


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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2019-109**

 YNC (former)

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on April 5, 2019, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated May 1, 2020, 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 Chief Yeoman (YNC; pay grade E-7) who was honorably discharged in 1984, asked the Board to correct his record by removing “unsuitability” as the narrative reason for separation on his discharge form (DD-214). The applicant did not specify what narrative reason for separation he wants substituted for “unsuitability”.

The applicant alleged that his narrative reason for separation should not be “unsuitability” because he was erroneously determined to be unsuitable on the basis of a personality disorder.<sup>1</sup> He argued that his Coast Guard record does not support a diagnosis that he suffered from a personality disorder. The applicant alleged that the Coast Guard physicians embellished their findings to

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<sup>1</sup> A “personality disorder” is “an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual’s culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.” American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-TR)*, p. 685. Types of personality disorders include paranoid, schizoid, schizotypal, antisocial, borderline, histrionic, narcissistic, avoidant, dependent, and obsessive-compulsive. *Id.* “The diagnosis of Personality Disorders requires an evaluation of the individual’s long-term patterns of functioning ... The personality traits that define these disorders must also be distinguished from characteristics that emerge in response to specific situational stressors or more transient mental states ... The clinician should assess the stability of personality traits over time and across different situations.” *Id.* at 686. The Coast Guard relies on the DSM when diagnosing members with psychological conditions. *See* Coast Guard Medical Manual (COMDTINST M6000.1B), Chap. 5.B.1.

diagnose him as having a personality disorder so that he would be found unfit for duty and discharged. The applicant alleged that during his service in the Coast Guard, he instead suffered from major depression. He further alleged that he did not receive the appropriate counseling that he needed to cope with his issues.

The applicant alleged that he refused to sail because his life was threatened by his Executive Officer (XO) who he described as an “an evil awful man.” The applicant explained that he reported wrongdoing by his XO to his District Command. He further alleged that word of his whistle-blowing spread to his XO which led to a year of persecution and subsequent discharge from the service that he loved.

To address the delay in submitting his application, the applicant stated that he submitted a similar request in 1989 and that he never heard anything in response. He believes that some of the members whom he had accused of wrongdoing stopped his appeal.<sup>2</sup> He stated that he is due consideration even after the long delay because he achieved the rank of chief petty officer.

To support his application, the applicant provided several articles and awards that demonstrate a meritorious and commendable career in the Coast Guard. He also submitted three letters of recommendation. The first two letters were from fellow members who served with the applicant on his last tour. The first letter stated that the XO of the cutter made life very difficult for everyone and created a toxic and tense environment. He further stated that the applicant is a good man who earned great marks. The second letter-writer described the applicant as loyal and respectful to both superiors and subordinates. He does not recall anyone having a bad thing to say about the applicant. The final letter of recommendation is from a fellow member who worked with the applicant before his last tour. He stated that the circumstances surrounding the applicant’s discharge warrant a discharge for the convenience of the government because his primary goal was to care for his family. He described the applicant as having exceptional expertise and stated that those who worked with him were grateful and appreciative of his services.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 29, 1970. Following recruit training, he was enrolled in “A” School to become a Yeoman and subsequently advanced to YNC.

In April 1983, the applicant reported for duty aboard an icebreaker after requesting the assignment. He justified this request by stating that he wanted to broaden his career and enhance his chances for advancement.

On an undated Evaluation Sheet for Appointment to Warrant Grade, the XO of the icebreaker awarded the applicant the highest possible overall performance evaluation of “Outstanding.” He stated the following:

[The applicant] possesses all of the qualities I desire in a Chief Petty Officer. His evaluations of others are always accurate and precisely describe specific performance. His supervision of others is positive and firm and he delegates responsibility to the lowest possible level to foster personal and

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<sup>2</sup> The Board has no record that the applicant submitted an application in 1989.

professional growth. He staunchly supports command policies and enforces regulations. [Applicant] has a unique ability to evaluate drug and alcohol problems and always recommends the proper course of action. I would be pleased to serve with [the applicant] as a Warrant Personnelman and strongly recommend him for positions of higher responsibility.

