

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-189


SN (former)

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 August 9, 2019, and assigned the case to the Deputy Chair to prepare the decision in accordance with 33 C.F.R. § 52.61(c).

This final decision, dated September 25, 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 Seaman (SN/E-3) who was honorably discharged from the Coast Guard on May 21, 2004, asked the Board to correct his record by changing the narrative reason for separation and separation code on his discharge form DD-214.

The applicant stated that at the time of his discharge, he was dealing with extreme stress and anxiety. Regarding his conduct, he argued that he never caused harm to any person or property and that he followed all orders.

To address the delay in submitting his application, the applicant stated that at the time of his discharge, he was informed that he would be able to upgrade his discharge after a certain amount of time had passed.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 6, 2004, by signing a six-year contract. He completed recruit training and was assigned to a cutter near the training center.

On March 17, 2004, the applicant received a psychiatric evaluation as part of a medical board after he was hospitalized for a multiple over-the-counter drug overdose. The applicant stated that the reason for his overdose was his extreme unhappiness about being a member of the Coast Guard. He stated that he was pressured to join by his father and that the demands of his job were overwhelming. He expressed a strong desire to be discharged. The applicant complained of frequent bouts of depression and anxiety since enlisting in the Coast Guard. The applicant denied having a history of significant mental health problems and stated that he had never received mental health services in the past. The applicant stated that he had a vague suicidal ideation when a girlfriend broke up with him when he was younger, and he had brief episodes of anxiety. The applicant also stated that he had no history of drug or alcohol abuse and no family history of mental illness. The psychiatrist diagnosed the applicant as having an adjustment disorder with anxiety and depression.¹ Further, the psychiatrist recommended that the applicant be discharged.

On March 19, 2004, the applicant was notified that his Commanding Officer (CO) had initiated action for his discharge for unsuitability. The CO cited the applicant's diagnosis of an adjustment disorder with anxiety and depression, his strong desire to be separated from the Coast Guard, and the medical board's recommendation as the reasons. The CO stated that he intended to recommend that the applicant receive an honorable discharge, but that the final decision regarding his characterization of service rested with the Commander of the Coast Guard Personnel Command. 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.

On April 23, 2004, the Commander of the Coast Guard Personnel Command directed that the applicant be honorably discharged by reason of unsuitability under Article 12.B.16., which authorizes discharges for unsuitability for various reasons. It was further directed that the applicant's DD-214 state "unacceptable conduct" as the narrative reason and JNC as the corresponding separation code.

On May 21, 2004, the applicant was discharged for unsuitability in accordance with Article 12.B.16. of the Coast Guard Personnel Manual. His DD-214 shows "honorable" as the character of discharge; "unacceptable conduct" as the narrative reason for separation; RE-4 (ineligible for reenlistment) as his reenlistment code; and JNC (unacceptable conduct) as his separation code. The applicant signed his DD-214.

On January 7, 2020, in response to the case before the Board, a judge advocate (JAG) of the Coast Guard requested a psychological opinion of the applicant. The JAG asked LCDR R, a Lieutenant Commander in the U.S. Public Health Service, to determine whether the applicant had a documented stress or anxiety disorder while he served on active duty, and if so, to determine if the symptoms of his condition were causally related to his misconduct.

¹ An "adjustment disorder" is a psychological response to an identifiable stressor that results in the development of emotional or behavioral symptoms. Adjustment disorders are normally temporary and disappear when the stressors disappear. Adjustment disorders are not personality disorders. American Psychiatric Association, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, FOURTH EDITION, TEXT REVISION* (2000) (DSM-IV-TR), p. 679. 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.

On January 8, 2020, LCDR R responded to the JAG. He stated that at the time of the applicant's separation, a psychiatrist had diagnosed him with an adjustment disorder with anxiety and depression. He further stated:

By definition, adjustment disorder criteria is met if there is enough depression and anxiety of such severity to interfere with social and/or occupational functioning and that is out of proportion to the severity of the stressor within 3 [months] of the stressor (that being enlisting in the coast guard) that can last less than 6 months if acute or chronic if lasting 6 [months] or longer. Since the "Unacceptable conduct" was an overdose attempt within 2 [months] of service and his NARSUM states the patient admitted to frequent bouts of depression and anxiety after his enlistment.

Therefore, I concur with [the applicant's psychiatrist] with the diagnosis and existed likely prior to the overdose. Although it's difficult to determine causality for an overdose attempt to a diagnosis since overdose attempts are multifactorial, there is a high degree of association between his diagnosis and the unacceptable conduct in my opinion.

VIEWS OF THE COAST GUARD

On January 23, 2020, a JAG of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant alternative relief in this case.

The JAG argued that the Coast Guard did not commit an error. First, the JAG stated that overdosing on medication as part of a suicide attempt is unacceptable for active duty members of the military. Second, the JAG explained that it was common practice for the Coast Guard to use "unacceptable conduct" as the narrative description and JNC as the separation code for members who were separated on an unsuitability basis for an adjustment disorder. The JAG stated that at the time of the applicant's discharge, there was not a more specific narrative description or separation code that better fit the circumstances of an adjustment disorder.

