

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-043


BMC (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 June 1, 2023, and assigned it to an attorney to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 22, 2024, 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 Chief Boatswain's Mate (BMC/E-7) who received a general (under honorable conditions) discharge, asked the Board to correct his record by to upgrading the characterization of service from “Under Honorable Conditions” to “Honorable,” and to upgrade the narrative reason of separation from “Misconduct—Involvement with Drugs” to “Secretarial Authority.”

The applicant, through counsel, asserts that he has service-connected post-traumatic stress disorder stemming (PTSD) from combat service. He asserts that under current standards, he would have been medically discharged for PTSD rather than misconduct related to his involvement with drugs.

The applicant discloses that he has a family history of alcoholism and that he initially engaged in substance abuse from the ages of 14 through 20. He states at age 20 he sought treatment for his substance abuse issues and achieved sobriety as documented in a 1991 letter from a substance abuse counselor. On December 10, 1991, the applicant enlisted in the Coast Guard. The applicant provides that he relapsed after a transfer of station in April 1992. The documentation the applicant provided establishes that he went to a rehabilitation program for alcoholism for 39 days, from August 24, 1992 through October 2, 1992, successfully completing the program.

The applicant provides that he was twice deployed to combat zones, from June 2004 to June 2005, and then from April 2007 to October 2007. He states that he was subjected to mortar explosions, fighter jets, and the death of Iraqi coalition soldiers, enemy combatants, civilians, and children, and suffered an incident in which he was so close to an explosion that it caused him to be knocked unconscious and required a days long recovery period in a hospital. The applicant provides that shortly after returning from his second deployment that he began to exhibit a number of symptoms of PTSD to include depression and suicidal thoughts. The applicant provides that he did not seek help for these symptoms and instead began to self-medicate by using cocaine.

The applicant states that he sought medical assistance for mental health symptoms in December 2007. He provides that in March 2008 he was diagnosed with PTSD and Major Depressive Disorder (MDD). The applicant states that he admitted to relapsing and using cocaine when questioned by USCG investigating agents on September 29, 2008. He explains that this admission led to him submitting a signed written statement admitting to drug use, which was the basis for his separation from the Coast Guard. He explains that during this time, on December 3, 2008, he was again diagnosed with PTSD, major depression, and cocaine dependence. Next, the applicant provides that on December 22, 2008, he was discharged from the USCG with a "General, Under Honorable Conditions" characterization of service and a narrative reason for separation of "Misconduct - Involvement with Drugs."

The applicant states that after his discharge he was granted a 50% disability rating for service-related PTSD with an effective date of December 23, 2008 (i.e., the day after his administrative discharge). The applicant notes that the examining psychologist assessed that the applicant's use of drugs was not willful misconduct but was a symptom of his PTSD. The applicant provides that in April 2010, he successfully completed a substance abuse residential rehabilitation treatment program in San Antonio and has been substance-free since April 2011. He has subsequently had academic and career success and has mentored other military members being treated for mental illness and substance abuse.

The applicant next provides that the Discharge Review Board (DRB) denied his request to upgrade his discharge in 2010. In this request, the applicant argued that his actions and drug use were related to mental illness, PTSD, anxiety, and depression and that he should have been processed for physical disability for PTSD before he began his illegal drug use.

The applicant argues because his application is based on a mental health condition, that under liberal consideration guidance to the military services, to include the Coast Guard, the Board should waive all time limits that would preclude consideration of his application. The applicant then argues that under the liberal consideration guidance his request to upgrade his discharge should be granted. In support of his argument, the applicant provides that he was diagnosed by medical professionals with service-related PTSD, that his medical records establish that his PTSD occurred and existed during his military service (specifically as a result of his combat service), that his medical record supports the conclusion that his service-related PTSD led him to engage in the misconduct (i.e., drug use) that resulted in his discharge, and that because his combat service-related PTSD caused him to self-medicate with drug use for which he then voluntarily sought treatment. He also asserts that his mental health condition and related experience outweighs the cause of his discharge (i.e., misconduct—drug use). The applicant states that he had 15 years of

exemplary service and sobriety prior to the conduct giving rise to his discharge, expressed remorse, and has exhibited exemplary conduct in the years after his discharge. Finally, the applicant argues that under current procedures he would likely have been referred to the Physical Disability Evaluation Process ("PDES") after his PTSD diagnosis and, as a result, would not have been discharged with a General characterization of service prior to his misconduct.

