



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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-241


SN (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on August 9, 2017, and assigned it to staff attorney  to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 20, 2018, 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, a former Seaman who was discharged in 2006 after less than eight months of service, asked the Board to correct his record by changing his DD-214¹ to state that the reason for his discharge was a service-connected disability instead of "Condition, Not a Disability." He stated that he applied to the Department of Veterans Affairs (VA) and received a decision stating that he had a 30% service-connected disability. The applicant asked that his DD-214 be "updated with the most current information" to account for his service-connected disability. Regarding the timing of his application, he stated that he discovered the alleged error or injustice on January 13, 2006, the date he was discharged. He asked that the Board consider his application because of his successful appeal to the VA "completed in March 2013." In support of his application he provided several documents which are discussed below in the Summary of the Record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 16, 2005. His initial service contract was for a period of six years.

On August 22, 2005, the applicant was seen by a licensed clinical social worker. He diagnosed the applicant with "Panic Disorder Without Agoraphobia" due to the symptoms he

¹ A DD 214 is prepared to document a member's release or discharge from a period of active duty.

exhibited. The social worker added a “Summary Update” on September 15, 2005, stating that he had seen the applicant a total of four times and that the applicant’s condition had worsened on the last meeting due to a death in his family.

The applicant was seen for a psychiatric evaluation by a military medical provider on November 1, 2005, and was diagnosed with claustrophobia noted as “specific phobia, situational type.” The doctor found that the applicant was unfit for service due to this phobia.

On November 15, 2005, the applicant was informed that he was being recommended for an administrative discharge for the convenience of the government due to his diagnosis of claustrophobia. The applicant waived his right to make a statement on his behalf and did not object to the discharge.

On November 16, 2005, the applicant’s command sent the Personnel Service Center (PSC) a discharge package for the applicant. The command requested the applicant’s discharge for the convenience of the government due to his claustrophobia. The applicant was “unable to work onboard [the ship] after repeated episodes of chest pains and shortness of breath. Due to the clinical diagnoses of claustrophobia and medical determination that he is unfit for continued military service,” the applicant was recommended for administrative discharge.

The applicant’s DD-214 states that he was discharged on January 13, 2006. He was honorably discharged for “condition, not a disability.” The applicant signed his DD-214.

On March 14, 2013, the applicant received a decision from the VA assigning him a 30% service-connected disability for “panic disorder without agoraphobia (claimed as anxiety and depression)” with an effective date of October 9, 2012.

On June 22, 2017, the applicant received a decision from the VA assigning him a 30% service-connected disability. The decision did not state what the disability was or make any other medical findings.

VIEWS OF THE COAST GUARD

On January 19, 2018, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is not timely because the applicant was discharged in 2006 and the Board should therefore only give the application a cursory review. PSC stated that the Physical Disability Manual states that a “condition, not a disability” is defined as a condition that causes a member to be unfit for duty but is not a physical disability within the meaning of the law and therefore subjects the member to administrative separation. The Medical Manual lists “Panic Disorder without Agoraphobia Depression” as one of the anxiety disorders which is disqualifying for enlistment. PSC argued that the applicant failed to provide evidence that his DD-214 contains an error or an injustice. PSC stated that he was discharged after being diagnosed with an unfitting

condition and his DD-214 reflects that diagnosis accordingly. Therefore, PSC recommended that the Board deny the applicant's request for relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 15, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

The Physical Disability Manual, CONDTINST M1850.2D, Article 2.A.9., states the following regarding conditions that are not physical disabilities:

Certain conditions and defects may cause a member to be unfit for continued duty and yet not have physical disabilities within the meaning of the law, thereby subjecting the member to administrative separation. ... A full listing of personality and intelligence disorders is contained in chapter 5 of the Medical Manual, COMDTINST M6000.1 (series).

Chapter 2.A.38. defines "physical disability" as "[a]ny manifest or latent physical impairment or impairments due to disease, injury, or aggravation by service of an existing condition, regardless of the degree, that separately makes or in combination make a member unfit for continued duty."

Chapter 2.C.2.i. states that the "existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the [VA] does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render him or her unfit for military duty. ... Such a member should apply to the [VA] for disability compensation after release from active duty."

The Medical Manual, COMDTINST M6000.1B, Article 5.B.11., states that the listed anxiety disorders are "disqualifying for appointment, enlistment, or induction" and members diagnosed with these disorders will be processed for separation. Article 5.B.11.a.(1) is Panic Disorder Without Agoraphobia.

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 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant was discharged in 2006 and he received his

² 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

first decision from the VA in 2013. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 2013, and his application is untimely.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”⁴ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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.”⁵

4. The applicant did not explain his delay in filing his application. The Board finds that the applicant failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

5. A cursory review of the merits of this case indicates that that the claim cannot prevail. The applicant’s records show that he was administratively discharged due to the claustrophobia he experienced aboard the ship, and this diagnosis and these records are presumptively correct.⁶ According to Article 5.B.11. of the Medical Manual, claustrophobia is a diagnosis for which members will be administratively discharged. The applicant asked the Board to change his Narrative Reason for Discharge based on the findings of the VA seven years after his discharge. The VA found in 2013 that his anxiety was service-connected because his social worker had said he had panic disorder without agoraphobia and the VA rated the condition as 30% disabling, but this was not the condition for which he was discharged. As noted in Article 2.C.2.i. of the Physical Disability Manual, the existence of a ratable condition under the VA’s system does not itself provide justification for a military medical discharge or retirement. The fact that the VA found the applicant to be disabled by a service-connected anxiety condition in 2013 is not evidence that the Coast Guard erred or committed an injustice under its own rules by administratively discharging him for claustrophobia that prevented him from serving aboard ships. Based on the record before it, the Board finds that the applicant’s claim cannot prevail on the merits.

6. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁶ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

ORDER

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

July 20, 2018

