

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1997-080

FINAL DECISION

Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on March 7, 1997, upon the Board's receipt of the applicant's application for correction.

This final decision, dated July 23, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former [REDACTED] pay grade E-4) asked the Board to change his honorable discharge to a "medical discharge" (discharge by reason of physical disability). The applicant was honorably discharged on September 27, 1991 by reason of unsuitability, with a JMB (personality disorder) separation code and an RE-4 (not eligible for reenlistment) reenlistment code.

EXCERPTS FROM RECORD AND SUBMISSIONS

The applicant stated that he was discharged from the Coast Guard "due to a nervous condition that [he acquired] in [the] Service." He believed he should have received a medical discharge.

The applicant served on active duty in the United States Army from July 1980 until June 1984. He enlisted in the Coast Guard on September 15, 1986, and was discharged from the Coast Guard on September 27, 1991. He served five years and 13 days on active duty in the Coast Guard.

Excerpt From the Applicant's Medical Record

On September 1, 1987, a medical board consisting of two psychiatrists and one psychologist diagnosed the applicant as suffering from "obsessive-compulsive disorder . . . manifested by recurrent and persistent ideas and thoughts that are intrusive, ego dystonic and which the patient has been unable to ignore and which furthermore had caused marked distress and are time consuming to the patient." The doctors found the

precipitating stress was routine military service. The applicant was also diagnosed as being alcohol dependent but was in remission.

The medical board report stated, in part, as follows:

The patient was admitted to the Psychiatry Service, U. S. Naval Hospital, [REDACTED] with the tentative diagnosis of Obsessive Compulsive Disorder. He was initially maintained with suicide precautions. He was afforded individual, group and milieu psychotherapy. During the initial 48-hour period of observation, the patient was maintained without medication and he began to sleep and eat normally.

[T]he medical board . . . is of the opinion that the [applicant] suffers from a mental disorder which temporarily renders the servicemember unfit but the servicemember is considered psychiatrically fit for return to limited duty. The medical board recommends that this servicemember be returned to limited duty for a period of six months. . . . Psychopharmacological medication is presently not recommended but may be started in the future if symptoms recur.

An addendum to the medical board report dated September 10, 1987, stated that at the applicant's first follow-up appointment with his doctors, he complained of renewed anxiety, dysphoria, and mixed insomnia since his return to limited duty. The report indicated that the applicant requested medications to relieve the symptoms and to prevent the more severe symptoms from recurring. The applicant was prescribed the antidepressant [drug] imipramine.

On May 19, 1988 the central physical evaluation board (CPEB) found the applicant fit for duty. The Commandant approved the findings of the CPEB on July 7, 1988.

On July 23, 1991, the applicant was hospitalized at the National Naval Medical Center. He was discharged from the hospital on August 2, 1991. During this period of hospitalization, the applicant was diagnosed with the following:

AXIS I: 1. Adjustment Disorder, with depressed mood, DSM III-R #309.00

2. Marital Problem, DSM-III-R #V61.10

AXIS II: Personality Disorder, NOS with narcissistic and dependent features, DSM-III-R #301.90.

AXIS III: History of gastritis.

According to the narrative summary of this hospitalization, the applicant had "a four month history of depressed mood, inability to fall asleep, waking up in the middle of the night, lack of interest in his usual activities, feelings of guilt, decreased energy, inability to concentrate and suicidal ideation with a plan of driving his car into a wall."

The psychiatrist recommended the following for the applicant:

The [applicant] has a severe personality disorder which, when he is stressed by a failure to gratify his narcissistic and dependent needs, leads him to become potentially suicidal or homicidal. He has received the maximum benefit from his inpatient hospitalization. Further hospitalization is not warranted. His personality disorder is not amenable to treatment routinely available within the military. It is likely that the stressors of continued military service would frustrate his narcissistic and dependent needs and lead him to develop suicidal or homicidal impulses once again. It is also likely that he would continue to repeat the behaviors which are maladaptive to his military career. It is therefore recommended that he be expeditiously administratively separated from the United States Coast Guard. His direct supervisors agree with the separation. At the time of discharge, the patient was without suicidal or homicidal ideation.