In support of his application, the applicant submits several articles and medical essays on PTSD and PTSD's connection to drug use and Department of Defense and DHS liberal consideration memoranda. The applicant also submits his military personnel records, honors and awards, medical records, DD Form 214, and a personal declaration. The applicant also submits records related to his request to the DRB for an upgrade to his discharge, to include a recommendation from a prior commanding officer supporting the applicant's request to that board to upgrade his discharge.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard as a Seaman Recruit (E-1/SR) on December 10, 1991, and was immediately transferred to recruit training. Upon enlistment the applicant signed a CG-3307 which stated, in most relevant part, that:

I have been advised that the illegal use or possession of drugs constitutes a serious breach of discipline which will not be tolerated. Illegal drug use is counter to esprit de corps, mission performance., and jeopardizes safety. No member will use, possess, or distribute illegal drugs or drug paraphernalia. Upon reporting to my unit I understand I will be tested by urinalysis for the presence of illegal drugs. If my urine tests detect the presence of illegal drugs, I will be subject to discharge from the Coast Guard.

The applicant was evaluated by a substance abuse counselor on August 7, 1992. The counselor stated that the applicant presented a serious history of substance abuse, which started at age 14, and included the use of several drugs, including marijuana, methamphetamine, and cocaine over a six-year period. The counselor also stated that in 1989¹ the applicant entered and completed a treatment and aftercare program and maintained sobriety for three years using the support groups until he relapsed in April 1992, after being transferred and he stopped attending his support group meetings. His relapse at this time was alcohol only.

The applicant entered in-patient alcohol rehabilitation on August 24, 1992, completing the program on October 2, 1992. During his time in this rehabilitation program the applicant admitted to heavy THC, methamphetamine, and cocaine use for two years prior to service, attending prior rehabilitation in 1989, and prior instances public intoxication and assault. The applicant signed a CG-3307 on October 21, 1992, which stated that he had completed this rehabilitation program. The applicant's military record over the next 16 years of service did not include any instances of significant misconduct prior to the drug use for which he was discharged. Although the applicant did note during treatment on February 13, 2008, that he had one relapse in his drinking from 2001 to 2003.

¹ Records provided by the applicant provide that he was treated for chemical dependency from June 2, 1989, to July 4, 1989.

On February 13, 2008, the applicant had a medical appointment in which he complained that he was suffering from PTSD. The applicant reported at this appointment that in Iraq he had experienced mortar and rocket blast.² He reported that he was suffering from various problems, to include withdrawal, isolation, irritability, sleeplessness, fatigue, anxiety, jumpiness, inability to concentrate, forgetfulness, and a lack of motivation. On March 17, 2008, the applicant was diagnosed with major depression and PTSD.

On August 7, 2008, the applicant had an appointment with Medical Provider K for a consultation during which he reported increased depression and thoughts of suicide. Medical Provider K stated in his report of the consultation that the applicant explained that his wife and seven-month-old son had left for India with no plans to return. The report also provides that the applicant stated that he was a recovering alcoholic but had not had a drink and was considering going to a private behavioral health program while on upcoming leave. On August 18, 2008, Medical Provider D spoke with the applicant while the applicant was on leave to find out how he was doing and set up an appointment upon his return from leave. On August 19, 2008, Medical Provider K authored a medical note regarding the applicant stating that he had been notified by the applicant's command that the applicant had thousands of dollars of unauthorized charges on his government credit card. Medical Provider K also noted that Medical Provider D informed him that the applicant had disclosed that he was having substance abuse problems with cocaine prior to his going on leave. Finally, Medical Provider K provided that the applicant's command was notified of his cocaine use. On August 21, 2008, the applicant had a therapy session with Medical Provider D in which the applicant admitted to a relapse through the use of cocaine.

