


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-143


SN/E-3 (former)

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the applicant's completed application on May 16, 2018, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 22, 2019, 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 correct the narrative reason for separation at the bottom of his discharge form DD 214 dated February 8, 1995, from "Personality Disorder" to "Anxiety Disorder." He stated that the Department of Veterans' Affairs (VA) determined that he has a "service-connected disability due to Anxiety disorder on 10/22/2010," and so the reason for discharge on his DD 214 is erroneous. The applicant alleged that he discovered the error on his DD 214 on December 21, 2016.

In support of his allegations, the applicant submitted a decision of the VA dated December 16, 2011, which states that "[s]ervice connection for anxiety disorder (claimed as mental disorder to include depression, borderline personality, and panic attacks) is granted with an evaluation of 30 percent effective October 22, 2010." The VA noted that the applicant had previously applied for service connection for depression on August 21, 1995; that that request had been denied because he had no diagnosis for depression at the time; and that the decision was final. However, the VA reopened the claim when the applicant reapplied on October 22, 2010, because he had been diagnosed with depression in 2008. Its examiner had found that "it is reasonable to assume that some of [the applicant's] current anxiety is service related since the first ever psychiatric treatment started while [he was] on active duty."

The applicant also submitted a letter from the VA dated March 1, 2017, which shows that his disability rating for "anxiety disorder with a history of recurrent mild major depression

(claimed as mental disorder to include depression, borderline personality, and panic attacks)” had been raised to 50% as of December 21, 2016.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard as a seaman apprentice (E-2) on November 12, 1991. He completed recruit training and was assigned to a station on Lake Michigan. He advanced to seaman in 1992 and qualified as a boat crewman on May 27, 1992.

On February 17, 1994, the applicant was counseled on a Page 7 about his decision to decline orders to attend Class “A” School to earn the Machinery Technician rating.

On June 24, 1994, a psychologist noted that the applicant had been diagnosed with an “Axis I Phase of Life Problem or Other Life Circumstance Problem.” An Axis II diagnosis, which is for personality disorders, was deferred due to insufficient information.

On December 15, 1994, the psychologist stated that the applicant had been offered but rejected psychotherapy on June 24, 1994. He noted that the applicant’s prior diagnosis and stated that the applicant had also shown “borderline and dependent traits on Axis II.” The psychologist stated that in June the applicant had been distressed because his wife and one-year-old child had left and moved to Iowa. The psychologist wrote that—

[t]he alleged reason [for his family’s departure] was he had thought he would get both housing and a stipend and he only would receive a stipend. Pt. angry about lack of money. He also applied for hardship separation which was rejected. Pt. reasoned he had put in sufficient time in USCG to get GI Bill. Although pt believed he was on a “dead end” job with no possibility for promotion, his chief explained that the pt had put in numerous chits for training but withdrew them all. Indeed, he had been given ... A School but rejected it because it might involve sea duty and longer separations from his family. Pt. is described by both his chief and the Coast Guard liaison at GLNH [Great Lakes Naval Hospital] as “bizarre.” When asked how he is, pt. will look away and continue his work. Pt. kept a Christmas tree and all the gifts he had received from his family unopened under the tree in his office and finally was told to remove them last summer. The liaison [and] chief were concerned because the pt. recently made out a will and invited them to the bank as witnesses to the document. Pt. requested to see a [mental health care] provider because he is planning to see his child for 1 week over the Xmas holiday and fears he will be physically abusive to him since this has been a problem.

Formulation. There seems to be anger about not being adequately cared for by the military vis entitlement [sic]. There seems potential for suicide based on writing of a will in an impulsive person who fears he is losing control.

Rx. This pt. was referred to [a clinical psychologist] today at 11:30 (Dec 15) 2 hrs after call came in. Chief assures pt. doesn’t need driver to accompany him to GLNH. [The clinical psychologist] has been advised verbally of situation by myself.

On December 15, 1994, the clinical psychologist noted that the applicant reported having had daily depression, lack of energy, irritability, trouble concentrating, and trouble remembering for two to three months. He found the applicant fit for duty but diagnosed him with “Major Depressive Disorder, mild” and noted that the applicant “wants out of the CG and is angry that he can’t get out.” He stated that the applicant—

denies assaultive behavior but is upset [with] his anger and 'short fuse.' He's afraid he might inadvertently harm his child. ... no hx [history] or evidence of psychosis. MSE – cognitively intact. No thought disorder. Affect constricted. Mood is depressed. Not suicidal. Discussed pros [and] cons of antidepressants. He is clearly situationally unhappy and I suspect biologically depressed. ...