On August 13, 1991, the applicant's commanding officer (CO) informed the applicant that he was recommending that the applicant be honorably discharged from the Coast Guard by reason of unsuitability. Also on August 13, 1991, the applicant signed a statement acknowledging notification of the proposed discharge. He indicated that he did not wish to submit a statement and waived his right to appear before an administrative discharge board. On August 28, 1991, the Commandant ordered the applicant's discharge.

On April 24, 1994, the applicant filed an application with the Discharge Review Board (DRB) requesting that his 1991 unsuitability discharge be changed to a "medical discharge." The DRB concluded that the applicant's discharge was improper and inequitable. The DRB voted unanimously (5-0) to recommend that the applicant be restored to active duty for the purposes of performing a medical board. The DRB gave the following reasons for its conclusions:

The [DRB] considered the facts presented and found that the evidence suggested two errors of procedure which would constitute impropriety under 33 CFR 51.6 [a DRB rule]. These errors made the separation physical improper. Specifically, not having a psychiatrist perform the examination and the lack of a signed statement by [the applicant] brings into question the propriety of the administration separation per 33 CFR 51.6. The [DRB] also found under a totality of the circumstances analysis, that, [the applicant] should have been afforded the opportunity to confer with counsel in light of his military record and other

evidence. In summary, the [DRB] concluded the Coast Guard made an error in procedure when it: (1) may have failed to properly advise [the applicant] of the findings of his separation physical as it was required to do, and (2) failed to have a psychiatrist conduct his separation physical as it should have. The Coast Guard also acted inequitably by (3) not providing [the applicant] counsel. As a result, [the applicant] was given an **ADMIN[ISTRATIVE]** discharge when he may warrant a **MEDICAL** discharge. [Emphasis in original.]

On February 3, 1997, the Commandant disapproved the findings and recommendation of the DRB. The Commandant stated that the DRB lacked the requisite authority to provide the type of relief requested. He directed that the Assistant Commandant for Human Resources to notify the applicant that he must seek appropriate relief from the BCMR.

On March 7, 1997, the applicant applied to the BCMR.

Additional Medical Evidence Submitted by the applicant

On July 20, 1994, the applicant was examined by a civilian psychiatrist who diagnosed the applicant as having recurrent and severe depression. The psychiatrist stated that the applicant's condition related to his Coast Guard service. He also stated that the applicant was unable to perform adequately in any working situation.

Department of Veteran's Affairs (DVA) Decision

On June 1, 1995, the DVA issued a decision denying the applicant's request for a service-connected disability for a "nervous condition, claimed as 'obsessive compulsive disorder.'" The applicant was granted a non-service connected disability because he was unable to "secure and follow a substantially gainful occupation due to disability."

In denying the applicant's claim for a service-connected disability, the DVA stated that the "condition of obsessive compulsive state is a constitutional or developmental abnormality; that is, a condition which was present at birth and/or which would have developed with or without entry into military service." The DVA further stated that the evidence before it "does not establish a depressive state was manifested to a compensable degree within 1 year of [the applicant's] discharge from service."

Views of the Coast Guard

On June 8, 1998, the Chief Counsel of the Coast Guard recommended that the Board deny relief to the applicant. The Chief Counsel stated that while the applicant presented evidence that he suffered from major depressive disorder as of 1994, he has not shown that his 1991 discharge by reason of unsuitability was erroneous or unjust.

The Chief Counsel also stated that mental disease is a physical disability but personality disorders are not.

The Chief Counsel stated that the physical disability evaluation system functions to determine a servicemember's fitness for duty. In contrast, the Department of Veteran's Affairs (DVA) is responsible for compensating former service members whose earning capacity is reduced, at any time, as a result of injuries suffered incident to, or aggravated by, military service. The Chief Counsel argued that the evidence shows that the applicant was not unfit for duty at the time of his discharge. He relied mainly on the medical report by the psychiatrists at the National Naval Medical Center.

The Chief Counsel concluded by stating as follows:

The evidence . . . shows only that nearly three years after this evaluation . . . he was diagnosed by a civilian psychiatrist with major depressive illness which the psychiatrist believed to be "related to" his service in the Coast Guard. While Applicant's Coast Guard experiences may have been a contributing factor to an illness he suffered in 1994 and he may therefore be entitled to DVA benefits, this does not show error in the discharge decision in 1991. Applicant has not shown that he was suffering from a physical disability rendering him unfit for duty when he was discharged.