On September 1, 2008, the applicant was admitted to a treatment center for substance dependence and was discharged on September 29, 2008. On September 29, 2008, during an investigation at his duty station, the applicant verbally admitted to using cocaine and submitted a written statement admitting to such. On October 28, 2008, Lieutenant Commander (LCDR) H initiated procedures to remove the applicant from the Coast Guard for misconduct, specifically for the use of a controlled substance. On November 24, 2008, LCDR H recommended a general discharge of the applicant based on his admitted use of a controlled substance, cocaine, in accordance with Personnel Manual, COMDTINST M1000.6 (series), Article 12.B.18.b(4). The applicant was discharged from the Coast Guard on December 22, 2008, with a "General, Under Honorable Conditions" characterization of service and a narrative reason for separation of "Misconduct - Involvement with Drugs."

² On June 16, 2005, the applicant completed a post-deployment health assessment after service in Iraq (among other locations) in which he reported himself in good health. He did note in the assessment that he had engaged in direct combat, though he did not ever feel in great danger of being killed nor did he see anyone wounded or killed during this deployment. On October 16, 2007, the applicant completed a post-deployment health assessment after service in Iraq (among other locations) in which he reported himself in excellent health with an expressed concern regarding exposure to burn pits. He also noted that during this deployment he was not engaged in direct combat where he discharged his weapon but reported that he felt during the deployment that he was in great danger of being killed and saw people killed or wounded. On October 20, 2008, the applicant completed a post-deployment health reassessment in which he noted a number of health problems that he believed were related to his deployment and that he experienced a blast and fall during his deployments. A memorandum dated January 14, 2009, from a prior commander in the Iraq theater recommending that the applicant's request for a discharge be upgraded identified a number of instances of the applicant's unit being in the vicinity of mortar and rocket fire during his 2007 deployment.

On April 8, 2009, the applicant was evaluated at VA outpatient clinic. During this evaluation, the applicant reported he was “knocked unconscious” by an explosion while he was deployed and “woke up days later in the hospital.” Additionally, he reported he was treated for a traumatic brain injury during his active-duty service. He disclosed he had been using cocaine again but had been “clean for about 4 months” at the time of the evaluation. He was diagnosed with depression, not otherwise specified, and cocaine dependence in early full remission. Diagnoses of Major Depressive Disorder and PTSD were considered, but not made.

On June 15, 2009, the applicant underwent an initial evaluation for PTSD by the Department of Veterans Affairs (VA). During this evaluation the applicant described experiencing stressors during combat duty, to include removing dead bodies from the water and having to take a warning shot towards a person. He stated during the evaluation that he used cocaine to cope with what is now recognized as PTSD. The evaluation provides that the applicant saw people getting killed, was often subject to mortar fire, and saw dead children. The examining physician for this evaluation provides that the applicant was traumatized during his combat service and “it is clear the [applicant’s] use of drugs was not simply ‘willful misconduct’, but rather, was a symptom of his PTSD and clearly revealed the extent to which his usually good judgment was compromised by his traumatic experiences.” The physician also includes a statement that past use of alcohol and cocaine are both contributory, but not independently explanatory of the applicant’s impairment in psychosocial adjustment/life quality. The applicant was assessed by the VA as having a 50% disability for service-connected PTSD effective December 23, 2008. The applicant completed a Substance Abuse Residential Rehabilitation Treatment Program that he attended from March 24, 2010, through April 21, 2010.

A DRB convened on April 15, 2010, to consider a request from the applicant that his discharge be upgraded to honorable based upon the assertion that his actions/drug use was related to a “mental illness, PTSD, Anxiety, and Depression as documented in medical records.” The DRB denied the request but did direct that the applicant’s records be administratively modified so that his discharge be described as “Under Honorable Conditions” rather than “General.” The president of the DRB and the Chief of Staff of the Coast Guard concurred with this recommendation.