On December 20, 1994, the psychologist noted that the applicant was taking Zoloft for his "Major Depressive Disorder, improving."

On January 5, 1995, the Group Commander advised the applicant that he was recommending that the applicant be discharged for unsuitability due to personality disorders. He wrote that the applicant was "diagnosed by Dr. ..., Clinical Psychologist at Great Lakes Naval Hospital on 15 December 1994 as having an adjustment disorder with depressed mood in remission. On previous occasions you have sought a separation to resolve your family concerns, with no success. Your recent behavior has caused me concern for your well being." The Group Commander advised the applicant that he had a right to disagree with the proposed discharge and to submit a statement on his behalf. The applicant acknowledged the notification, waived his right to submit a statement, and indicated that he did not object to the discharge.

On January 5, 1995, the Group Commander sent the Personnel Command a memorandum recommending that the applicant be honorably discharged—

... for unsuitability due to personality disorder. [The applicant] was diagnosed by Dr. ..., Clinical Psychologist at Great Lakes Naval Hospital, on 15 December, 1994 as having an adjustment disorder with depressed mood in remission. [The doctor's] findings are provided as enclosure (1). If further clarification is needed [the doctor] may be contacted at ...

2. [The applicant] previously submitted a request for separation under the last Reduction in Force. He request was denied. He submitted a request for a hardship discharge due to family problems. This request was also disapproved for insufficient grounds. However, his family situation is causing him increasingly more stress and makes it difficult for him to work as a contributing member of the unit. Recent disturbing comments and actions by [the applicant] led to referral to [the doctor], with the resulting diagnosis noted above. I foresee this situation developing further and this becoming an increasing administrative burden.

3. Enclosure (2) is my notification to [the applicant] on his proposed discharge. Enclosure (3) is his endorsement to the notification.

On January 17, 1995, the Personnel Command issued orders for the applicant to be honorably discharged within thirty days pursuant to Article 12-B-16 of the Personnel Manual with a JFX separation code, which denotes an involuntary discharge due to a diagnosed personality disorder.

The applicant was honorably discharged on February 8, 1995. His DD 214 shows that he was discharged due to "Personality Disorder," with a JFX separation code and RE-4 reenlistment code. He had completed 3 years, 2 months, and 27 days of active duty.

VIEWS OF THE COAST GUARD

On November 16, 2018, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the application be denied and adopted the findings and analysis in a memorandum on the case prepared by the Coast Guard Personnel Service Center (PSC). The JAG also noted that the narrative reason for separation on a DD 214 must be one of the authorized reasons shown in the Separation Program Designator (SPD) Handbook.

PSC stated that the applicant was diagnosed with a mild Major Depressive Disorder but was found fit for duty despite the diagnosis in December 2015. Although he was fit for duty, he was processed for discharge for unsuitability in accordance with Article 12-B-16 of the Personnel Manual then in effect due to a personality disorder. Therefore, he received “Personality Disorder” as his narrative reason for separation on his DD 214, as provided by the SPD Handbook. Therefore, PSC recommended granting no relief.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 30, 2018, the Chair sent a copy of the views of the Coast Guard to the applicant’s attorney and invited him to respond in writing within thirty days. After the applicant emailed the BCMR on December 12, 2018, at his request, the staff emailed him a copy of the views of the Coast Guard with the invitation to submit a response. No response was received.

APPLICABLE LAW AND POLICY

Article 12-B-12 of the Personnel Manual in effect in 1995 authorized the discharge of members for the convenience of the government for various reasons, including unsatisfactory performance, “a condition that, though not a physical disability, interferes with performance of duty,” and Secretarial authority.

Article 12-B-16 of the Personnel Manual authorized the discharge of members for unsuitability if they had been diagnosed with a personality disorder by a medical authority or if they showed inaptitude, apathy, a defective attitude, or “inability to expend effort constructively.”

Under Chapters 3.F.16., 5.B.2, and 5.B.3. of the Medical Manual then in effect, members diagnosed with personality disorders or adjustment disorders that interfered with their performance of duty were administratively discharged pursuant to Article 12-B-16 of the Personnel Manual.

Under Chapter 3.F.16. of the Medical Manual, a mood disorder, including Major Depressive Disorder, could be disqualifying for service and result in processing under the Physical Disability Evaluation System (PDES) if the condition recurred and required extended or recurrent hospitalization or if the symptoms showed no improvement despite hospitalization.