On July 13, 1984, the applicant requested a hardship discharge. In his letter to the Commandant, the applicant stated that he was requesting a hardship discharge due to hardship caused by being separated from his family. He explained that his tour of duty aboard the icebreaker was the first tour of his career that had separated him from his wife and two daughters. He stated that he knew this was a common concern in the Coast Guard but that he had had no idea that family separation would impact him so much. He explained that he believed his mental health was in danger. He further stated that this letter was the first mention of this problem. That same day, the applicant sent a letter to his representative in Congress. In the letter, the applicant acknowledged that the Coast Guard does not typically allow for a hardship discharge based on his condition. However, he requested assistance in obtaining a hardship discharge.

On July 19, 1984, the applicant's Commanding Officer (CO) sent a letter to the Commandant regarding the applicant's request for a hardship discharge. The CO recommended denying the request because his situation did not satisfy the requirements for a hardship discharge under the Personnel Manual. The CO stated that the applicant was an outstanding Chief Petty Officer who consistently received higher evaluations than others on board the icebreaker. He suggested therapeutic counseling and other means of resolving the problem. The CO further stated that the applicant did not want a psychiatric evaluation or assistance and had refused to be interviewed by a physician's assistant.

On August 3, 1984, the District Commander sent a letter to the Commandant also recommending denial of the applicant's request for a hardship discharge. He stated that the applicant's hardship of family separation was no different than that experienced by the rest of the ship's crew. He further stated that the applicant's refusal to discuss his family problems with anyone or seek professional assistance was "most unusual."

On August 7, 1984, the applicant received a psychiatric evaluation from Dr. T who noted the following:

[The applicant] is a 33 year old married white male. He has 14 years of active duty in the USCG and is a YNC. He was referred here for evaluation because of problems associated with being on board the [redacted].

The patient related that he came into the Coast Guard after high school graduation. At that time he spent one year aboard a ship. After his ship duty he got married and had shore assignments over the next 13 years. Recently he was assigned to the [redacted]. During its most recent deployment he became profoundly depressed. He stated that he could not properly do his job. All he could think of was his family. He felt empty without them. He began to feel so bad that he even considered suicide. He couldn't relate to his peers, couldn't sleep and couldn't even concentrate enough to watch TV. He disembarked in [redacted] and came back to the U.S. He was seen at [redacted] hospital and given brief psychotherapy. He asked for a hardship discharge. However, even after this the patient still cannot tolerate the thought of going back to the [redacted]. He simply and emphatically states, "I will not go back to the [redacted]".

Past history showed that the patient was raised in an intact family. He has 3 brothers and 2 sisters. The patient graduated from high school. He had frequent visits to the principle for discipline problems. As mentioned the patient joined the USCG immediately after graduation; he joined for "something to do". The patient denied any past psychiatric history. There was no family history of psychiatric problems. He denied drug or alcohol abuse. He has been married for 11 ½ years and has 2 girls. He describes himself as being a perfectionist and he gets upset when things do not go as they should. He stated that he has worked hard for everything that he has gotten.

Mental Status Exam: showed an intense white male. He was alert and cooperative. His mood was somewhat depressed. His affect was appropriate. The patient was oriented to person, time, and place. His intelligence was judged to be above average. Thought process showed normal, goal directed speech. Thought content showed no sensory hallucinations or paranoia. He denied current suicidal ideation and homicidal ideation.

Assessment: Axis I—Adjustment Disorder, severe, manifested by extreme dysphoria and suicidal thoughts when separated from his family.

Axis II—Mixed Personality Disorder, manifested by dysphoria, compulsive, suicidal thoughts and dependency on family to feel emotionally stable.

Recommendation: in view of the above it is recommended that the patient be discharged from active duty. If forced to continue he is at increased risk for acting out behavior such as missing a movement or self-destructiveness. His condition cannot be helped by psychiatric intervention as the patient has no motivation to continue on active duty.

On August 15, 1984, the Commandant set a letter to the applicant notifying him that his request for a hardship discharge was denied. The Commandant stated that his request did not meet any of the policies for early separation and encouraged the applicant to successfully complete his enlistment contract.

On September 10, 1984, the applicant received a psychiatric evaluation from Dr. P, who noted the following:

The patient is a 33 year old YNC with 14 years of active duty stationed on the USCGC [redacted]. He is seen in referral from the Outpatient Dept. of the USCG SUPRTCEN, [redacted], where he was seen on 30 August 1984 verbalizing difficulty handling the emotional consequences of separation from his family engendered by deployments to sea.

On interview, the patient stated that he had been assigned to his present vessel for seventeen months. He said that within a during [sic] his last deployment he began to miss his family intensely, felt dysphoric, and had trouble concentrating. He related that he decided that the best solution to his difficulties was to apply for a hardship discharge from the Coast Guard. His request for discharge from the Coast Guard has been denied.

