer further stated:

I believe [the applicant] is a “hands-on” type of learner who asks a lot of questions. Over time, after she had been called names, my belief is that she felt isolated from the unit, causing anxiety and depression, which may have been misinterpreted as a “lack of commitment.” It is my belief that this combination of factors caused [the applicant] to be “done with the Coast Guard.”

The investigating officer further opined that the “feedback we received from many of the crew members at the Station was that it was an unprofessional, very young, and immature environment at the Station.”

7. Although the Board does not condone the treatment of the applicant as described in the investigative report, we find that the applicant has not met her burden of proof to demonstrate that the Coast Guard erred by discharging the applicant for her diagnosed adjustment disorder with the separation code JFY. The correction made by the Commandant, changing her discharge to one for “Condition, Not a Disability” with separation code JFV, also accurately describes the reason for her discharge. The Board is not persuaded that her record is erroneous or unjust in this regard.

8. The applicant argued that before being discharged, she should have been given a 6-month probationary period in accordance with Article 12.B.16.c. of the Personnel Manual. However, under Article 12.B.16.c., the probationary period is available only to members who are

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

being discharged for inaptitude, apathy, defective attitudes, unsanitary habits, or financial irresponsibility. The applicant was discharged for an adjustment disorder, and so the probationary period provided in Article 12.B.16.c. was not applicable.

9. The applicant asked the Board to upgrade her reentry code to RE-1 so she can reenlist. However, under ALCOAST 252/09, a member being discharged with the JFY separation code may receive either an RE-3G or an RE-4 reentry code. The same two codes are authorized for those being discharged due to a “Condition, Not a Disability” with the separation code JFV. Although the DRB recommended that the applicant’s reentry code be upgraded to RE-1, the Commandant disagreed and directed that her reentry code remain RE-3. An RE-3 reentry code is not a permanent bar to reenlisting but requires a veteran to convince a recruiter that the problem that caused her discharge will no longer impede her ability to serve in the military. Given the applicant’s performance in the Coast Guard, the Board agrees with the Commandant that this hurdle should not be removed.

10. Accordingly, the applicant has failed to prove by a preponderance of the evidence that her record contains an error or injustice, and her application should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

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

April 4, 2014