The Coast Guard obtained a medical advisory opinion from the Walter Reed National Medical Center (WRNMC) with regard to this case pursuant to 10 U.S.C. § 1552(g). The medical opinion states that there is insufficient evidence to establish a diagnosis of PTSD at the time of the misconduct that led to the applicant’s discharge. The opinion notes that there are inconsistencies in the applicant’s reports of his experiences from his deployments. For example, in his post-deployment health assessments he denied ever spending time in a hospital and there were no health records presented documenting that he sustained any injuries in the course of his deployments. The opinion notes that while the applicant did indicate that he discharged his weapon during his first deployment, he denied seeing anyone killed or wounded during that deployment and he did not disclose ever shooting anyone. The opinion provides that he reported that one of his duties was to remove dead remains, which if true, could qualify as a traumatic experience. However, the opinion notes that the applicant did not report any distress or negative emotional reactions to his reported experience. Additionally, the opinion states that the applicant reported that his symptoms developed in the context of other stressors including relationship discord with his spouse, guilt

related to his extramarital affair and divorce of his first wife, the stress associated with caring for a newborn, and his pending separation from the military. In addition, while he reported experiencing irritability, restlessness, paranoia, difficulty sleeping, and hypervigilance, these symptoms are confounded by his co-occurring cocaine use. The medical advisory opinion concludes that the applicant meets the criteria for alcohol dependence, cocaine dependence, and presents consistent with adjustment disorder.

The medical advisory opinion notes that the applicant had a history of drug and alcohol dependence before joining the Coast Guard, to include the use of cocaine, and then relapses thereafter. The opinion also provides that there was evidence of adjustment disorder while the applicant was in service that appear related to various stressors in his personal life. The opinion concludes that the applicant's symptoms and behavior were most consistent with a primary diagnosis of adjustment disorder. Conversely, the opinion provides that the applicant's medical record does not support a diagnosis of PTSD. The opinion notes that the onset of his emotional responses did not correlate with his exposure to traumatic events while on combat duty. The opinion further notes that there is no evidence from the records reviewed, that the applicant had received treatment during this deployment, or that any providers during this period were concerned about the applicant suffering from any head trauma or traumatic brain injury. The opinion then states:

After liberal consideration, it is our opinion that, within a reasonable degree of medical certainty, the conduct that led to the Applicant's separation is **not** a symptom of, or otherwise related to, his primary diagnosis of adjustment disorder, but are more likely related to his substance use disorders.

The medical opinion further concludes that, based on the record presented, that at the time of his misconduct the applicant met the criteria for cocaine and alcohol dependence. The opinion notes that the applicant had a longstanding pattern of relapsing cocaine and alcohol use that predates his service in the Coast. The opinion thus concludes that:

After liberal consideration, it is our opinion that, within a reasonable degree of medical certainty, the conduct that led to the Applicant's separation **is more likely** related to his diagnosis of cocaine dependence, but **not** his alcohol dependence.

The opinion goes on to state that there is no evidence of linkage between an adjustment disorder and cocaine dependence. The opinion thus concludes that, after liberal consideration, the diagnosis of adjustment disorder does not excuse the applicant's misconduct. Finally, the opinion concludes that the applicant met the criteria for alcohol and cocaine dependence prior to his Coast Guard service and thus, after liberal consideration, the applicant's cocaine and alcohol dependence do not excuse the applicant's misconduct.

VIEWS OF THE COAST GUARD

On April 10, 2024, the Coast Guard submitted an advisory opinion in which he 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).

Consistent with the WRNMC medical opinion, the Coast Guard concludes that the applicant's symptoms are more indicative of adjustment disorder and cocaine dependence than PTSD and that the conduct leading to the applicant's separation is not a symptom of his adjustment disorder, but more likely related to his substance use disorders. The Coast Guard notes that these substance use disorders existed prior to the applicant's joining the Coast Guard and, therefore, did not excuse the conduct that led to his discharge. The Coast Guard then concludes that if the substance use disorders do not excuse his misconduct, then they cannot outweigh the misconduct or otherwise warrant modifying the discharge.