MENTAL STATUS; the patient was alert, oriented and cooperative. His appearance was neat and appropriate. His speech was spontaneous without evidence of a thought disorder. His affect was mildly anxious and dysphoric. He verbalized no homicidal ideation. The patient did not appear of danger to others. There was no evidence of psychosis or organic brain syndrome.

IMP: Deferred pending further evaluation.

PLAN: Since the patient has expressed interest in psychotherapy, such has been offered to him. His next appointment is on 17 September at 1300. The patient is returned to duty, fit for same.

On September 20, 1984, the applicant received a psychiatric evaluation from Dr. H who, noted the following: “He continues to say he will not go to sea. When asked what he would do he doesn’t respond directly. When questioned further he states he wouldn’t go to work that day. He was able to relate what he thought were to be consequences.” The physician recommended the following: 1) supportive counseling; 2) consider use of antidepressants; and 3) return for counseling when second opinion is completed.

On September 24, 1984, the applicant had another psychiatric evaluation from Dr. P, who noted that the applicant exhibited some personality traits which have been accentuated by the stress imposed by family separation due to his sea duty. However, the physician concluded that this stress did not render him unsuitable nor unfit for further military service and recommended further outpatient psychotherapy.

On October 23, 1984, the applicant received another psychiatric evaluation from Dr. T, who noted the following: “Patient doing well. There is the possibility he will be retained in Coast Guard for shore duty. No new problem. No suicidal ideation.”

On October 24, 1984, the applicant appealed his semi-annual marks to his District Command. The applicant stated that during this marking period, he had suffered from depression. He told his XO and CO that he believed the command was not doing everything they could to get him the help he needed to cope with his issues. He believed that certain marks were a punishment for his criticism of the command. However, on the narrative portion that accompanied the applicant’s marks, his XO concluded by stating: “During this period [the applicant] was highly recommended for the W.O. exam. I feel that he will make an excellent W.O.”

Also on October 24, 1984, the applicant was notified that his CO had initiated action for his discharge. He was further notified that his performance marks supported an honorable discharge. The CO cited the applicant’s personality disorder and his refusal to go to sea as the reasons. The CO stated that the final decision regarding his discharge and type of discharge rested with the Commandant. The applicant was notified that he had the right to submit a statement on his own behalf, that he could disagree with the CO’s recommendation, that any such rebuttal would be forwarded to the Commandant, and that he had the right to consult with an attorney. That same day, the applicant sent his CO a letter acknowledging notification of his proposed discharge, to which he did not object. He also waived his right to submit a statement on his behalf and his right to an administrative discharge board. The applicant noted that he was waiving these rights to try to depart from his ship before it got underway on October 26, 1984. He also acknowledged that he had been provided the opportunity to consult with a lawyer.

On October 30, 1984, the applicant received a psychiatric evaluation from Dr. L, who noted the following:

Patient has been depressed past year... which he describes as caused by family separation, and now states he can not go to sea because of the prolonged separation from his family. States that when he is depressed, he can’t do anything... States he cried nights on the ship. Patient alert, cooperative, but appears somewhat depressed. Denies any suicidal thoughts at present, though has in past. Depressive state which seems to be a major problem.

On November 9, 1984, the applicant wrote a letter to the Commandant regarding an unconditional waiver of a hearing before an Administrative Discharge Board. The applicant stated, “I have been advised by my commanding officer that he is recommending me for an Honorable discharge by reason of unsuitability for medical reasons.” He voluntarily waived his rights to be heard by an administrative discharge board, to appear in person before the board, and to be represented by counsel. The applicant provided the following explanation of his waiver:

At the time just prior to [redacted] sailing on [redacted] operations, I signed a waiver stating that I waived my right to an administrative discharge board in order not to sail with [redacted] due to my documented medical problem. I signed this statement as a condition set up by my executive officer. If I did not waive my right to an administrative discharge board, he would not submit the letter recommending me for discharge until after the ship returned from operations.<sup>3</sup> Hence, I signed the waiver to avoid sailing.

I voluntarily sign this statement with the hope that this will put an end to the persecution I have suffered since first asking for help for my problem back in July of this year. I have also spoke with [redacted] a lawyer, from the District staff about my situation. I told her that I must either sign the waiver or sail. She advised me that this was the ship’s prerogative. Feeling that I have no alternative, I sign this waiver hoping to bring a swift close to my Coast Guard Career.