The JAG stated that although the Coast Guard did not commit an error, the Board should upgrade the applicant's narrative description to "adjustment disorder" and separation code to JFY. The JAG stated that the Coast Guard has now recognized that "unacceptable conduct" has a negative connotation that can easily be misread as "misconduct." Recently, the Coast Guard announced the use of "adjustment disorder" as the new narrative description and JFY as one of several new separation codes for those separated for adjustment disorders. The JAG stated that this is the result of a service-wide recognition that numerous people were prejudiced after leaving the service because of the outmoded language of "unacceptable conduct." Further, the JAG stated that the psychological opinion obtained for this matter concurs with the original Coast Guard Medical Officer's diagnosis of the applicant. The psychological opinion also acknowledged that the applicant's adjustment disorder likely existed prior to his overdose and that there is a high degree of association between his diagnosis and the overdose.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 24, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Article 12.B.16.b. of the Personnel Manual in effect in 2004 lists possible reasons for an unsuitability discharge, including “(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.”

The Separation Program Designator (SPD) Handbook, which is Enclosure 2 to the DD-214 Manual, COMDTINST M1900.D, states that one of the authorized narrative reasons for separation for members being discharged under Article 12.B.16. of the Personnel Manual is “unacceptable conduct.” The corresponding separation code is JNC, and it means that the member is being involuntarily discharged “when member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed.” The only authorized reentry code for this type of discharge is RE-4.

ALCOAST 252/09, issued on April 29, 2009, states that the Department of Defense created new separation codes 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 explained that historically, when members were discharged for their inability to adapt to military life, the only available separation code was JNC with a narrative reason of “unacceptable conduct.” However, the narrative reason of “unacceptable conduct” has a negative connotation. Consequently, the DOD recognized the need for additional narrative reasons and SPD codes that better fit the cause for discharge when a member is unable to adapt to military life. The ALCOAST specifies that the new narrative reason “adjustment disorder” and 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. CGPSC (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 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 2004 and received and signed his DD-214 showing a discharge for “unacceptable conduct” and JNC separation code at the time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in 2004, 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,³ and the Board will excuse the untimeliness

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

³ 10 U.S.C. § 1552(b).

in this case because the applicant's request falls under the Board's "liberal consideration" guidance since the applicant is challenging his reason for discharge based in part on an alleged mental health problem.⁴ Therefore, the Board waives the statute of limitations in this case.

3. The applicant alleged that his discharge for "unacceptable conduct" and JNC separation code are erroneous and unjust because a mental health condition 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.⁵ 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."⁶ 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 mental health condition(s) while in the Service that could excuse the veteran's misconduct; whether the mental health condition(s) actually excused the misconduct that adversely affected the discharge; and, if not, whether the mental health conditions outweigh the misconduct or otherwise warrant upgrading the veteran's discharge.⁷

4. In this case, the applicant's military records show that he began experiencing problems soon after he enlisted. Within two months of enlisting in the Coast Guard and a few days after reporting to his first duty station, the applicant was hospitalized for a drug overdose. The applicant stated that his drug overdose was due to his extreme unhappiness about joining the Coast Guard. The applicant stated that he was pressured to join the Coast Guard by his father, and that he wanted to be discharged. After his overdose, the applicant was diagnosed by a medical board with an adjustment disorder with anxiety and depression. This diagnosis has been confirmed by a contemporaneous psychological evaluation of the applicant. Soon thereafter, the applicant was notified by his CO that he was being processed for discharge. This notification specifically states that he was being recommended for discharge because of his adjustment disorder diagnosis.

5. The Coast Guard recommended correcting the applicant's DD-214 to reflect the new JFY/adjustment disorder discharge established in ALCOAST 252/09. The new JFY/adjustment disorder discharge is appropriate for a member who is unsuitable for military service because of a diagnosed adjustment disorder that prevents the member from adapting to military life. First, the Board finds that the applicant's records clearly show that he was diagnosed with an adjustment disorder. Second, the Board finds that the applicant's adjustment disorder prevented him from adapting to military life. The applicant's psychological response to being in the Coast Guard was such unhappiness, anxiety, and depression that he overdosed on over-the-counter drugs. As the

⁴ 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).

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁷ *Id.*

JAG noted, overdosing on drugs as part of a suicide attempt is unacceptable for active duty members of the military. Therefore, the Board agrees with the Coast Guard that the applicant's DD-214 should be corrected to reflect the new JFY/adjustment disorder discharge. Although this type of discharge did not exist in 2004, the Board is authorized to upgrade discharges in light of current mores and policies.⁸

6. Accordingly, the Board will order the Coast Guard to issue the applicant a new DD-214 showing that he was discharged due to an adjustment disorder with a JFY separation code. No other correction is warranted.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁸ Memorandum of the General Counsel to J. Warner Mills, et al., Board for Correction of Military Records (July 8, 1976).

ORDER

The application of former SN [REDACTED], USCG, for correction of his military record is granted as follows: The Coast Guard shall issue him a new DD-214 with “adjustment disorder,” instead of “unacceptable conduct,” as the narrative reason for separation, and a JFY separation code, instead of JNC.

September 25, 2020