The Coast Guard also finds that there is evidence to contradict the applicant's argument that under current procedures, he would likely have been referred to the PDES with their PTSD diagnosis and given a medical discharge prior to his misconduct. The Coast Guard concludes that the applicant's substance abuse disorder was more likely the cause of the symptoms initially attributed to PTSD and, therefore, the Applicant would not have been referred to the PDES for a substance abuse disorder that existed prior to military accession. This is because the sole standard in making determinations of physical disability as a basis for retirement or separation is fitness for duty because of disease or injury incurred or aggravated *through military service*. Consequently, the applicant's claim that he would have been referred to the PDES is unsupported.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 12, 2024, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

Pursuant to 10 U.S.C. § 1552(h), if an applicant's claim for review of a discharge or dismissal is based in whole or in part on matters relating to PTSD as supporting rationale and whose PTSD is related to combat trauma, the Board (1) shall review medical evidence of the VA or a civilian health care provider that is presented by the applicant; and (2) review the claim with liberal consideration to the applicant that PTSD potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the applicant's discharge or dismissal.

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 Discharge Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment" (June 20, 2018) (DHS Liberal Consideration Guidance) provides, in most relevant part, that:

- Unless otherwise specified, the term "mental health condition" in this guidance refers to both diagnosed and undiagnosed mental health conditions, including PTSD and TBI.
- The Board shall waive the statute of limitations (if applicable) and liberally consider and reconsider veterans' requests for discharge modifications based in whole or in part on claims that a mental health condition, sexual assault, or sexual harassment either excuses

the conduct or poor performance that adversely affected the discharge or otherwise warrants modifying the discharge.

- Requests for discharge modifications should not be denied based solely on the absence of a pre-separation diagnosis of the asserted mental health condition or the lack of a pre-separation report of sexual assault or sexual harassment.
- An honorable discharge does not require flawless military service. Many veterans who have committed some minor misconduct are separated with an honorable discharge.
- Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, in cases of minor misconduct or other conduct or performance problems commonly associated with mental health conditions, sexual assault, or sexual harassment, and even in some cases of significant misconduct if it is sufficiently justified or outweighed by the facts and circumstances.
- Absent clear evidence to the contrary, a diagnosis rendered by a licensed psychiatrist or psychologist is evidence that the veteran has or had the diagnosed mental health condition.
- A diagnosis made by a licensed psychiatrist or psychologist indicating that a mental health condition existed during military service shall be liberally considered along with other evidence.
- A determination made by the VA that a veteran's mental health condition, sexual assault, or sexual harassment is "service connected" is not binding on the Board but shall be considered persuasive evidence that the condition existed or the experience occurred during military service.
- The Board shall liberally consider whether the conduct or poor performance that adversely affected a veteran's discharge should be considered excused by a mental health condition or experience of sexual assault or sexual harassment that the Board believes to have existed at the time of that conduct or poor performance.
- The Board shall liberally consider whether a mental health condition or experience of sexual assault or sexual harassment that the Board finds to have existed at the time of separation outweighs the conduct or poor performance that adversely affected the veteran's discharge or otherwise warrants modifying the discharge.
- The Board may find that a veteran's misconduct is so severe that it should not be excused because of a mental health condition, sexual assault, or sexual harassment.

Article 12.B.18.b.(4) of the Personnel Manual in effect in 2004 (COMDTINST M1000.6A) states that any enlisted member "involved in a drug incident" will be discharged for misconduct with "no higher than a general discharge."

The Physical Disability Evaluation System (PDES Manual), COMDTINST M1850.2D (May 2006), in effect then and now, prescribes the policies, procedures, and standards for administering the Coast Guard PDES. Chapter 2 provides the following definitions, presumptions, and policies:

A.9. Conditions or Defects 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. These conditions include, but are not limited to, alcoholism

A.15. Existed Prior to Entry (EPTE). An impairment that existed prior to an evaluatee's entry onto active or inactive duty.