On November 28, 1984, the applicant received a psychiatric evaluation from Dr. C who diagnosed him with passive-aggressive personality disorder. The narrative summary of the evaluation stated the following regarding his diagnosis:

However I don’t think [the applicant] was ever actually suicidal. He probably would have gone AWOL or just refused to sail before he actually hurt or destroyed himself. He didn’t really want to be dead—just off the ship. According to the patient, if he knew how much he was going to miss his family while underway, he never would have reenlisted in 1981. His talk about suicide was to emphasize and buttress his resolve to get off the ship. He also realized that by demanding to get off the ship, he was seriously violating Coast Guard rules and regulations. He knew that refusing to sail would probably result in his discharge from the Coast Guard under adverse conditions. However, according to the patient, he realizes the consequences of his negative position and is willing and prepared to accept them. “I’d rather get thrown out than leave my family and sail again”. He obviously is very attached and dependent upon them. He also is rebelling against military authority and asserting his independence. Many people have tried to convince and remind him that he is giving up his Coast Guard career and retirement benefits because of his actions and irrevocable position, but he feels resolute and sedulous in his determination to get out of the service. He is uncertain where he will live but is confident he will be able to get a good job, earn a comfortable living, support his family, and be with them constantly. He is not bitter or resentful toward the Coast Guard but is angry at his Executive Officer for recently changing and lowering his marks. He perceives this as an injustice and feels he was wronged. (See statement of Marks Appeal dated 24 October 1984). It is interesting to follow his way of thinking and logic. He dislikes sailing and being away from his family and now wants to quit in violation of military regulations and his obligated service agreement. However, when Commander [redacted] subsequently lowered his marks, he got angry, frustrated, and feels he is being capriciously discriminated against and unfairly picked upon. This reactive attitude and orientation to authority figures, rules and regulations, is rather typical of passive-aggressive individuals. [The applicant] does not feel his marks should have been lowered just because he hates to sail and be away from his family... As indicated above, the patient manifested no evidence of a psychotic thought disorder form his behavior or thought content during these psychiatric interviews. No signs of CNS

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<sup>3</sup> During the hearing of an Administrative Discharge Board (ADB), the member’s supervisor, the XO, and sometimes the CO are called as witnesses to testify about the member’s performance and circumstances. Since the cutter was getting underway, the ADB presumably had to be waived or postponed until after the deployment.

organicity were present nor did he seem inordinately depressed at the time now that he is off the ship. According to the patient, he has pondered and deliberated his situation for many days and has made the decision to leave the Coast Guard prematurely rather than complete even a 20 year career... He alleges he cannot adjust to the separation situation. Since sea duty is such an integral and indispensable part of Coast Guard service, he is unsuitable for further military service and should be administratively discharged.

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Diagnosis: Passive-Aggressive Personality Disorder

Recommendations: 1. Because the patient suffers from a primary inherent personality defect which is not secondary to any disease or injury and existed prior to entrance into the Coast Guard, he is at present unsuitable for further military service.

2. There are no disqualifying physical or mental defects which are ratable as a disability under the standard schedule for rating disabilities in current use by the Veterans Administration.

3. The patient was and is mentally responsible both to distinguish right from wrong and to adhere to the right and has the mental capacity to understand the actions being contemplated in his case.

4. It is recommended that the patient be found not fit for military service and that he be discharged under the authority of Article 12-B-16 of the Personnel Manual.

On December 12, 1984, the District Commander endorsed the CO's recommendation and forwarded it to Coast Guard Headquarters with the November 28, 1984, psychiatrist's report as an attachment.

On December 31, 1984, the Commandant directed that the applicant be discharged by reason of unsuitability under Article 12.B.16. of the Personnel Manual. It was further directed that the applicant's DD-214 state "JMB" as the separation code and "unsuitability" as the narrative reason for separation.

On December 31, 1984, the applicant was discharged for unsuitability in accordance with Article 12.B.2. of the Coast Guard Personnel Manual. His DD-214 shows "honorable" as the character of discharge; "unsuitability" as the narrative reason for separation; RE-4 (ineligible for reenlistment) as his reenlistment code; and JMB (which denotes a diagnosed Personality Disorder) as his separation code. The applicant signed his DD-214.