The Coast Guard disagreed with the DRB that there might have been errors committed by the Coast Guard in not having a psychiatrist conduct the applicant's separation physical and in not advising the applicant of the findings of that separation physical. The Chief Counsel stated that Article 12-B-16h. of the Personnel Manual states that servicemembers with psychiatric considerations should be examined by a psychiatrist when available. The Chief Counsel stated that the applicant has presented no evidence showing that a qualified psychiatrist was available at the time of the applicant's discharge. The Chief Counsel stated that the psychiatrist function in these cases is not to provide an additional diagnosis of the member's psychiatric condition (which had just been determined by two medical corps psychiatrists in an 11-day evaluation), but to assess and document the applicant's mental capacity to control his behavior and to understand the separation process. The Chief Counsel stated that the applicant did not present any evidence to raise the issue of his mental capacity to know right from wrong at the time of his discharge. Nor did the applicant present any evidence to show that, had a psychiatrist undertaken to render a new diagnosis, it would have contradicted that of the two psychiatrists at the National Naval Medical Center.

Applicant's Response to the Views of the Coast Guard

The applicant did not agree with the recommendation of the Coast Guard. He stated that he was given no choice but to accept an unsuitability discharge. The applicant claimed that he was not told the meaning of an unsuitability discharge.

The applicant stated that after his discharge in 1991, until April 1994, he received psychiatric help from a DVA outpatient clinic. He has since been treated by a civilian psychiatrist. The applicant stated that he has always been treated for depression that was incurred while he was in the military.

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 of this case pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant has not shown by a preponderance of the evidence that he had a physical disability at the time of his discharge. The evidence shows that the applicant suffered from an adjustment disorder with depressed mood and a personality disorder with narcissistic and dependent features. These conditions are not the kind for which an applicant may receive a physical disability discharge. Chapter 2-A-7, COMDTINST M1850.2B states: "Certain conditions and defects may cause an evaluatee to be unfit for continued duty and yet not be physical disabilities within the meaning of the law, thereby, subjecting the evaluatee to administrative separation. These conditions include but are not limited to: . . . character disorders; . . ."

3. Documents of the applicant's discharge physical, if any, are not included in the applicant's military record. Even so, approximately two months prior to his September 27, 1991 discharge from the Coast Guard, the applicant was hospitalized at the National Naval Medical Center where he received a thorough mental and physical examination. His mental condition was evaluated by two psychiatrists. They determined that the applicant suffered from adjustment and personality disorders and recommended that he be discharged from the Coast Guard. There was no need to refer the applicant to a medical board, since these conditions were not of the nature that would lead to a discharge by reason of physical disability. The Board finds that it was acceptable for the Coast Guard to use the medical evaluation report from the National Naval Medical Center as the applicant's separation physical, since the applicant was given a complete physical during this period of hospitalization and since a period of 12 months had not elapsed between the physical examination and the applicant's discharge. The Personnel Manual permits the use of physical examinations performed within 12 months of discharge in processing members for discharge. See Article 12-B-6, Personnel Manual. The Board also notes that the applicant did not object to the discharge and waived his right to submit a statement and to have a hearing.

4. Article 12-B-16d.(3) of the Personnel Manual states that a member should be afforded the opportunity to consult with counsel, if the member's character of service warrants a general discharge. Since the CO recommended that the applicant receive an honorable discharge, the Coast Guard did not commit an error in this case by not affording the applicant an opportunity to consult with counsel.

5. Moreover, Coast Guard regulations permit the discharge of a member for unsuitability due to a personality disorder. Article 12-B-16 of the Coast Guard Personnel Manual. The evidence of record supports the Coast Guard's decision to discharge the applicant for that reason.

6. In 1994, approximately three years after his discharge from the Coast Guard, the applicant was diagnosed as having a severe major depressive illness. The applicant has not established that his current depressive illness was incurred while serving on active duty. The applicant has presented insufficient evidence to establish a service connection between his present condition (major depression) and his military service.

7. The applicant has failed to prove an error or injustice in this case. Accordingly, his application should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of
correction of his military record is denied.

, USCG, for