C.2. Fit for Duty (FFD) and Not Fit for Duty (NFFD). The following policies relate to fitness for duty.

a. The 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. Each case is to be considered by relating the nature and degree of physical disability of the evaluatee concerned to the requirements and duties that a member may reasonably be expected to perform in his or her office, grade, rank, or rating. In addition, before separation or permanent retirement may be ordered:

(1) there must be findings that the disability

(a) is of a permanent nature and stable; and

(b) was not the result of intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence.

i. The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) 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. A member may have physical impairments that are not unfitting at the time of separation but which could affect potential civilian employment. The effect on some civilian pursuits may be significant. Such a member should apply to the DVA for disability compensation after release from active duty.

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. The applicant is requesting a modification to the type of discharge he received based, in part, on his contention that the misconduct he engaged in that led to his discharge was the result of a combat service-related mental health condition.³ DHS's liberal consideration guidance directs the Board to waive the statute of limitations in such situations. Accordingly, the application shall be considered by the Board.

³ *DHS Liberal Consideration Guidance*, at § 8.

3. The applicant alleges that the conduct that led to his discharge, cocaine use, was an attempt to self-medicate his combat service-related PTSD. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.⁴ Error means either legal or factual error.⁵ Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.⁶ 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.⁷ 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.”⁸ And under DHS’s “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 VA records and decide whether the preponderance of the evidence shows that the veteran had an experience of military sexual trauma and mental health condition(s) while in the Service that could excuse the applicant's misconduct; whether the experience of military sexual trauma and mental health condition(s) actually excused the misconduct that adversely affected the discharge; and, if not, whether the experience of military sexual trauma and mental health conditions outweigh the misconduct or otherwise warrants upgrading the applicant's discharge.⁹

4. As described in the medical advisory opinion obtained by the Coast Guard from the WRNMC with regard to this application pursuant to 10 U.S.C. § 1552(g) and the health assessment records submitted by the applicant, the applicant’s allegations have inconsistencies when compared to those records. In his post-deployment health assessments, the applicant denied spending time in a hospital and there are no medical records presented documenting that he sustained any injuries during his deployments. He also reported that one of his duties was to remove dead remains, and that he saw dead and wounded during his second combat deployment, which if true, could qualify as a traumatic experience. However, other than reporting after his second deployment that he felt “constantly on guard, watchful, or easily startled” the applicant did not report any distress or negative emotional reactions to his reported experience in his initial post-deployment assessments.

5. DHS Liberal Consideration Guidance provides that “[a]bsent clear evidence to the contrary, a diagnosis rendered by a licensed psychiatrist or psychologist is evidence that the veteran has or had the diagnosed mental health condition.”¹⁰ The applicant was diagnosed by a psychiatrist with PTSD during his Coast Guard service and prior to the misconduct that led to his discharge.

⁴ 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

⁵ *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

⁶ *Id.*

⁷ 33 C.F.R. § 52.24(b).

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

⁹ *DHS Liberal Consideration Guidance*, at § 8-9.

¹⁰ *Id.*, at § 13.

6. DHS Liberal Consideration Guidance provides that “[a] determination made by the VA that a veteran’s mental health condition, sexual assault, or sexual harassment is ‘service connected’ is not binding on the Board but shall be considered persuasive evidence that the condition existed or the experience occurred during military service.”¹¹ The applicant was assessed by the VA as having a 50% disability for service-connected PTSD effective December 23, 2008. The examining physician for this evaluation provides that the applicant was traumatized during his combat service and “it is clear the [applicant’s] use of drugs was not simply ‘willful misconduct’, but rather, was a symptom of his PTSD and clearly revealed the extent to which his usually good judgment was compromised by his traumatic experiences.” The physician also includes a statement that past use of alcohol and cocaine are both contributory, but not independently explanatory of the applicant’s impairment in psychosocial adjustment/life quality.