On June 5, 1989, a physician at the Mental Hygiene Clinic of the Department of Veterans Affairs sent a letter to the Commandant. The physician stated the following:

[Applicant] is a 37 year white male with a history of dysthymic disorder and recurrent major depressive episodes whom I have been seeing weekly since August 1988. He has had an excellent response to nortriptyline (125 m.g./qhs) and psychotherapy. After reviewing his medical record from the US Coast Guard, it appears that at the time of his difficulties in the service and subsequent discharge that he was suffering from a major depressive episode with sleep disturbance, depressed mood, decreased interest in usual activities, decreased concentration, agitation and restlessness, and impaired work performance.

It is not clear, however, why a trial of anti-depressant medications was not initiated at that time. It is doubtful that a person with a 14 year history of above average performance in the military would suddenly become unsuitable for service secondary to a personality disorder.

In the time that I have been seeing [applicant], he has received a significant promotion in his job as a drug and alcohol counselor and has nearly completed his college education. It is my strong conviction that he would have had a similar response to anti-depressants in 1984 and been able to successfully continue his career in the military.

### **VIEWS OF THE COAST GUARD**

On September 4, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is untimely. PSC also stated that the application should be denied because the applicant did not demonstrate an error or injustice in his discharge processing. Pursuant to Personal Manual 12.B.16., the applicant's medical diagnosis of passive-aggressive personality disorder warranted a discharge for unsuitability. Additionally, the applicant waived his right to an administrative separation board to allow for a quick discharge.

The JAG reiterated PSC's statement that the application is untimely. Further, the JAG stated that the applicant has failed to demonstrate that it is in the interest of justice to excuse the delay.

The JAG argued that the record does not demonstrate any evidence that the applicant's XO threatened his life, as the applicant alleged. In fact, the record shows that the XO wrote a letter of recommendation for the applicant to receive a commission as a Chief Warrant Officer. The record does not support the applicant's allegation that his XO was hostile towards him.

The JAG acknowledged that the applicant successfully served in the Coast Guard for many years. However, the JAG argued that the record demonstrates that the applicant experienced a significant change in his ability serve during his last tour. Specifically, separation from his family caused the applicant to experience significant psychological issues. Despite experiencing these issues, the JAG alleged, the applicant refused psychiatric care and other forms of counseling.

The JAG argued that the applicant's refusal to go to sea was contrary to the tenets of the Coast Guard. After the applicant's hardship discharge was denied, the applicant had an obligation to continue to serve aboard the cutter. The JAG argued that the applicant's refusal to do so and his admission that "he could not adjust to the separation situation" confirmed that he had a personality disorder and was no longer suitable for military service.

The JAG concluded by reiterating PSC's argument that the applicant was afforded the opportunity to contest the reason for his discharge. After being apprised of his rights and consulting with counsel, the applicant waived his right to a hearing before a discharge board in an effort to bring about the swift close to his Coast Guard career.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On September 10, 2019, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. In his response, the applicant reiterated that his



discharge was due to persecution by his XO. The applicant explained that when he discovered his XO committing crimes against fellow members, he notified his District Command. However, when the District Command failed to pursue the issue, the applicant determined that his only option was to leave the ship and so he requested a hardship discharge. When the hardship discharge was denied, the applicant alleged, he began to feel threatened. Feeling that his life was threatened, he reported to medical that he missed his family and that he no longer wanted to live without them.

The applicant also reiterated that he suffered from depression while in the Coast Guard. The applicant alleged that he was never allowed an opportunity to receive the recommended treatment to manage his depression. He argued that the schedule of a ship and the attitude towards mental health in 1984 prohibited him from receiving proper treatment.

Lastly, the applicant reiterated that his military record does not support a finding that he suffered from a personality disorder and so the narrative reason for discharge, "Unsuitability," should be changed.

### APPLICABLE LAW AND POLICY

Article 12.B.16(b) of the Personnel Manual in effect in 1984 authorized the Commandant to direct the discharge of an enlisted member for, *inter alia*,

- (1) Inaptitude. Applicable to those persons who are best described as inapt due to lack of general adaptability, want or readiness of skill, unhandiness, or inability to learn.
- (2) Personality disorders. As determined by medical authority, personality behavior disorders and disorders of intelligence listed in Chapter 5, CG Medical Manual (CG-294).
- (3) Apathy, defective attitudes, and inability to expend effort constructively. A significant observable defect, apparently beyond the control of the individual, elsewhere not readily describable.