Under Article 2.C.2.a. of the PDES Manual, “[t]he sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated through military service.”

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 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.¹ The applicant claimed that he discovered the error in 2016 but the record shows that he knew in 1995 that he had been diagnosed with depression and knew in 2011 that the VA had diagnosed him with an anxiety disorder. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record no later than 2011, and his application is untimely. However, the Board finds that the applicant's request falls under its “liberal consideration” guidance and so will waive the statute of limitations.²
3. According to the “liberal consideration” guidance, when deciding whether to modify the discharge of an applicant who has been diagnosed with a mental health condition, the Board must liberally consider the evidence, including the applicant's claims and diagnoses received both during and after the applicant's military service.³ In addition, the guidance states that “[w]hen a veteran's narrative reason for separation is a mental health diagnosis, such as ‘Personality Disorder,’ the Board shall liberally consider whether the circumstances of the case warrant changing the narrative reason to ‘Secretarial Authority,’ ‘Condition Not a Disability,’ or another authorized narrative reason for separation.”
4. The record shows that the applicant was discharged with “Personality Disorder” as his narrative reason for separation on his DD 214 even though he was never diagnosed with a personality disorder. The psychologist noted that the applicant had borderline and dependent “traits” on Axis II but there is no clear Axis II diagnosis of a borderline or dependent personality disorder in the applicant's medical record. The preponderance of the evidence therefore shows that the narrative reason for separation on the applicant's DD 214 is erroneous.
5. The applicant asked the Board to change his narrative reason for separation to “Anxiety Disorder” to comport with his diagnosis from the VA, but “Anxiety Disorder” is not an authorized narrative reason for separation under the SPD Handbook, and so the requested relief cannot be granted. Nor does the fact that the VA diagnosed the applicant with service-connected

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

² DHS Office of the General Counsel, “Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment” (signed by the Principal Deputy General Counsel as the delegate of the Secretary, June 20, 2018).

³ *Id.*

anxiety more than 15 years after his discharge prove that the applicant was discharged due to anxiety in 1995.

6. The record shows that in December 1994 a clinical psychologist diagnosed the applicant with mild Major Depressive Disorder, which was improving, and he found the applicant fit for duty. Because the applicant was fit for duty, there were no grounds for processing him for a disability separation under the PDES.⁴

7. The record also shows that the applicant wanted to leave the Coast Guard and had unsuccessfully sought to leave pursuant to a reduction in force and hardship discharge. The Group Commander initiated the applicant's discharge primarily because "his family situation [was] causing him increasingly more stress and mak[ing] it difficult for him to work as a contributing member of the unit. Recent disturbing comments and actions by [the applicant] led to referral to [the doctor], with the resulting diagnosis noted above. I foresee this situation developing further and this becoming an increasing administrative burden." Therefore, the Group Commander could have discharged the applicant for "defective attitude" or "inability to expend effort constructively" pursuant to Article 12-B-16 of the Personnel Manual. There is no corresponding narrative reason for separation in the SPD Handbook for "defective attitude" or "inability to expend effort constructively," however. But "miscellaneous/general reasons" is an authorized narrative reason for separation, and the SPD Handbook states that the corresponding separation code, JND, is appropriate for an involuntary discharge for the convenience of the government under Article 12-B-12 of the Personnel Manual when the Service "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." Therefore, the Board finds that the applicant's DD 214 could be corrected to show that he was discharged for "miscellaneous/general reasons" with the JND separation code under the authority of Article 12-B-12 of the Personnel Manual then in effect.

8. The applicant did not ask for his narrative reason for separation to be corrected from "Personality Disorder" to "Miscellaneous/General Reasons," however, and it is not clear whether he would want such a correction to be made. As noted above, he asked that his narrative reason for separation be changed to "Anxiety Disorder," but that is not an authorized narrative reason in the SPD Handbook. Therefore, the Board must deny the requested relief, but if the applicant submits another application requesting that his narrative reason for separation be corrected to "Miscellaneous/General Reasons," the Board will grant further consideration.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ PDES Manual, Article 2.C.2.a.

ORDER

The application of former SN [REDACTED], USCG, for correction of his military record is denied, but if he submits another application requesting that his narrative reason for separation be corrected to “miscellaneous/general reasons,” the Board will grant further consideration.

March 22, 2019