7. The WRNMC medical advisory opinion, however, contradicts the prior PTSD diagnoses of the applicant, concluding that there is insufficient evidence to establish a diagnosis of PTSD at the time of the misconduct that led the applicant’s discharge. The WRNMC also concludes that:

- the applicant meets the criteria for alcohol dependence, cocaine dependence, and presents consistent with adjustment disorder;
- the applicant’s symptoms that were attributed to PTSD, such as irritability, restlessness, paranoia, difficulty sleeplessness, hypervigilance, depression, and anxiety, can be attributed to cocaine dependence;
- the misconduct that led to the applicant’s discharge is not a symptom of, or otherwise related to, his primary diagnosis of adjustment disorder, but is more likely related to his substance use disorders;
- the misconduct that led to the applicant’s separation is more likely related to his diagnosis of cocaine dependence, but not his alcohol dependence;
- there is no evidence of linkage between the applicant’s adjustment disorder and cocaine dependence;
- the diagnosis of adjustment disorder does not excuse the applicant’s misconduct; and
- the applicant met the criteria for alcohol and cocaine dependence prior to his Coast Guard service and thus, the applicant’s cocaine and alcohol dependence did not excuse the applicant’s misconduct.

8. The applicant reports a long history of alcohol and drug use, to include cocaine, prior to his service with the Coast Guard with relapses occurring thereafter. The applicant’s medical records also show that he suffered from a number of personal stressors related to issues with his marriage and family prior to the misconduct that led to his discharge.

9. Based on the applicants personal statement,¹² post-deployment medical records, history of substance abuse prior to and during his Coast Guard service (to include a relapse prior to his combat service), and the WRNMC medical opinion, after liberal consideration, the Board

¹¹ *Id.*, at § 20.

¹² *Id.*, at § 10. (“The Board shall carefully consider the veteran’s own testimony, oral or written, and may find that it is sufficient by itself to establish a basis for relief.”)

finds that the applicant has not established by a preponderance of the evidence that he had combat service-related PTSD at the time of the misconduct that led to his discharge. The Board, consistent with the WRNMC medical opinion, finds that the applicant most likely had an adjustment disorder during his Coast Guard service, but that this condition was unrelated to the misconduct that led to his discharge. The Board, consistent with WRNMC medical opinion, further finds that the applicant's misconduct that led to his discharge was instead most likely related to his cocaine dependence diagnosis that predates his service in the Coast Guard. The Board thus finds that the applicant has not established by a preponderance of the evidence that the misconduct led to his discharge was excused, or outweighed, by a combat service-related mental condition.

10. The Board also finds that the applicant has not established by a preponderance of the evidence that under current standards that he would have been referred to the PDES with a PTSD diagnosis and given a medical discharge prior to his misconduct. Consistent with the WRNMC medical opinion, the Board finds that the applicant's substance abuse disorder was more likely the cause of the symptoms initially attributed to PTSD and, therefore, the applicant would not have been referred to the PDES for a substance abuse disorder that existed prior to service in the Coast Guard.¹³ This is because the standard in making determinations of physical disability as a basis for retirement or separation is fitness for duty because of disease or injury incurred or aggravated *through military service*.¹⁴ The Board finds that the applicant has failed to demonstrate by a preponderance of evidence that he had a mental health condition incurred in or aggravated by service that prevented him from performing the duties of his office, grade, rank, or rating. The fact that the applicant is service connected by VA does not equate to a finding that the applicant was unfit at service separation.¹⁵ Consequently, the applicant's claim that he would have been referred to the PDES is unsupported by the other evidence of record.

11. The applicant has not established by a preponderance of that he was discharged for misconduct stemming from combat service-related PTSD. The applicant has also not established by a preponderance of the evidence that under current standards that he would have been referred to the PDES with a PTSD diagnosis and given a medical discharge prior to his misconduct. Accordingly, the applicant's request for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹³ COMDTINST M1850.2D, Art. A.9.

¹⁴ *Id.* at Art. C.2.a. In accordance with *Doyon v. United States*, 58 F.4th 1235 (Fed. Cir. 2023), the Board has applied liberal consideration in making this determination.

¹⁵ *Id.* at Art. C.2.i.

ORDER

The application of former Chief Boatswain's Mate [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

August 22, 2024

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