Under Article 12-B-16(d), prior to recommending a member for such a discharge, the CO was required to notify the member of the proposed discharge; permit him to submit a statement on his own behalf; and, if a General discharge was contemplated, allow him to consult with an attorney.

Article 12-B-16(h) stated that when a psychiatric condition was a consideration in the discharge for unsuitability, the member should be examined by a psychiatrist who could either diagnose the member with a mental disability and refer the member to a medical board or, if there was no mental disability, complete an SF 502 form with a narrative summary describing the essential points of the mental condition and a statement averring that the member does not have a ratable disability.

Chapter 5 of the Coast Guard Medical Manual, COMDTINST M6000.1E, discusses Psychiatric conditions in relevant part:

2. Personality Disorders. These disorders are disqualifying for appointment, enlistment, and induction under Chapter 3-D of this Manual and if identified on active duty shall be processed in accordance with Military Separations, COMDTINST M1000.4 (series). These are coded on Axis II.

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- k. 301.9 Personality disorder NOS (includes passive-aggressive).

## FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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.<sup>4</sup> The applicant was discharged in 1984 and received and signed his DD-214 showing an honorable discharge for unsuitability at the time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in 1984, and the application is untimely. However, the Board may excuse the untimeliness of an application if it is in the interest of justice to do so,<sup>5</sup> and the Board will excuse the untimeliness in this case because the applicant's request falls under the Board's "liberal consideration" guidance since the applicant is challenging his type of discharge based in part on an alleged mental health problem.<sup>6</sup> Therefore, the Board waives the statute of limitations in this case.
3. The applicant alleged that his honorable discharge for unsuitability is erroneous and unjust because a mental health condition—depression—caused or contributed to the behavior that resulted in the discharge. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>7</sup> 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."<sup>8</sup> And under the "liberal consideration" guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged mental health condition, the Board must liberally consider the evidence, including the applicant's claims, and decide whether the preponderance of the evidence shows that the veteran had a mental health condition while in the Service that could excuse the veteran's misconduct; whether the mental health condition actually excused the behavior that adversely affected the discharge; and, if not, whether the mental health condition outweighs the misconduct or otherwise warrants upgrading the veteran's discharge.<sup>9</sup>
4. The applicant alleged that he suffered from depression while serving in the Coast Guard. During the applicant's final six months in the Coast Guard, he received several psychiatric evaluations from more than one physician. Most of these evaluations noted that the applicant had

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<sup>4</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>5</sup> 10 U.S.C. § 1552(b).

<sup>6</sup> 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).

<sup>7</sup> 33 C.F.R. § 52.24(b).

<sup>8</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>9</sup> *Id.*

a depressed mood or was in a depressed state but none of them diagnosed him with Major Depression. Some recommended that the applicant consider the use of antidepressants and/or attend some sort of counseling. Additionally, the applicant was diagnosed with recurrent major depressive episodes in 1988 by a Department of Veterans Affairs (VA) physician. The physician noted that after reviewing his Coast Guard medical record, “it appears that at the time of his difficulties in the service and subsequent discharge that he was suffering from a major depressive episode with sleep disturbance, depressed mood, decreased interest in usual activities, decreased concentration, agitation and restlessness, and impaired work performance.” Therefore, the Board finds that the applicant has proven by a preponderance of the evidence that he was suffering symptoms of depression at the time of his discharge from the Coast Guard.

5. The applicant argued that his military record does not support a finding that he suffered from a personality disorder. The record shows that before his Commanding Officer (CO) initiated action for his discharge, the applicant received five psychiatric evaluations from three physicians.<sup>10</sup> During the applicant’s first psychiatric evaluation, dated August 7, 1984, he was diagnosed with an adjustment disorder and a mixed personality disorder. The diagnosis of a mixed personality disorder did not specify which personality traits comprised this “mix”. This diagnosis was made after the applicant’s first evaluation, however, and according to the American Psychiatric Association, “The diagnosis of Personality Disorders requires an evaluation of the individual’s long-term patterns of functioning... the clinician should assess the stability of personality traits over time and across different situations.”<sup>11</sup> The applicant’s second psychiatric evaluation, dated September 10, 1984, deferred diagnosing him pending further evaluation. His third psychiatric evaluation, dated September 20, 1984, also did not include a diagnosis and included a recommendation that he attend supportive counseling and consider the use of antidepressants. The applicant’s fourth psychiatric evaluation, dated September 24, 1984, noted that he exhibited some personality traits which had been accentuated by the stress imposed by the separation due to his sea duty. His fifth psychiatric evaluation, dated October 23, 1984, noted the following: “Patient doing well. There is the possibility he will be retained in Coast Guard for shore duty. No new problem. No suicidal ideation.” After these five psychiatric evaluations, the applicant’s CO advised the applicant that he was initiating his discharge for unsuitability due to a personality disorder. Therefore, it appears that the CO initiated the applicant’s discharge for unsuitability with a less-than-clear diagnosis of a personality disorder. More than a month later, on November 28, 1984, the applicant was diagnosed with passive-aggressive personality disorder. However, this diagnosis was made during the physician’s first evaluation of the applicant. Given that the applicant did not have a physician who was able to assess the stability of his personality traits over time and across different situations, as required for a proper diagnosis by the American Psychiatric Association, the Board finds that the preponderance of the evidence shows that the applicant’s diagnosis of a personality disorder was inconclusive at the time of his discharge.

6. The preponderance of the evidence shows that the applicant was depressed due to his separation from his family, but the Board cannot conclude that his depression excused or

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<sup>10</sup> There was a sixth psychiatric evaluation in the applicant’s military record. However, this psychiatric evaluation was hand-written and is illegible. Therefore, physician notes, diagnoses, and recommendations cannot be extracted from this evaluation.

<sup>11</sup> American Psychiatric Association, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION (2000) (DSM-IV-TR), p. 686.

justified his refusal to perform his duty. He was discharged primarily because he was unhappy with his circumstances and felt very homesick. There is no evidence in the record that the applicant's mental health interfered with his performance of duty aboard the cutter. In fact, the applicant's XO had recently recommended that he receive a commission as a Chief Warrant Officer and awarded him the highest possible overall performance evaluation. Further, there is no evidence of other misconduct or inappropriate behavior in the applicant's record. Despite his high performance, the record shows that the applicant was adamant on leaving the service because he could not cope with being separated from his family. He initially attempted to leave the service by requesting a hardship discharge. When he was not approved for a hardship discharge, he was ordered to undergo a psychiatric evaluation for his issues stemming from family separation. The applicant was repeatedly recommended to attend counseling and to consider the use of antidepressants. There is no evidence to support the applicant's allegation that he was never given the opportunity to receive the recommended treatment. To the contrary, the record shows that the applicant tried to refuse counseling and had no intent to try to manage or improve his situation. As such, the applicant's unwillingness to try to adapt to life on a cutter is the primary reason he was discharged from the Coast Guard.

7. The applicant argued that his reason for discharge should be changed from "unsuitability" to something more favorable because his military record does not support a finding that he suffered from a personality disorder. However, the applicant's narrative reason for discharge on his DD-214 does not indicate any diagnosis of a personality disorder: the applicant's DD-214 only indicates "unsuitability" as the narrative reason for discharge. As discussed above, the applicant was discharged primarily because he was homesick, he was unwilling to manage his homesickness, and he refused to sail. While the applicant alleged that his refusal to sail was due to persecution by his XO, there is no evidence to support this allegation, and the XO had highly recommended the applicant for appointment as a chief warrant officer. Unpopularity of an XO is not evidence of wrongdoing, illegality, or persecution. Instead, the record supports a finding that the applicant's desire to leave the Coast Guard was due to his unwillingness to try to adapt to military life—specifically sea duty. As the JAG noted, refusing to go to sea is contrary to the tenets of the Coast Guard. Under Article 12.B.16.b.1. of the Personnel Manual, members who did not adapt to military life could be separated for "unsuitability" in 1984, and this provision remains in the Military Separations Manual today. Therefore, the Board finds that the applicant's discharge for "unsuitability" *per se* was not erroneous or unjust. And the fact that the applicant was feeling depressed due to his separation from his family does not excuse his conduct or render his discharge for "unsuitability" erroneous or unjust.

8. The only information on the applicant's DD-214 that indicates a personality disorder is his separation code, JMB. However, the applicant did not ask the Board to change his separation code, and whether the evidence would support a change is unclear. Alternative separation codes that would be appropriate given the applicant's conduct as discussed above are either BHJ, which goes with an "Unsatisfactory Performance" narrative reason for discharge, or BNC, which goes with an "Unacceptable Conduct" narrative reason for discharge. If the applicant so desires, he may reapply to this Board to request a different separation code.

**ORDER**

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

May 1, 2020

